



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

September 30, 2019

Tom Stickrath, Director
Ohio Department of Public Safety
1970 West Broad Street
Columbus, Ohio 43223

Colonel Richard Fambro, Superintendent
Ohio State Highway Patrol
1970 West Broad Street
Columbus, Ohio 43223

Re: Compliance Review of the Ohio Dep't of Pub. Safety &
the Ohio State Highway Patrol (Docket No. 16-OCR-1553)
Compliance Review Report

Dear Director Stickrath and Colonel Fambro:

I write to report the findings of the Compliance Review (Review) of the Ohio Department of Public Safety (DPS) and the Ohio State Highway Patrol (OSHP), conducted by the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice (DOJ), which focused on employment practices related to the recruitment, selection and retention of females to the position of trooper.

In my letter dated December 15, 2016, I informed former Director John Born and former Colonel Paul Pride, that the OCR selected the DPS, OSHP for a Review as part of the OCR's broader review of the employment practices of state law enforcement agencies. The OCR conducted the Review in accordance with the nondiscrimination provisions of the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act) and its implementing regulations.¹

The OCR has completed its Review and finds that the OSHP and DPS policies and practices regarding the recruitment, selection, and retention of female troopers are consistent with the requirements of the Safe Streets Act and its implementing regulations. Specifically, the OSHP has a robust recruiting program with a focus on recruiting women. The DPS is also compliant with the EEOP requirements and has existing department-wide policies addressing equal employment opportunity. Finally, a statistical analysis of the employment data by an expert hired to assist the OCR found that overall, the OSHP selection process does not have a disparate impact on the selection and hiring of women to the position of trooper.

¹ 34 U.S.C. § 10228(c) (2018); 28 C.F.R. §§ 42.201-.308 (2018).

Based on 2015 data published by the Federal Bureau of Investigation, which depicts the total number of sworn law enforcement officers employed by an agency as of October 1, 2015, the OSHP's percentage of female troopers ranked fifteenth out of thirty-nine reporting states with females representing 8.43% of all OSHP trooper positions.² As of November 5, 2018, the OSHP realized an increase in the percentage of female troopers on the force to 9.2%.³ This Report contains recommendations to aid the OSHP and DPS in continuing to increase the representation of female troopers, and to strengthen its Safe Streets Act-mandated equal employment opportunity program (EEOP).

The OCR's Review evaluated the OSHP's recruitment activities from 2014 through the present, along with the policies and practices related to the selection and retention of troopers from January 1, 2014, through December 31, 2016.⁴ In preparing this Report, the OCR relied on information provided by the DPS and OSHP in response to the OCR's data requests, including relevant written policies and procedures and applicant flow data pertaining to applicants and hires for the position of trooper during the requested time period, in addition to information publicly available on the OSHP and DPS websites.⁵ During its September 2017 onsite visit, the OCR also interviewed six female recruits; twelve female troopers; twelve male troopers; five district captains; three recruiters; and a cross section of the OSHP command staff, including staff from the Office of Recruitment's Patrol Training Academy; and staff from the DPS' Office of Human Resource Management. The OCR also conducted a series of conference calls with the staffs of OSHP and DPS throughout the Review.

Please find the OCR's Report, including the OCR's findings and recommendations below.

Compliance Review Report

I. OCR's Women In Law Enforcement Compliance Review Initiative

This Review is part of a broader compliance review initiative by the OCR to evaluate the efforts of law enforcement agencies to employ women as sworn officers. The OCR selected state law enforcement agencies as the focus of its initial women-in-policing compliance reviews based on research from the Bureau of Justice Statistics (BJS) that demonstrated, from 1987 to 2007, state law enforcement agencies had the lowest percentage of female sworn officers when compared to local police departments and

² FBI, UNIFORM CRIME REPORT PROGRAM, CRIME IN THE UNITED STATES, 2015, tbl.76 (Full-time State Law Enforcement Employees by State, 2015), <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-76>.

³ Workforce totals ebb and flow based on a number of factors to include retirement and resignations. Overall, the OSHP has experienced an upward trend in the number of female troopers on the force during the time period of this Review. The number of female and male troopers at the OSHP from 2015 to the present are as follows: in 2015, 129 females and 1426 males; in 2016, 128 females and 1426 males; in 2017, 142 females and 1454 males; and, as of November 5, 2018, 147 females and 1449 males.

⁴ The OSHP used NEOGOV, an electronic applicant-tracking system to receive and process applications for the position of trooper. Through NEOGOV, the OSHP tracked the progression of each applicant at each step in the selection process. During the data collection period of January 1, 2014, through December 31, 2016, the OSHP solicited applications for the trooper position on a continuing basis, receiving 9423 applications for the position during this time period. The OCR examined this information, referred to as applicant flow data, pertaining to the OSHP's selection of recruits for the training academy, referred to as the Trooper Recruit School (hereinafter TRS), for which each selected applicant would attend. The applicant flow data reviewed by the OCR covered the following six TRS classes were: 158th, 159th, 160th, 161th, 162th, and 163th. For applicants that ultimately were appointed to a TRS, the OSHP provided data on how each applicant performed at the TRS and during the Field Training Officer program [hereinafter FTO], the last step in the trooper selection process.

⁵ See <http://www.statepatrol.ohio.gov/about.aspx> and <https://publicsafety.ohio.gov/wps/portal/gov/odps> (last visited May 3, 2019).

sheriffs' offices.⁶ The BJS report also found that the percentage of female officers grew within state law enforcement agencies at a much slower rate when compared to local jurisdictions.⁷ Because this data suggested state agencies may face challenges in hiring and retaining female officers, the OCR prioritized reviews of state law enforcement agencies.⁸

The DPS, as a recipient of financial assistance from the OJP, must comply with the nondiscrimination provisions of the Safe Streets Act, which, among other protections, prohibit discrimination in employment based on sex.⁹ Because the OCR has jurisdiction to conduct compliance reviews of funded state law enforcement agencies, the OCR selected the DPS, which includes the OSHP, for a review based on several factors including the DPS' receipt of a substantial amount of DOJ funding.¹⁰ At the initiation of this Review, the DPS was receiving over twenty-six million dollars in financial assistance from the DOJ.¹¹

II. Relevant Legal Obligations

A. Safe Streets Act EEOP Requirements

As a condition for receiving DOJ financial assistance subject to the Safe Streets Act, recipients agree to comply with the Safe Streets Act's regulations governing the development of a written EEOP.¹² In accordance with these regulations, when developing and implementing an EEOP, a recipient must identify and analyze "any problem areas inherent in the utilization or participation of minorities and women in all of the recipient's employment phases (e.g., recruitment, selection, promotion)."¹³

An EEOP must include a variety of analyses, including a comparison between the demographics of a recipient's workforce, cross-classified by race, sex, and national origin in major job categories, to the demographics of qualified individuals in the same job categories, cross-classified by race, sex, and national origin, in the relevant labor market.¹⁴ The EEOP must also include the recipient's written narrative analyzing its existing employment policies, procedures, and practices as they relate to the

⁶ LYNN LANGTON, BJS, WOMEN IN LAW ENFORCEMENT, 1987- 2008 (June 2010), <https://www.bjs.gov/content/pub/pdf/wle8708.pdf>.

⁷ *Id.*

⁸ From 1987 to 2007, the percentage of female sworn officers increased from approximately 8% to nearly 12% in local police departments and from approximately 4% to approximately 7% in state police agencies; in the same time period, the percentage of female sworn officers declined slightly from less than 13% to roughly 11% in sheriffs' offices. *Id.* at 3 fig.4.

⁹ 34 U.S.C. § 10228(c)(1).

¹⁰ 28 C.F.R. § 42.206(c)(1)-(5).

¹¹ DOJ financial assistance includes multiple grant awards, some of which remain open, that are subject to the nondiscrimination provisions of the Safe Streets Act. *See, e.g.*, FY 2016 Ohio Edward Byrne Memorial Justice Assistance Grant, Award No. 2016-MU-BX-0372 (October 1, 2015 to September 30, 2019) (award for \$5,740,424); FY 2016 STOP Violence Against Women Formula Grant Program, Award No. 2016-WF-AX-0011 (July 1, 2016 to June 30, 2018) (award for \$4,812,569); FY 2015 Justice Assistance Grant Program, Bureau of Justice Assistance, Award No. 2015-MU-BX-0772 (Oct. 1, 2014 to Sept. 30, 2018) (award for \$5,355,775); FY 2015 STOP Violence Against Women Formula Grant Program, Award No. 2015-WF-AX-0015 (July 1, 2015 to June 30, 2017) (award for \$4,373,792); FY 2014 Justice Assistance Grant Program, Bureau of Justice Assistance, Award No. 2014-MU-BX-1200 (Oct. 1, 2013 to Sept. 30, 2017) (award for \$6,129,635). Please note, this list of DOJ awards is *not* comprehensive as it does not list awards to the DPS following the initiation of the Review which are currently open, and any new awards that are pending to the DPS, of which there are multiple.

¹² 28 C.F.R. pt. 42, subpt. E.

¹³ *Id.* § 42.303(a).

¹⁴ *Id.* § 42.304.

employment of minorities and women.¹⁵ When this analysis identifies underutilization of women or minorities in any job category, the recipient's EEOP must include the specific steps the recipient will take to achieve full and equal employment opportunity.¹⁶ The regulations also require recipients to analyze all elements of their hiring process, including the administration of tests and other selection devices to ensure they are equitable.¹⁷ Recipients must also develop a recruitment plan to attract minority candidates,¹⁸ and assess their efforts to retain employees, including conducting an annual analysis of promotion processes and training programs to determine whether they treat women equitably.¹⁹ Pursuant to the EEOP regulations, recipients "are expected to conduct a continuing program of self-evaluation" to determine whether their employment practices have a discriminatory effect.²⁰

Major recipients, like the DPS, which are public entities that receive a grant of \$500,000 or more and have fifty or more full-time employees, must submit a utilization report to the OCR for review as part of their EEOP.²¹ Each utilization report provides a snapshot of the number of the recipient's employees within specific job categories, cross-classified by race, national origin, and sex, and identifies whether a recipient has an "underutilization rate." This rate results from the comparison of the percentage of employees of a protected class in a particular job category to the percentage of qualified workers of the same protected class in the relevant labor market.

B. Prohibition of Employment Discrimination Based on Sex

The Safe Streets Act prohibits discrimination based on sex, including any discrimination against female applicants or employees.²² Accordingly, a recipient that receives funding under the Safe Streets Act must ensure it is not utilizing discriminatory selection devices in the hiring of female law enforcement officers. In determining whether a recipient is engaging in prohibited employment discrimination under the Safe Streets Act, the OCR relies on the standards of Title VII of the Civil Rights Act of 1964 (Title VII), as amended.²³

Under Title VII, the OCR may prove discrimination in multiple ways, including demonstrating that a certain policy has a disparate impact on the employment of a protected class of individuals.²⁴ To that end, Title VII prohibits a recipient from using employment practices that are "fair in form, but discriminatory in operation."²⁵ To establish a prima facie case of disparate-impact discrimination, one must identify a facially neutral policy or practice and then provide evidence, usually through statistical

¹⁵ *Id.* § 42.304(g)(1).

¹⁶ *Id.*

¹⁷ *Id.* § 42.303(c).

¹⁸ *Id.* § 42.304(g)(2).

¹⁹ *Id.* §§ 42.303(a), (c)(3); .304.

²⁰ *Id.* § 42.306(a).

²¹ *Id.* §§ 42.204(b), .302(d); *see also* *EEOP Frequently Asked Questions*, OCR https://ojp.gov/about/ocr/faq_eeop.htm#4

²² 34 U.S.C. § 10228(c)(1).

²³ 28 C.F.R. § 42.203(c); 42 U.S.C. § 2000e-e-17 (2018).

²⁴ 42 U.S.C. § 2000e-2(k).

²⁵ *Griggs v. Duke Power Co.*, 401 U.S. 424, 432 (1971) (holding that Title VII prohibited employer from requiring employees to have a high school education when the requirement had a disparate impact on African Americans and the employer could not demonstrate that the requirement was related to job performance); *Scales v. J.C. Bradford and Co.*, 925 F.2d 901, 907-909 (6th Cir. 1991) (applying a sex-based disparate impact theory of discrimination).

data,²⁶ that the challenged policy or practice has a disproportionately negative effect on a protected class.²⁷ The employer may rebut the prima facie case by proving that the challenged employment practice did not cause the disparate impact²⁸ or by presenting evidence that the challenged practice or policy is “job related for the position in question and consistent with business necessity.”²⁹ Even if the employer can show that business necessity, or public interest for a public entity, justifies the contested policy or practice, the employer may still violate the law if the employer could have achieved its legitimate purpose by other reasonable means that have a less disparate impact on the protected class.³⁰

III. Agency Overview: Ohio Department of Public Safety, Ohio State Highway Patrol, and the Ohio Peace Officer Training Commission

A. Ohio Department of Public Safety

The DPS is responsible for controlling traffic safety, vehicle registration, emergency medical service certification, homeland security investigations, and other functions for the State of Ohio.³¹ The DPS executes these responsibilities through the following six divisions: Ohio Bureau of Motor Vehicles, Ohio Emergency Management Agency, Emergency Medical Services, Ohio Office of Criminal Justice Services, Homeland Security, and the OSHP.³² The DPS Director, a cabinet-level position appointed by Ohio’s governor, supervises the OSHP.³³ During the planning and onsite phases of the Review, former Director John Born presided over the DPS. In January of 2019, Ohio Governor Mike DeWine appointed the current DPS Director, Tom Stickrath, to head the DPS.³⁴

B. Ohio State Highway Patrol

The OSHP is regulated by § 5503 of the Ohio Revised Code³⁵ and is responsible for statewide traffic and emergency-response services, investigation of criminal activities on state property, and the protection of the governor and other officials.³⁶ The OSHP consists of the following six divisions: Office of the Superintendent, Office of Field Operations, Office of Criminal Investigation, Office of Personnel, Office of Planning and Finance, and Office of Logistics and Security Services.³⁷ The OSHP also has a multitude of specialty units, such as Aviation, Crash Reconstruction, and the Special Response Team.³⁸ Colonel Richard S. Fambro is the current superintendent, and as the OSHP’s highest

²⁶ *Dothard v. Rawlinson*, 433 U.S. 321, 330-31 (1977) (holding statistics related to height and weight of applicants showed discriminatory impact on women); *Hazelwood Sch. Dist. v. United States*, 433 U.S. 299, 307-08 (1977) (finding statistical disparities showed a pattern of discrimination).

²⁷ 42 U.S.C. § 2000e-2(k)(1)(A)(i).

²⁸ *Id.* § 2000e-2(k)(1)(B)(ii).

²⁹ *Id.* § 2000e-2(k)(1)(A)(i).

³⁰ *Id.* § 2000e-2(k)(1)(A)(ii).

³¹ See *About ODPS*, ODPS, <http://www.publicsafety.ohio.gov/aboutodps.stm> (last visited May 16, 2019).

³² *Id.*

³³ See *Director’s Office-Tom Stickrath*, ODPS, <http://www.publicsafety.ohio.gov/diroffice.stm> (last visited May 16, 2019).

³⁴ *Id.*

³⁵ See OHIO REV. CODE ANN. §§ 5503.01-.02 (West 2019). The OSHP has also incorporated its statutorily based authority into OSP Policy 203.03-Powers/Duties, Authority/Code of Ethics/Oath/Rules and Regulations. The State of Ohio also classifies troopers as peace officers and outlines the authority of a peace officer. See OHIO REV. CODE ANN. § 2935.01 (West 2019) (describing the authority of a peace officer).

³⁶ See *About Us*, OSHP, <http://www.statepatrol.ohio.gov/aboutus.aspx> (hereinafter *About OSHP*) (last visited May 3, 2019).

³⁷ See *About Us: Offices and Units*, OSHP, <http://statepatrol.ohio.gov/aboutus.aspx> (last visited May 3, 2019).

³⁸ See *About Us: Offices and Units, Office of Field Operations*, OSHP, <http://www.statepatrol.ohio.gov/about-operations.aspx> (last visited July 27, 2018).

ranking member, is responsible for its oversight.³⁹ Supporting the OSHP superintendent are two assistant superintendents, Lieutenant Colonel Kevin Teaford, and Lieutenant Colonel Marla Gaskill.⁴⁰ The OSHP has maintained accreditation from the Commission on Accreditation for Law Enforcement Agencies (CALEA) since 1989.

The OSHP headquarters are in Columbus, Ohio, as is the Patrol Training Academy (Training Academy or Academy).⁴¹ The Patrol Division (Patrol), within the Office of Field Operations, contains most of the OSHP sworn troopers. While Patrol headquarters is also in Columbus, because the OSHP maintains statewide jurisdiction, the Patrol Division is spread throughout the state, segmenting the OSHP's jurisdiction into nine districts.⁴² Each district has further subdivisions called posts; a captain oversees each district and a lieutenant oversees each post.⁴³ The OSHP troopers are primarily responsible for enforcing traffic and criminal laws on public roadways and on state-owned-or-leased property in Ohio. Troopers can serve in specialty positions, such as undercover investigators, a member of the drug interdiction team, canine officers, and accident-reconstruction specialists. In addition to its sworn personnel, the OSHP has approximately 1000 support personnel and an all-volunteer auxiliary force.⁴⁴

C. Ohio Peace Officer Training Commission

The Ohio Peace Officer Training Commission (OPOTC or Commission) is a division of the Ohio Attorney General's Office.⁴⁵ The Commission has nine members, each appointed by Ohio's governor with the advice and consent of the Ohio Senate for a three-year term.⁴⁶ Among other duties, the Commission has statutory responsibility for establishing and overseeing the training standards for all commissioned police officers in Ohio and for certifying venues offering police officer training curriculum.⁴⁷ The OSHP Training Academy adheres to the OPOTC's certified training curriculum.⁴⁸ All OSHP sworn troopers must attend the OSHP Training Academy.

IV. Recruitment for the Position of Trooper

A. DPS's EEOP

As discussed in Section II. A. of this Report, the DPS must develop an EEOP that analyzes the impact of its employment practices on women and minorities, and submit the EEOP utilization report and

³⁹ See *About Us: Senior Staff*, OSHP, <http://www.statepatrol.ohio.gov/about-staff.aspx> (last visited Sept. 13, 2019). The superintendent is selected from the patrol ranks upon the retirement or death of a predecessor; see also *About OSHP*.

⁴⁰ See *About Us: Senior Staff*, OSHP, <http://www.statepatrol.ohio.gov/about-staff.aspx> (last visited Sept. 13, 2019).

⁴¹ See *About OSHP*.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See *Ohio Peace Officer Training Commission*, Ohio Attorney General, <https://www.ohioattorneygeneral.gov/Law-Enforcement/Ohio-Peace-Officer-Training-Academy/Ohio-Peace-Officer-Training-Commission> <http://www.statepatrol.ohio.gov/about.aspx> (last visited May 15, 2019). The OPOTC was not the subject of the OCR's Review, but is referenced in this Report because it establishes the training standards for all commissioned peace officers in Ohio, which includes all troopers who attend the OSHP Academy and graduate from a TRS.

⁴⁶ *Id.*

⁴⁷ *Id.*; See OHIO ADMIN. CODE § 109:2-1 (2019).

⁴⁸ In addition to adhering to the OPOTC's certified training curriculum, the OSHP supplements the curriculum with additional training requirements that all candidates for the position of trooper must satisfy while attending a TRS at the Academy. See *infra* Section V. B. of this Report for a full discussion of the TRS requirements.

accompanying analysis to the OCR for review.⁴⁹ The DPS is in compliance with this obligation. On February 3, 2016,⁵⁰ and on November 5, 2018,⁵¹ the DPS filed with the OCR its EEOPs and accompanying documents, including utilization reports covering the period of this Review and extending into the present. The 2016 EEOP reported 1573 total sworn positions among all ranks, of which 1444 were male (91.79%) and 129 (8.20%) were female.⁵² The 2018 EEOP reported 1596 total sworn positions among all ranks, of which 1449 were male (90.78%) and 147 were female (9.21%).⁵³ A comparison between the 2016 and 2018 EEOPs shows an increase in both the number and percentage of sworn females on the force.

After analyzing the workforce in comparison to the relevant labor market, both the 2016 and 2018 EEOPs did, however, identify underutilization rates for females in the job category of Protective Services,⁵⁴ which includes data for the subcategories of Sworn Officials and Sworn Patrol Officers. The tables below list the underutilization rates in the 2016 and 2018 EEOPs:

Underutilization Rates for Female Sworn Officers in 2016 and 2018⁵⁵

2016 DPS Utilization Report	White		Hispanic or Latino		Black or African American		American Indian or Alaska native		Asian		Native Hawaiian or Other Pacific		Two or More Races		Other	
	Patrol	Official	Patrol	Official	Patrol	Official	Patrol	Official	Patrol	Official	Patrol	Official	Patrol	Official	Patrol	Official
Underutilization %	-24%	-7%	-1%	0%	-5%	-3%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%

2018 DPS Utilization Report	White		Hispanic or Latino		Black or African American		American Indian or Alaska native		Asian		Native Hawaiian or Other Pacific		Two or More Races		Other	
	Patrol	Official	Patrol	Official	Patrol	Official	Patrol	Official	Patrol	Official	Patrol	Official	Patrol	Official	Patrol	Official
Underutilization %	-22%	-7%	-1%	0%	-5%	-3%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%

In both EEOPs, the DPS discussed the workforce data in the utilization reports, setting forth objectives and steps to address the identified underutilization.

In the 2016 EEOP, the DPS stated it would encourage females in the areas affected by underutilization to apply to vacancies in Protective Services. Steps identified by the DPS to achieve this objective were primarily four-fold: (1) develop an action plan identifying ways to attract more females to the job category of protective services; (2) expand recruitment activities beyond traditional hiring sources by building relationships with community agencies and organizations and colleges and universities; (3) collaborate with the OSHP, Office of Recruitment, to develop a unified recruitment plan; and (4) create a stand-alone diversity committee representing all facets of the DPS, which will develop programs to support diversity, such as lunch-and-learns and community outreach programs. As for achieving the

⁴⁹ 28 C.F.R. pt. 42, subpt. E.

⁵⁰ The DPS initially filed with the OCR an EEOP dated November 17, 2015, but subsequently submitted a revised EEOP, considered final, dated February 3, 2016 (on file with the OCR) [hereinafter 2016 EEOP].

⁵¹ The DPS initially filed with the OCR an EEOP dated October 2, 2018, but subsequently submitted a revised EEOP, considered final, dated November 5, 2018 (on file with the OCR) [hereinafter 2018 EEOP].

⁵² See 2016 EEOP 9 (on file with the OCR).

⁵³ See 2018 EEOP 9 (on file with the OCR).

⁵⁴ The category of Protective Services includes *all* sworn positions throughout the DPS to include the positions of police officer 2 (PO2) and Ohio Investigative Unit Enforcement Agent (OIU Agent), *as well as* the position of trooper, which is specific *only* to the OSHP. The data contained in the EEOP, Law Enforcement Category Rank Chart, however, represents only the position of sworn trooper and does not include the positions of PO2 and OIU Agent. The OCR highlights this distinction for the reader when considering all of the workforce data contained in the DPS's EEOPs. See 2016 EEOP 6, 9 (on file with the OCR); 2018 EEOP 6, 9 (on file with the OCR).

⁵⁵ The negative percentages in the table represent the percentage of underutilization of sworn females in the DPS workforce as compared to the relevant labor market.

stated objectives, the DPS reported it had developed the action plan, expanded its recruitment activities as demonstrated through a progress report provided to the OCR listing dozens of career fairs attended by the DPS staff throughout the state soliciting applicants for protective services' positions, and the OSHP had specifically addressed in its recruitment plans the underutilization of females identified in the protective services category. The DPS also hosted several of the intended diversity programs listed in its EEOP narrative to include working lunches featuring speakers from community organizations, such as the Hispanic Coalition and Disability Awareness, however, the diversity committee had yet to take shape.

In the 2018 EEOP, the DPS reaffirmed its objective in the 2016 EEOP to focus on the recruitment of females. To this end, the DPS expanded the steps in the 2016 EEOP to address the underutilization of women in the category of Protective Services to include the following: (1) creating the diversity committee entitled, Recruitment, Retention and Diversity, which would focus on the recruitment and retention of female troopers by designing a mentoring program for female troopers and produce recommendations for improving female retention; (2) continue tracking the impact of OSHP's recruitment efforts on female enrollment at the Academy; (3) develop a recruitment plan for calendar year 2019 based on recruitment and retention data for females; (4) distribute automatically the job announcement for the position of trooper to community organizations subscribed to receive the notification; (5) use targeted radio ads to announce the position in metro and urban areas; (6) the OSHP would host at least one open house promoted by field recruiters; and (7) the DPS would host a job expo at the Training Academy, and participate in the 2019 Women's Health and Wellness Expo, to aid in the recruitment of females for the position of trooper.

B. The OSHP's Recruitment Plan^{56, 57}

The OSHP provided copies of its annual recruitment plans for each year from 2014-2018, which cover the period of this Review. Each annual plan, titled OSHP Recruitment Plan/Minority Recruitment, has three primary goals with corresponding objectives and provides a written narrative on how the OSHP, through its Office of Recruitment (Recruitment or Recruitment Office), intends to achieve the identified goals and objectives. The articulated goals in the recruitment plans were as follows: (1) increase the current level of female troopers, (2) increase the current level of Hispanic troopers, and (3) increase the current level of other minorities to include African Americans, Asian/Pacific Islanders, and Native Americans.⁵⁸ The associated objectives for each goal focused on recruiting qualified applicants in the noted categories through achieving a percentage increase of representation in each category. Relevant to

⁵⁶ The DPS also developed recruitment strategies that focused on recruitment efforts of all the noted categories of underutilization in the EEOP. The recruitment strategies for women in the category of protective services primarily focused on attending career fairs. As for the category of protective services as a whole at the DPS, this category includes all sworn personnel throughout the DPS with sworn positions comprising other law enforcement officers other than trooper, which is exclusive to the OSHP. Because the OSHP recruitment plans address the identified underutilization specific to targeting applicants for the trooper position, the OCR has highlighted the goals, objectives, and strategies of those plans in the narrative of this Report.

⁵⁷ The OSHP also produced a strategic plan titled, Ohio State Highway Patrol, 2015-2019 Strategic Plan [hereinafter Strategic Plan], which set forth specific goals with the following six categories: Promote Traffic Safety, Deter Crime, Build Relationship, Improve Administration Efficiency, Develop and Maintain a Professional Workforce, and Enhance Infrastructure. The fifth category, Develop and Maintain a Professional Workforce, established goals to develop strategies to increase the recruitment of minorities and females and to study retention of patrol cadets. The OSHP Recruitment Plans carried out the directive in the Strategic Plan with regard to recruitment strategies for females. The retention study of cadets was also executed and is discussed in Section V. B. of this Report.

⁵⁸ Although the objective to increase the overall number of identified applicants in each category remained the same for each plan, the 2018 Plan updated the phrasing of the goals.

this Review, in the 2016 Recruitment Plan, the OSHP set a goal of increasing female troopers to 10% through focused recruitment efforts to recruit female applicants. The 2017 Recruitment Plan had the same goal and objective. The written narrative in each plan clearly established objectives on how the OSHP intended to achieve these goals through the efforts of the Recruitment Office. Some of the recruitment strategies proposed in the 2014-2017 Recruitment Plans include the following: conducting outreach through social media, newspapers, radio, and cable television; continuing to maintain relationships with community businesses and groups; attending career fairs at colleges, universities, and high schools; disseminating print materials about the trooper position featuring women and minorities; and reestablishing relationships with military programs.⁵⁹ The 2018 Recruitment Plan built on these initiatives, adding innovative strategies to reach female applicants. Details of the outreach efforts are in Section IV. E. of this Report.

C. Vacancy Announcement

Applications are accepted on a continuing basis⁶⁰ and the public receives notification about the trooper vacancies in a variety of ways. The DPS posts the vacancy announcement online at the State's career website, <http://careers.ohio.gov/>, and on several job-oriented websites to include Ohio Means Jobs, Indeed, and Monster. The OSHP also posts the announcement on its website at <http://www.statepatrol.ohio.gov/recruit/index.html>, which includes a detailed description about the position of trooper and provides a direct link to the application for the position at <http://careers.ohio.gov>. The Recruitment Office also posts the vacancy announcement at career placement offices at colleges and universities; the placement offices then post the announcement on their respective websites. Additionally, the vacancy announcement is advertised at the National Association of Women Law Enforcement Executives, the NAACP, and the National Organization for Black Law Enforcement, and on multiple social media networks used by OSHP to include Facebook, Instagram, LinkedIn, Twitter, and YouTube. In the recent past, vacancy announcements were posted in the following local media outlets: *The Columbus Dispatch*; Cleveland's *The Plain Dealer*; Cleveland's *Call and Post*; Radio One Cleveland; Radio One Cincinnati; Radio One Columbus; WLIP Channel 25 in Lima, Ohio; and *Live on Lakeside* on WKYC Channel 3 in Cleveland.

D. The OSHP, Office of Recruitment

The Recruitment Office is in Columbus and has primary responsibility for recruitment and selection of troopers.⁶¹ The standard operating procedures for the OSHP and Recruitment establish the protocol and procedures for trooper selection and hiring.⁶² Recruitment is staffed by a female commander, who holds the rank of lieutenant; a male assistant commander, who holds the rank of sergeant; an administrative officer; four recruiters, of which two are female and two are male;⁶³ and nine assistant recruiters, of which four are female and five are male.

⁵⁹ See *supra* note 56.

⁶⁰ The OSHP command staff explained that prior to 2016, applications were only received during a one-month open application period. From 2016 to the present, applications for the trooper position were accepted continuously.

⁶¹ Recruitment command staff emphasized that it is the expectation of the OSHP command that all troopers actively engage in recruiting applicants for the position of trooper.

⁶² See OSP 503.01, Recruitment Process for Trooper, Enforcement Agent, and Police Officer (Aug. 5, 2016); OSHP Recruitment Standard Operating Procedure for Sworn Officers (Jan. 24, 2017) [hereinafter Recruitment SOP].

⁶³ During the OCR's onsite visit, the Recruitment Office explained there were only four budgeted positions for the position of recruiter and there were no plans to increase the number of funded positions.

The position of recruiter is full-time;⁶⁴ when openings arise, interested troopers must apply to be considered for the position. Some of the preferred qualifications for the position of recruiter include possessing certification as an Ohio Peace Office Training Academy Instructor, a minimum of two years of experience as a trooper, a demonstrated understanding of the application process for the position of trooper, strong communication skills to include the ability to speak in front of large groups, and excellent leadership qualities. Upon hire, all troopers receive training on their role and responsibilities as a recruiter. New recruiters also shadow senior Recruitment staff at recruitment events, such as career fairs, to understand fully their new role of soliciting and engaging potential applicants for the trooper position. All Recruitment staff undergo annual testing on their duties as recruiters, and on their knowledge of the DPS and OSHP recruitment, selection, and hiring policies.

Although Recruitment's main office is in Columbus, field recruiters work in Cleveland, Cincinnati, and Toledo to proximately target the most populated areas of the state. Field recruiters are primarily responsible for conducting recruitment activities within their assigned area, which includes multiple counties.⁶⁵ Recruiting responsibilities include meeting with interested applicants to discuss the applicants' interest in the position of trooper, informing members of the public about the position, assisting in the administration of initial applicant testing to include the physical fitness and written tests, attending community events, visiting college and university campuses, and maintaining relationships with minority groups, all with the goal of making contact with qualified applicants for the position of trooper. Assistant field recruiters serve as back-up to field recruiters by assisting during large recruitment events and filling in when field recruiters are unable to attend an event.

E. Outreach

The Recruitment Office engages in extensive outreach to notify the public about, and seek applicants for, the position of trooper by participating in career fairs and job expos; visiting colleges, universities, and military bases; attending community events; and visiting community businesses and non-traditional venues as described below.

Recruitment participates in the DPS' annual career fair held at the OSHP Training Academy and the job expo hosted at the Ohio State Career Fair. Recruiters have attended career fairs held at colleges and universities throughout the state. In 2016, two recruiters traveled out of state to attend a career fair at the Tennessee State University (TSU) and to visit another nearby college. While at TSU, recruiters offered applicants the option to take the initial job-screening tests, which included the written and physical fitness examinations, eliminating the need for applicants to travel to Ohio to complete the tests.

In addition to career fairs, recruiters regularly visit college and university campuses to spread the word about the trooper position and seek applicants. When visiting campuses, recruiters often meet with representatives from career services, athletic services, and the departments of criminal and social justice. The Recruitment Office provided the OCR with a list of fifty-six colleges and universities that recruiters visited to provide information about trooper positions with the OSHP.

Recruiters have also attended community events sponsored by a variety of organizations to identify and connect with prospective applicants; the organizations have included the Hispanic Coalition, Historic

⁶⁴ Although the position of recruiter is full time, the position of assistant field recruiter is not; thus, troopers serving as assistant recruiters remain full-time in the trooper position and "fill in" as assistant recruiters when needed.

⁶⁵ Although a full-time position, a recruiter must still perform the enforcement duties of a general trooper if the recruiter observes a violation of the law.

Black Colleges and Universities for Women, the NAACP, and the Urban League. In June 2017, recruiters attended an event hosted by the Urban League of Columbus called "Fishing with Dads." Similarly, in September 2017, recruiters attended a volleyball tournament hosted by the Historic Black Colleges and Universities for Women to identify and connect with prospective female applicants. In October 2017, the Hispanic Coalition hosted a conference in which recruiters attend, along with troopers active in the Coalition, in hopes of connecting with prospective applicants.

In addition to recruiting at the traditional venues already described, Recruitment has creatively thought about where it may reach applicants, particularly women, and developed a list of non-traditional venues that recruiters regularly visit. This list includes shopping malls, fitness clubs, yoga studios, golf courses, community recreation centers, churches, hair salons, and barber shops. Recruitment has tried to be innovative in engaging with prospective applicants. For example, the Recruitment Office has developed relationships with local YWCAs to offer self-defense classes to women. The classes provide positive exposure for the OSHP while providing an opportunity to attract potential female applicants.

The Recruitment Office also hosted recruitment events targeting solely female applicants. On April 4, 2015, a Women's Seminar was held at the OSHP Training Academy for only females interested in the position of trooper. The seminar was an opportunity for female applicants to meet one-on-one with female troopers from various ranks and positions to learn about their careers in law enforcement, discuss expectations of attending the Academy, and to understand better the life of a trooper, particularly from a female perspective. In the media release for this event, a female command staff member said that the seminar would help demystify the preconception that law enforcement is not a career for women. Recruitment provided to the OCR the attendance roster for this event, which showed that 100 women pre-registered to attend, and four women walked-in on the day of the event. Of that number, fifty-three applied for the trooper position, and four women ultimately became troopers as a result of this recruiting initiative. Following this seminar, the OSHP hosted a second seminar on April 29, 2017, at the Academy, with a focus on both women and minorities. During the OCR's onsite visit, the Recruitment Office informed the OCR that it hoped to sponsor another seminar targeting women in late 2017 or early 2018 subject to budgetary considerations. Unfortunately, the OSHP command staff informed the OCR that the event did not occur as it could not secure a no-cost venue for the seminar.

The OSHP offers several other programs to solicit applicants for the trooper position. One such program is the Cadet Intern Program, which is for college students interested in pursuing a career as an OSHP trooper. The program provides training and experience in the field of law enforcement with the hope that interns successfully progress through the program and then attend the Training Academy as cadets. Another program is the Ride-Along-Program for applicants who are actively processing through the application process. The program is intended to be both an informational experience, which allows applicants to accompany a trooper during a work shift to gain a better understanding of the job and its duties. The OSHP's hope is that the program will assist the applicant in making an informed decision about a potential career as a trooper. The program also ensures applicants remain engaged in the hiring process prior to attending the Academy.

The OSHP has produced for recruiter dissemination flyers and brochures about the trooper position, which prominently feature women. While the main page of the OSHP website contains an image of a male and female trooper with the phrase "Recruitment," Recruitment's own webpage does not, however, contain any images of women performing the duties of a trooper.

The OSHP does not offer any particular recruitment incentives to attract recruits. If the OSHP selects a recruit to attend the Academy, however, the OSHP provides living accommodations, meals, uniforms and equipment, and the recruit receives a salary.

During the OCR's onsite interviews with male and female troopers and command staff, the OCR heard that the OSHP could do more to connect with prospective female applicants. Among the suggestions were that the OSHP should increase the number of female recruiters and conduct more outreach to females through women-only events. When the OCR asked how these examples would help recruit more women, the interviewees said that female recruiters make the force more relatable to women, and women-only events allow interested women to hear directly from female troopers about their successful matriculation to the position of trooper and their experience in a male-dominated occupation.

Recruitment staff informed the OCR during onsite interviews that they have been fortuitous in identifying female applicants at some of the untraditional venues previously mentioned, particularly shopping malls and fitness centers, and will continue to target these venues if they yield results. Recruitment staff also noted that when speaking to interested female applicants, some of the concerns expressed about becoming a trooper included working alone, having a support system at home, and "fitting in" to the work environment.

The Recruitment command staff explained that it monitors and assesses the recruitment activities of the office. Recruiters must produce and submit for review weekly activity logs documenting their recruitment activities, noting prospective applicants and plans to follow up with them. Recruitment command staff also conducts monthly meetings with the recruiters to assess their recruitment efforts and to determine staffing needs. The meetings inform how Recruitment sets the goals and objectives in its annual recruitment plans, which this Report previously discussed in Section IV. B.

Since 2014, the OSHP has steadily increased both the number and percentage of female applicants. As listed in the table below, in 2014, females represented 390 applicants or 14.33%, of the total applications that the OSHP received for the position of trooper. In 2015, females represented 323 applicants or 13.84%, of the total applications. By 2016, the OSHP saw an increase on both fronts as there were 662 female applicants, representing 15.17% of all applications received, for the position of trooper. The applicant data by sex for 2014-2016 is summarized in the table below:

Applicants for the Position of OSHP Trooper for 2014-2016⁶⁶

Year	2014		2015		2016	
	Applicants	Percent	Applicants	Percent	Applicants	Percent
Female	390	14.33%	323	13.84%	662	15.17%
Male	2312	84.97%	1997	85.56%	3665	84.00%
Sex Not Provided	19	0.70%	14	0.60%	36	0.83%
Grand Total	2721		2334		4363	

⁶⁶ The OCR derived the data in this table from the comprehensive applicant flow data that the OSHP provided on applicants to the trooper position for the time period of January 1, 2014, through December 31, 2016.

F. Recommendations

The OSHP's recruitment program substantially complies with the Safe Streets Act regulations. The OCR commends the OSHP and Recruitment for its robust outreach efforts and continuing assessment to identify ways to recruit women for the position of trooper. In addition to the steps outlined in the DPS's 2018 EEOP, the OCR makes the following recommendations to assist the OSHP in its efforts to recruit females for the trooper position:

- Offer more frequent informational workshops and seminars for potential female applicants, such as the Women's Seminar hosted in 2015. Targeted outreach like this can encourage women to apply to be troopers.⁶⁷
- Increase the number of female recruiters that interact with prospective male and female applicants. Observing female troopers and hearing them speak about their experiences as OSHP troopers can help dispel myths and stereotypes associated with law enforcement.⁶⁸
- Consider an update and refresh to Recruitment's webpage to include pictures of women engaging in law enforcement activities. The webpage may include links to connect interested female applicants to information on women in law enforcement. The linked information may include first-hand accounts from current female troopers about their experiences at the OSHP, highlighting female promotions and various jobs that women hold. The links may also lead to resources on work-life balance and women law enforcement associations.
- Develop a program where female troopers may serve as mentors to female applicants awaiting entry into the academy and to females participating in the Cadet Intern Program. Mentoring early on in the recruitment process could aid in demystifying any concerns that female applicants may have about becoming a trooper and provide valuable information from female predecessors on how best to manage the challenges the job of a trooper may present.⁶⁹

V. Selection of Troopers

The OCR examined the OSHP's selection of entry-level troopers from January 1, 2014, through December 31, 2016. During this period, the OSHP conducted six Trooper Recruit Schools (TRS), and hired a total of 324 male and 62 female recruits to attend a TRS.⁷⁰ Cumulatively, the six TRS classes graduated 261 male and 46 female troopers.⁷¹ The qualifications and screening process for applicants

⁶⁷ The DOJ and EEOC conducted an interagency research initiative to help law enforcement agencies recruit, hire, retain, and promote a diverse set of officers. The resulting report, *Advancing Diversity in Law Enforcement*, identifies promising practices for increasing diversity in law enforcement. See DOJ and EEOC, *ADVANCING DIVERSITY IN LAW ENFORCEMENT*, iv-v (Oct. 2016), <https://www.justice.gov/crt/case-document/file/900761/download> [hereinafter *Diversity in Law Enforcement*].

⁶⁸ *Id.* at 27.

⁶⁹ *Id.* at iv, 28-29.

⁷⁰ The OCR derived this data from the applicant flow data that the OSHP prepared and provided to the OCR for all applicants and hires from January 1, 2014, through December 31, 2016. The data did not include the sex of five individuals whom the OSHP hired to attend a TRS.

⁷¹ The OCR derived this data from the applicant flow data that the OSHP prepared and provided the OCR for all applicants and hires from January 1, 2014, through December 31, 2016. The data did not include the sex of four individuals who graduated from a TRS.

wishing to attend a TRS are set forth below and reflect the application and hiring process covered under the time period of this Review.⁷²

A. Qualifications and Screening Process⁷³

1. Minimum Qualifications

Pursuant to Ohio state law, the OPOTC, and the OSHP's standard operating procedure and policy,⁷⁴ an applicant who wishes to serve as a trooper must meet the following minimum requirements: (1) be a U.S. Citizen; (2) possess a valid driver's license with five or fewer points;⁷⁵ (3) be a Ohio resident prior to commission from the TRS;⁷⁶ (4) have a high school diploma or GED;⁷⁷ (5) be between the ages of twenty and thirty-four;⁷⁸ (6) have uncorrected vision no worse than 20/100 in each eye separately and correctable to 20/20 monocular vision without color perception issues;⁷⁹ (7) have a hearing level not exceeding a thirty-decibel loss at any of the following frequencies: 500 Hz, 1000Hz, and 3000 Hz in each ear; and (8) have no tattoos or body art visible while in uniform.⁸⁰ The OSHP notifies applicants through its website of other possible disqualifiers, including a conviction for driving under the influence of alcohol or drugs, a conviction for aggravated vehicular homicide or vehicular assault, six or more points on one's driving record in any jurisdiction, a conviction of a felony criminal act, a conviction of a domestic violence offense, sexual relations with a child, molestation, and sex by intimidation or deception, and abuse of a position of trust through theft or time.⁸¹

⁷² Because some of the application and selection requirements have changed since the time period covered in this Review and those changes appear on the OSHP's website, this Report has incorporated the changes to avoid confusion.

⁷³ Unless otherwise specified, the entire process is guided by the authority set forth in *infra* note 74.

⁷⁴ OHIO REV. CODE ANN. §§ 5503.01, .05; OHIO ADMIN. CODE § 109:2-1; OSP 503.01, Recruitment Process for Trooper, Enforcement Agent, and Police Officer (Revised Aug. 5, 2016). *See also* Recruitment SOP. As previously discussed in Section II. C. of this Report, the OPOTC establishes the minimum training standards for all peace officers in Ohio.

⁷⁵ Currently, six or more points lead to an automatic disqualification for an applicant. *See* OSHP, *Requirements*, <http://www.statepatrol.ohio.gov/recruit/require.html> (last visited May 15, 2019) (listing cadet/applicant requirements for the trooper position).

⁷⁶ The superintendent may waive the residency requirement. *See* OHIO REV. CODE ANN. § 5503.01.

⁷⁷ *See* OHIO ADMIN. CODE § 109:2-1-03(D).

⁷⁸ The following statutory stipulations apply to the age requirement: an applicant must be twenty-one prior to graduating from the training academy, be no older than thirty-four upon entry into the Academy, and must not exceed the age of thirty-five at the time of graduation from the training academy. *See* OHIO REV. CODE ANN. § 5503.01; Recruitment SOP at 2. *See also* *Requirements*, OSHP, <http://www.statepatrol.ohio.gov/recruit/require.html> (last visited May 15, 2019) (listing cadet/applicant requirements for the trooper position).

⁷⁹ The color vision requirement was modified as of August 15, 2017, and stipulates that an applicant with color vision deficiency can use color corrective lenses, provided the applicant can still pass the color vision test while wearing the corrective lenses.

⁸⁰ OSHP, Appearance Standards for All Employees, OSP 505.03 (Revision #13) (Apr. 6, 2017) sets forth, among other things, the OSHP tattoo policy. As Recruitment command staff explained to the OCR, during the time period covered in this Review, the OSHP had several iterations of the tattoo policy. In 2014, applicants could enter a TRS with visible tattoos; in August 2015, however, applicants were ineligible for placement on a roster for a TRS with visible tattoos. As of January 18, 2017, applicants would not progress beyond the written exam and pre-employment physical fitness test with a visible tattoo. On April 17, 2019, OSP 505.03, Revision #14, was issued. It appears that the tattoo policy in this revision remains the same as outlined in the previous policy dated April 6, 2017.

⁸¹ *See Trooper Application Process*, OSHP, <http://www.statepatrol.ohi.gov/recruit/apply.html> (last visited May 15, 2019).

2. Screening Process

Statutory mandates, administrative code, OSHP policy and practice, and the OPOTC requirements guide the screening process, which takes approximately four to six months.⁸² The Recruitment Office manages the entire process. A brief description of each step in the OSHP's application and screening process for hiring an entry-level trooper is set forth below.

a. Online Application and Forms

To initiate the process, applicants must complete an online application, which is located at <https://career.ohio.gov>. An electronic application system called NEOGOV processes the applications.⁸³ Applicants must provide data such as contact and personal information, a description of educational and work experiences, and a written summary explaining their eligibility for the position. By responding to a series of yes-or-no questions, applicants demonstrate whether they can satisfy the minimum job requirements.⁸⁴ Applicants may also upload as an attachment to the application their resumes, cover letters, and transcripts from educational institutions they attended.

When completing the online application, applicants must also download and complete the following forms: Applicant Release for Physical Assessment, Vision Specialist's Report, Hearing Report, and Background Investigations Questionnaire.⁸⁵ The applicant is notified that these forms are required for completion if the applicant progresses beyond the online application phase and that the applicant must remit the completed forms when the applicant sits for the pre-employment physical test and written assessment.

Once NEOGOV screens the applications, applicants will receive an auto-generated email stating whether they did, or did not, satisfy the minimum requirements. If the applicants meet the minimum requirements, the email informs the applicants that they may proceed to the next step, the written and pre-employment physical fitness assessment. The email instructs the applicants to self-schedule a test date and venue most convenient for them. The email also provides applicants with a description of the tests, including the required pass rates, and a reminder to bring to the test the required forms noted above.

b. Written Exam and Pre-Employment Physical Fitness Test

After self-registering for the written and pre-employment physical fitness test at a date and site convenient for them, the applicant reports for testing. The Recruitment Office offers the written and

⁸² See *supra* note 74.

⁸³ See *supra* note 4 and *infra* note 84.

⁸⁴ The OSHP relied upon a computerized application system, NEOGOV, to receive, screen and process applications during the time period covered in this Review. The OSHP notified the OCR that effective September 2018, the Ohio Department of Administrative Services would replace NEOGOV with a new application processing system that the OSHP would use after that date to process applications. In terms of screening, NEOGOV automatically screens the applicant's response to the minimum requirements of age, U.S. Citizenship, high school diploma or GED and valid driver's license, which initially determines if applicants satisfy the minimum requirements. Once NEOGOV filters the applicants, it automatically generates a list of the applicants that meet the minimum requirements and then auto-sends notice of such to the applicants. NEOGOV also generates a list of applicants for the OSHP that will proceed in the application process.

⁸⁵ A certified Optometrist or Ophthalmologist must complete the Vision Specialist's form within six months of an applicant's initial test date. A certified Otolaryngologist (ENT) or Audiologist must complete the Hearing Report within six months of the applicant's initial test date. See *Trooper Application Process*, OSHP, <http://www.statepatrol.ohio.gov/recruit/apply.html> (last visited May 15, 2019). See also Recruitment SOP at 4.

pre-employment physical fitness assessment at various times and locations throughout the state, including the Training Academy in Columbus and at numerous regional test sites to afford applicants multiple venues at which to schedule. Prior to administering the written and physical fitness tests, the Recruitment staff reviews the applicants' forms and confirms that they satisfy the minimum requirements such as age and driving record. If Recruitment determines that an applicant does not satisfy the minimum requirements, it dismisses the applicant from the testing site. Recruitment also advises applicants of the OSHP's tattoo policy.⁸⁶

If the required forms are complete and the Recruitment Office confirms that the applicant meets the minimum requirements, the applicant proceeds to take the written exam, which covers the following subjects in six sections: crash diagrams, ethical dilemmas, spelling and vocabulary, map reading, math, and scenario-based questions.⁸⁷ Applicants must pass the written exam to proceed to the pre-employment physical fitness test. If an applicant does not pass the written test, the OSHP dismisses the applicant from the hiring process.⁸⁸

The physical fitness assessment contains four components: push-ups, sit-ups, a mile-and-a-half run, and a test of body-fat composition.⁸⁹ Pass rates for all components of the test are both gender- and aged-normed at the twentieth percentile, as established by the Cooper Institute for Aerobics Research.⁹⁰ Prior to taking each component of the test, applicants receive a verbal explanation of the test and a physical demonstration by Recruitment staff. This explanatory information is in addition to the testing information provided on the OSHP webpage⁹¹ and conveyed to each applicant by Recruitment staff prior to the applicant's reporting for testing. To pass the pre-employment physical fitness test, applicants must attain the age- and gender-normed pass rates listed in the table below:

Physical Fitness Standards	1.5 Mile Run		Timed 1 Minute Push-Ups		Timed 1 Minute Sit-Ups		Body Fat % ⁹²	
	20-29	30+	20-29	30+	20-29	30+	20-29	30+
Age	20-29	30+	20-29	30+	20-29	30+	20-29	30+
Male	13:58	14:33	22	17	33	30	23.1	24.9
Female	17:11	18:18	10	8	24	20	27.1	29.1

All applicants *must* pass the mile-and-a-half run to pass the pre-employment physical fitness test. On test day, applicants have the opportunity to retake once the push-ups test and the sit-ups test *if* they already passed the mile-and-a-half run. The OSHP dismisses applicants who fail the run or who fail the

⁸⁶ See *supra* note 80 and accompanying text.

⁸⁷ The written test offered in 2014 also contained a personality assessment and applicants had to attain at least a passing score of 70%. Beginning in 2015, the OSHP command staff explained that the OSHP removed the personality assessment from the written test to comply with CALEA standards, which require applicants to undergo a stand-alone psychological assessment. Thus, in the updated written exam, applicants had to achieve a minimum passing score of 75% and then underwent the stand-alone psychological assessment.

⁸⁸ During 2014-2016, applicants who did not pass the written exam had to wait six months before retaking the exam; the six-month waiting period applied to the applicant flow data covered under the time period of this Review. As of June 15, 2017, however, the waiting period was reduced to three months from six months.

⁸⁹ The body fat composition component was added to the physical fitness assessment effective August 1, 2016.

⁹⁰ The Cooper Institute for Aerobics Research is a nonprofit organization dedicated to preventive medicine that, among other things, aggregates and distributes information about physical fitness tests. See *About*, COOPER INST., <http://www.cooperinstitute.org/about/> (last visited Aug. 10, 2018).

⁹¹ See *Trooper Application Process*, OSHP, <http://www.statepatrol.ohio.gov/recruit/apply.html> (last visited May 15, 2019); see also *Requirements*, OSHP, <https://www.statepatrol.ohio.gov/recruit/require.html> (last visited May 15, 2019).

⁹² See *supra* note 89.

retaken sit-up and push-up tests. The OSHP advises unsuccessful applicants on the process to retake the pre-employment physical fitness test.⁹³

c. Conditional Offer of Employment

Applicants passing all portions of the written and pre-employment physical fitness exams receive a conditional offer of employment. If the applicant accepts the conditional offer, the applicant must execute the following forms: Acceptance of Offer, Applicant Release, Notification and Authorization for Employment Credit Report, Supplemental Nepotism Statement, Supplemental Employment Agreement, Authorization for Release of Information, and Tattoo/Body Art Modification Declaration.

d. Polygraph

Applicants are scheduled to take a polygraph examination after accepting the conditional offer of employment. Refusing to take, or complete, the polygraph examination results in disqualification from the hiring process. Applicants who fail the polygraph exam receive written notification informing them of their failure and noting whether the results permanently disqualify them for employment or disqualify them for one or two years.

e. Background Investigation

Applicants who pass the polygraph proceed to the background investigation (BI) stage of the hiring process. A sworn trooper or a contracted background investigator who has received training from the OSHP on how to conduct background investigations completes the BI. The OSHP states the BI is as thorough as necessary to verify a candidate's credentials and personal history, which entails the following: reviewing criminal, credit, medical, driving, and educational records; interviewing character references; reviewing the polygraph examination; and auditing past and present employment history.⁹⁴ To prepare the candidate for the investigation, the Recruitment Office provides on its website a description of what to expect and a list of all documents the applicant must furnish to the background investigator. Some of the required documents include the applicant's driver's license; birth certificate; and if applicable, marriage licenses and divorce decrees.⁹⁵

Once completed, background investigators summarize their factual findings in a report submitted to Recruitment. The Recruitment Office then reviews each report for accuracy and completeness and sends a copy of the report and all accompanying documents, including the polygraph exam results, to the Selection Committee for review.

f. Drug Screen

Prior to completing the background investigation, all applicants must undergo a drug urinalysis per state law.⁹⁶ Applicants must receive a negative test result to complete the BI. Applicants who test positive on the drug urinalysis cannot continue with the hiring process.

⁹³ In 2014, applicants did not have the option to retake the pre-employment physical fitness test; however, in 2015, the OSHP began allowing applicants one opportunity to retake the test.

⁹⁴ See Recruitment SOP at 9.

⁹⁵ See *Trooper Application Process*, OSHP, <http://www.statepatrol.ohi.gov/recruit/apply.html> (last visited May 15, 2019).

⁹⁶ See OHIO ADMIN. CODE § 123:1-76-09 (2019).

g. Selection Committee Review

The Selection Committee consists of two sworn senior-level troopers, each holding the rank of captain and overseeing the Office of Personnel and the Academy, respectively. Each member of the Selection Review committee independently review and score each applicant's entire BI packet, which includes the background documents requested from the applicant and a copy of the results of the polygraph exam. Recruitment command staff explained to the OCR staff that the review conducted by the Selection Committee is a "holistic review" in that the Selection Committee makes a cumulative assessment of all aspects of the applicant's completed BI in scoring each applicant. The scoring system that the Selection Committee uses has six categories: employment history, financial standing, personal qualities, compliance with the law, reputation/character, and acceptance of responsibility. Each member of the Selection Committee must rate the applicant in each of the six categories on a scale of one to five. To pass the background phase, an applicant must receive a total of at least eighteen points from each Selection Committee member.⁹⁷ In the case of a split vote, the Lieutenant Colonel, Assistant Superintendent for Administration, provides the final, tie-breaking vote. In so doing, the Lieutenant Colonel independently reviews the applicant's entire BI packet and then scores the applicant in each of the six categories described above; the Lieutenant Colonel's score serves as the controlling score for the applicant.

All applicants are notified in writing of the results of the Selection Committee. Applicants who receive less than eighteen points and thus fail the Selection Committee's review, are notified that they can reapply after a two-year waiting period. Applicants receiving a score of eighteen points or more thus, passing the Selection Committee's review, are placed on the eligibility roster⁹⁸ to attend the next scheduled TRS at the Academy pending successful completion of the required psychological assessment. Passing applicants also receive a written letter from the Commander of the Patrol Academy notifying them that they are tentatively selected to attend the next scheduled TRS contingent upon successfully completing the psychological assessment. The letter also provides other pertinent information, including the TRS start date; notification of mandatory attendance at an orientation on hiring information, such as payroll and benefits; and the need to undergo the physical fitness assessment again before entering the TRS.⁹⁹

h. Psychological Assessment and Orientation

Applicants on the eligibility roster must complete a psychological fitness and emotional stability assessment. To conduct this assessment, the OSHP relies on the Minnesota Multiphasic Personality Inventory 2 Restructured Form (MMPI-2-RF) Police Candidate Interpretive Report to evaluate

⁹⁷ The Recruitment Office explained to the OCR that the individual scores from the Selection Committee members are not averaged and all scores are listed as either pass or fail.

⁹⁸ Once an applicant passes the Selection Committee, the applicant is placed on either a starting or reserve eligibility roster to attend the next available Academy class. An applicant's placement on each roster is based on the date that the applicant completes the application process, and not on any rating or evaluation. Thus, those applicants who progress through the hiring process and are first time-stamped by the OSHP as completing the process, fill the starting roster. Once the starting roster is full, the OSHP begins to fill a reserve roster. Applicants on the reserve roster fill any vacancies on the starting roster or remain on standby to fill the next scheduled Academy class. Vacancies on the starting roster can occur for a variety of reasons, such as an applicant deciding not to attend the training academy or a recruit enrolls in the next available Academy class.

⁹⁹ Recruitment staff explained to the OCR that retaking the physical fitness assessment at this juncture solely serves as a baseline for an applicant's performance on the physical fitness assessment that an applicant must pass during the TRS. *See infra* note 110 and accompanying text.

candidates who may not meet the standards of effective police officer performance.¹⁰⁰ Dr. Theresa Martelli¹⁰¹ administers the MMPI-2-RF, and then reviews the resulting Police Candidate Interpretive Report for presenting factors inconsistent with police work. If she has concerns, Dr. Martelli interviews the applicant. In some cases, she refers applicants to a licensed psychologist for further evaluation. Dr. Martelli notifies Recruitment either (1) that the applicant may continue with the selection process or (2) that the applicant requires further evaluation, which may require an interview or a referral to a psychologist.

The OSHP provides all applicants with written notification of their score. If the applicants fail the psychological assessment, the OSHP notifies them that their application for employment is not approved. If the applicants pass the assessment, the OSHP notifies them of their placement on either the active or reserve eligibility roster to attend the next scheduled TRS.¹⁰²

B. Patrol Academy Training, TRS

Cadets, or those applicants selected for academy training, attend a TRS at the Training Academy in Columbus, Ohio. A commandant, who holds the rank of captain oversees the Academy; two staff lieutenants and four lieutenants support the commandant. The Academy training is approximately twenty-four to twenty-six weeks, depending on holidays, and cadets reside in dormitory-style housing at the Academy during operating hours, which are from Monday at 8:00 a.m. to Friday at 6:00 p.m. As described on the OSHP's website, academy training is rigorous with intensive course work and physical training; cadets should expect continuous pressure to perform in a paramilitary environment.¹⁰³

As explained in Section III. C. of this Report, the OPOTC mandates all training standards for sworn police officers in Ohio.¹⁰⁴ The OPOTC requires all candidates commissioned as police officers to complete a 695-hour curriculum, which includes thirteen topics.¹⁰⁵ Pursuant to state statute, the OSHP superintendent may also establish examinations to determine the fitness of cadets for the position of trooper,¹⁰⁶ and the OPOTC encourages Academy commanders to implement training programs that exceed the OPOTC's minimum standards.¹⁰⁷ Thus, the OSHP has expanded the OPOTC's mandatory

¹⁰⁰ The OSHP explained that the MMPI-2-RF compares the individual's results to those of 2000 police candidates; provides guidance on implications of under-reporting; offers interpretive transparency through comprehensive annotation and references to peer-reviewed research; and identifies potential problems in ten job-related areas: (1) emotional control and stress tolerance, (2) routine task performance, (3) decision-making and judgment, (4) feedback acceptance, (5) assertiveness, (6) social competence and teamwork, (7) integrity, (8) conscientiousness and dependability, (9) substance use, and (10) impulse control.

¹⁰¹ In its response, the OSHP stated Dr. Martelli has a doctorate in industrial and organizational psychology with formal training in the ethical administration, scoring, and interpretation of clinical assessments related to the intended use of the assessment. The OSHP provided the OCR a list of the formal training Dr. Martelli has received in the use of the MMPI-2-RF.

¹⁰² Applicants receive notification of the date that they must report to the next scheduled TRS when placed on the active roster. Applicants on the reserve roster also receive notification of the date of the next TRS, but are instructed that if the OSHP does not contact them by an identified date and time, they will then be placed on the roster to attend the next scheduled TRS.

¹⁰³ See also *Requirements*, OSHP, <http://www.statepatrol.ohio.gov/recruit/require.html> (last visited May 15, 2019).

¹⁰⁴ See *supra* note 47 and accompanying text.

¹⁰⁵ The topics include the following: administration, legal, human relations, firearms, driving, subject control techniques, first aid/CPR/AED, patrol, civil disorders, traffic, investigation, physical conditioning, and homeland security. See Peace Office Basic Training Audit Sheet, OPOTC (effective July 1, 2017) (on file with the OCR); see also Ohio State Highway Patrol Cadet Syllabus Catalog, 162nd Class, Cadet Training Program (Apr. 5, 2017-Sept. 29, 2017) (on file with the OCR).

¹⁰⁶ See OHIO REV. CODE ANN. § 5503.05.

¹⁰⁷ See OHIO ADMIN. CODE § 109:2-1-03(E)(1), (2); see also OHIO REV. CODE ANN. § 5503.05.

training hours and curriculum,¹⁰⁸ requiring all cadets to complete a total of 1104 course hours to be commissioned as a trooper.

The mandatory Academy curriculum is divided among academic coursework, physical fitness training, and practicums on the operation of equipment used to perform law enforcement duties.¹⁰⁹ The coursework covers subjects such as military courtesy, professional conduct, operation of law enforcement databases, benefits and payroll, criminal and traffic law, arrests, search and seizure, rules of evidence, court testimony, traffic stops, administration, investigations, and officer safety. Cadets are tested on the academic coursework as they proceed through each subject, and all scores combined must result in a cumulative score of at least 75%.

The practical exams test the cadets' proficiency in using three different firearms, driving an emergency vehicle in a variety of conditions, operating a speed-measurement device, conducting a field sobriety test, and administering CPR. To pass, cadets must achieve at least the following scores on the practical exams: Handgun, 80%, Rifle 80%, Shotgun, 100%, Electronic Speed Measurement Device, 75%, Standardized Field Sobriety, 80%, Emergency Vehicle Operation, 75%, and CPR, pass/fail.

The physical fitness training¹¹⁰ and associated curriculum focus on self-defense techniques, health and wellness, and cardiovascular and strength training, culminating in the requirement that cadets pass a physical fitness exam near the end of their academy training. The components of the physical fitness exam at the Academy model the pre-employment physical fitness assessment as it is both gender- and age-normed with pass rates set by the Cooper Institute of Aerobics Research, *but* at the fiftieth percentile, as reflected in the following table:

Academy Testing Physical Fitness Standards	1.5 Mile Run		Timed 1 Minute Push-Ups		Timed 1 Minute Sit-Ups		Body Fat %	
	20-29	30+	20-29	30+	20-29	30+	20-29	30+
Age	20-29	30+	20-29	30+	20-29	30+	20-29	30+
Male	11:58	12:25	33	27	40	36	16.6	19.7
Female	14:15	15:14	18	14	35	27	21	22.6

To graduate from the Academy as a commissioned trooper, cadets must complete the 1104 mandatory course hours and achieve the established passing rates in the academic coursework, practical exams, and physical fitness training. Cadets who satisfy all requirements and become commissioned as troopers must next begin the field training officer program, which is discussed in Section V. C. below.

¹⁰⁸ See § 109:2-1-01, -13.

¹⁰⁹ The description of the Academy curriculum in this Report is not all encompassing, but provides an overview of the training cadets receive during the TRS.

¹¹⁰ In preparation for the physical fitness training at the Academy, all cadets must pass the physical fitness test on their third day at the Academy. Academy command staff explained that the test is administered again at this time because of the lapse in time between when cadets take the pre-employment physical fitness test and when they enter the Academy. Thus, retesting at this time provides Academy staff with a baseline of each cadet's performance, which is then reviewed by an exercise physiologist. If necessary, the exercise physiologist will develop individualized physical fitness plans for cadets that may need focused training to best prepare them for the final physical fitness exam. Cadets who do not pass the physical fitness exam administered on the third day of the Academy may take one retest five days later. If the cadet does not pass the retest, the OSHP removes the cadet from the Academy and places the cadet on the roster for the next TRS.

Per DPS policy,¹¹¹ the Academy command staff conduct exit interviews with all cadets departing the Academy prior to graduation. The purpose of the exit interview is to understand the contributing factors that led to a cadet's departure.¹¹² Academy command staff told OCR that they review and consider all of the information gathered during the exit interviews, using the data to inform their opinion on any possible modifications to recruitment and training.¹¹³ In addition to the exit interviews, the DPS asks departing employees to complete voluntarily a questionnaire about their employment and to state the reason for their departure.¹¹⁴

The OCR reviewed the exit records for all DPS employees, including cadets who attended the Academy, during the time period covered under this review.¹¹⁵ The records showed that the reasons that female cadets left the Academy prior to graduation were as follows: physical injury;¹¹⁶ not feeling emotionally, mentally, or physically prepared to complete Academy training; unable to commit to the lifestyle of a trooper; familial circumstances, such as lack of support at home, childcare issues, and the inability of family members to adjust to the Academy schedule and anticipated trooper schedule; and departure to work for a local police agency.

Following the directive in the OSHP's 2015-2019 Strategic Plan,¹¹⁷ the OSHP, Office of Planning and Analysis, Statistical Analysis Unit (SAU), conducted a retention study (Study) of the cadets at the Academy.¹¹⁸ The Study focused on cadets enrolled in TRS classes between October 2010 and April 2015, which included the 150th to 157th TRS classes.¹¹⁹ The study involved a total of 637 cadets, representing eight TRS classes; 412 cadets graduated from the Academy and 225 cadets resigned. Of the cadet resignations, 185, or 82.2%, were male, and 40, or 17.8%, were female.¹²⁰

The Study had two parts, (1) an analysis of Academy records and (2) responses from cadets during the covered time period to an electronic questionnaire.¹²¹

The first part of the Study concluded as follows:

- Female cadets were 2.4 times more likely to resign from training than male cadets. No significant differences were found between racial/ethnic groups;
- Cadets who graduated from training, on average, scored slightly higher on pre-entrance written assessments than cadets who resigned;
- Although there were some differences based upon age and gender, cadets who graduated from training performed better, on

¹¹¹ DPS-501.18, In and Out Processing of New, Transferring, and Exiting Employees at §(C) (2013).

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ For a full discussion of the composition of employee departures, please see Section VI. of this Report which discusses employee retention.

¹¹⁶ The cadets who cited physical injury as the reason for their departure from the Academy were deferred to the next scheduled TRS.

¹¹⁷ See Strategic Plan, Goal 5.1, Recruitment and retention of minorities and females, at 15.

¹¹⁸ Ohio State Highway Patrol, Cadet Retention [hereinafter Retention Study or Study] (Aug. 2015).

¹¹⁹ Although most of the time period reviewed in the Study falls outside the scope of this Review, the latter dates of the study, from January 1, 2014, to April 2015, coincide with the period of the OCR's Review.

¹²⁰ See Retention Study at 6.

¹²¹ *Id.* at 3.

average, than cadets who resigned on several pre-entrance tests of physical fitness;

- Cadets who resigned from training were more likely to receive at least one failing score from a member of the applicant selection committee; and
- Overall, cadets who had some college experience and received all positive recommendations from members of the background screening committee were more likely to graduate from the academy. In addition, every increase in the number of push-ups a cadet was able to complete during the pre-entrance test increased the likelihood of graduation.¹²²

The second part of the Study concluded as follows:

- Participants who resigned from training rated their overall training and recruiting experience lower than participants who graduated from training;
- When asked what led to their resignation, 61.3% of participants reported experiencing a single event that initially made them consider resign. Of the events described the most common was having a negative experience with one or more academy staff members;
 - 71.0% of participants who resigned reported that they believed making a phone call to a family member or friend during the first week of training would have eased their transition into the academy; and
 - Of the participants who graduated from training, 20.1% reported that they had considered resigning while in training. The most common reason reported by participants had to do with the difficult and stressful nature of the training environment.¹²³

Based on the SAU's findings, it recommended to the OSHP command that it should undertake additional research on the factors that led women to resign from the Academy, and the factors that contributed to the retention of troopers following graduation from the Academy.¹²⁴

In response to the Study's finding, the OSHP made some modifications to its training regimen, which included ensuring the ratio of female instructors to female cadets at the Academy was "in line with good business practices." The OSHP explained it made this change to ensure female trainees have the necessary support they need during the Academy. The OSHP also modified its previous practice, allowing trainees a nightly half-hour telephone call. While the Study triggered these modifications, the OSHP command staff informed the OCR that there are no plans to conduct another retention study.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.* at 36-37.

C. Field Training Officer Program

The Field Training Officer program (FTO) is generally sixty working days and coincides with the statutorily mandated probationary period of one year for all new trooper-employees.¹²⁵ The OSHP command explained to the OCR that the FTO period can be extended beyond sixty working days and well into the probationary period. During the FTO, the new troopers, referred to as a probationary trooper, are monitored and evaluated on their skills and progress in the position, and trained and evaluated daily by their assigned field training officer in administrative and operational tasks, general demeanor, and compliance with the OSHP core values. At the twenty- and forty-day mark, the field training officer and post commander conduct evaluations of the probationary trooper's job performance. Each evaluation rates the trooper on a three-point scale of below, meets, or exceeds expectations, and contains a section in which the rating official can provide a description of any areas needing improvement. At the 40- and 60-day mark, the probationary trooper must ride along with the post commander for further assessment. At the 180- and 270- day mark, the post commander assesses how the probationary trooper is performing on typical daily functions such as report writing, officer and traffic safety, and crash investigations. The probationary trooper receives a final review at the end of the FTO period, and if the post commander concludes that the probationary trooper has achieved an acceptable level of performance, the trooper has then successfully completed the FTO program.

D. Impact of Selection Process on Female Candidates

As discussed in Section II. B of this Report, a recipient's hiring policies and practices, although neutral on their face, may result in disparate impact on female applicants.¹²⁶ Disparate impact is generally demonstrated through statistical data.¹²⁷ Thus, the OCR reviewed the OSHP's selection devices to determine their effect on applicants. The OCR refers to this information as applicant flow data. In evaluating the data, the OCR applied the following: (1) the Uniform Guidelines on Employee Selection Procedures (Uniform Guidelines),¹²⁸ including its Four-Fifths Test or 80% Rule, and (2) the Fisher's Exact Test.¹²⁹ According to the 80% Rule, if a respondent, or employer, uses a selection device for a particular job that selects applicants of one sex at a rate that is less than 80% of the selection rate for applicants of the other sex, the OCR considers that result as some evidence that the selection process adversely impacts applicants of the sex with the lower passage rate.¹³⁰

The Uniform Guidelines recognize that differences in selection rates less than 80% may nonetheless constitute adverse impact where they are significant in both statistical and practical terms.¹³¹ In this scenario, the OCR relies upon the Fisher's Exact Test, which analyzes whether an employment practice has a disparate impact on a protected class, such as women, that is statistically significant, meaning it is

¹²⁵ See OHIO ADMIN. CODE § 123:1-19-02 (2019); DPS, Performance Evaluation, DPS-501.21 at § VI. (Jan. 11, 2019).

¹²⁶ 42 U.S.C. § 2000e-2(k); see also *Griggs*, 401 U.S. at 432.

¹²⁷ *Dothard*, 433 U.S. at 330-31; *Hazelwood Sch. Dist.*, 433 U.S. at 307-08.

¹²⁸ See 28 C.F.R. §§ 42.203(b)(10), § 50.14(4)(C).

¹²⁹ *Id.* § 50.14(4)(D).

¹³⁰ *Id.* § 50.14(4)(C), (D). For example, if 100 males take an employment test and ninety of those males pass, the selection rate for male applicants is 90/100, or 90%. If seventy females take the same test and thirty-five females pass, then the female selection rate is 35/70, or 50%. When comparing the female selection rate of 50% with the male selection rate of 90%, the female selection rate is 50/90, or 55.55% of the male selection rate. Because the female selection rate is less than 80% of the male selection rate, the OCR could conclude that the employment test adversely impacted female applicants, if further statistical analysis confirms adverse impact.

¹³¹ *Id.* § 50.14(4)(D).

unlikely to occur by chance.¹³² A Fisher's Exact Test result is statistically significant if it has a "p-value," or probability that something occurred by chance, of less than five percent.¹³³ In assessing whether disparate impact is present, the OCR evaluates the totality of the statistical evidence.¹³⁴

To analyze whether the OSHP's selection and hiring processes had a disparate impact on female applicants, the OCR obtained from the OSHP applicant flow data for all applicants who applied for the position of trooper from January 1, 2014, through December 31, 2016. The OCR retained, and relied upon, the statistical consulting services of an expert to analyze the OSHP's applicant flow data for disparities based on sex for each step in the trooper selection process for all applicants in the aggregate and then for each year covered under this Review.

Upon statistical analysis of the aggregated applicant flow data, the expert observed that the selection devices of age and the pre-employment physical fitness assessment, specifically its subcomponent push-ups test, had a disparate impact on females.¹³⁵

As for the pre-employment physical fitness assessment, the analysis of the aggregate data revealed disparate impact. To understand the observed impact on women, the statistical expert analyzed the applicant flow data for this selection device and its subcomponents, including the push-ups test, by year for each year of data collected for this Review. The analysis showed that the push-ups test effected the disparate impact in the aggregated data, however, disparate impact was not present consistently from year to year in the pre-employment physical fitness assessment. The statistical analysis further showed that females achieved pass rates in the ninetieth percentile for the push-ups test both in the aggregate and for each year under review.

Consequently, the OCR finds that the pre-employment physical fitness test and its subcomponent push-ups test do not have a discriminatory effect on female applicants. In reaching this conclusion, the OCR conducted a cumulative assessment of the totality of the evidence, weighing multiple factors. Among the factors were the following: the pre-employment physical fitness test, including the push-ups test, was gender- and age-normed at the twentieth percentile of the Cooper Institute for Aerobics Research; female test-takers achieved pass rates in the ninetieth percentile in both the aggregate and yearly data for the push-ups test; the disparate impact in the physical fitness assessment did not occur every year; the OSHP provides applicants notice of, and information about, the test and its pass rates, including a physical demonstration on test day; and applicants self-register for the physical fitness test, which allows them to take the test when they believe they are most prepared. The OCR also considered that during the period of this Review, the OSHP continued to increase both the number of female applicants for the position of trooper and the number of female troopers hired.¹³⁶

The finding above notwithstanding, the OCR concludes the OSHP is not consistently complying with

¹³² See *Barnes v. GenCorp, Inc.*, 896 F.2d 1457, 1466 (6th Cir. 1991).

¹³³ *Jones v. City of Boston*, 752 F.3d 38, 43 (1st Cir. 2014); *Bazile*, 858 F. Supp. 2d at 738.

¹³⁴ See *Isabel v. City of Memphis*, 404 F.3d 404, 413 (6th Cir. 2005) (noting that "we prefer to look to the sum of statistical evidence to make a decision in these kinds of cases.")

¹³⁵ As for the selection device of age, while the statistical analysis demonstrated that the age requirement of 20 to 34 resulted in an adverse impact on female applicants, the data was not further analyzed as there is no existing federal law or regulation under which the OCR has enforcement authority to review claims of age discrimination in employment. Further, the federal statute that does prohibit employers from using neutral tests or selection procedures that have a discriminatory impact on persons based on age applies *only* to those who are age forty or older. See The Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. § 621 (2018).

¹³⁶ See Section IV. A., E. of this Report.

the Safe Streets Act's regulatory requirement to assess annually its selection devices to determine whether they have a disparate impact on female applicants thus, not affording equal employment opportunities to women.¹³⁷ Thus, the OCR makes the following recommendations.

E. Recommendations

The OSHP must evaluate whether its employment criteria, standards, and selection devices correspond with the skills and abilities required of a trooper, taking care that its hiring practices are not a barrier to qualified prospective female troopers.¹³⁸ In conducting this evaluation, the OSHP should do the following:

- Review the TRS to ensure its existing structure and training objectives meet the OSHP's needs while achieving the goal of producing commissioned female troopers.¹³⁹ The findings of the Retention Study the OSHP commissioned of cadets further supports this recommendation.
- Review, on at least an annual basis, each of the selection devices used in the trooper hiring process to ensure the devices are nondiscriminatory and have no disparate impact on females.¹⁴⁰ The OCR commends the OSHP for its initiative in conducting the Retention Study, which serves as a good prospective example of how to review and analyze all of the selection devices in the hiring process.
- When reviewing the selection devices used in the trooper selection process, the OSHP should pay particular attention to the pre-employment physical fitness assessment, particularly, the push-ups test, in light of the impact findings of the OCR's expert. Should the OSHP observe in the future additional disparate impact in the passage rates of female applicants, it should take prompt action to identify the cause and modify the test as warranted.
- The OSHP should further enhance its notification of, and required pass rates for, the pre-employment physical fitness assessment, with a particular emphasis on the push-ups component. In addition to the current notification the OSHP provides to applicants at the time of application, some examples of enhanced notification could include the following: inclusion of an instructional video on its website, or social media outlets, that applicants may access prior to their test date; producing a training regimen focused on the development of upper body strength that may aid female applicants with the push-ups test; and advising of "best practices" with regard to physical fitness training in preparation for the pre-employment physical fitness test, particularly the push-ups test. The OSHP should also consider offering as an option to applicants, particularly females, participation in pre-test training sessions that invite applicants to undergo an in-person, unscored practice test prior to taking the actual physical fitness assessment. Alternately, the OSHP could consider offering "boot camp" style training sessions to applicants in preparation for the pre-employment physical fitness test. A recent example of this type of program was used by the recruitment office of a large metropolitan police department that offered a "boot camp" to assist prospective female recruits in preparing for

¹³⁷ 28 C.F.R. § 42.203 (a), (c)(2).

¹³⁸ Advancing Diversity in Law Enforcement, *supra* note 67, at 31-32.

¹³⁹ There is some evidence that a more collegial training environment increases the graduation rate of female recruits. BRIAN REAVES, BJS, STATE AND LOCAL LAW ENFORCEMENT ACADEMIES, 2006 (2009), 11, <http://go.usa.gov/x9P8j>.

¹⁴⁰ 28 C.F.R. § 42.303(a), (c)(2).

the physical fitness exam.¹⁴¹

- The OCR encourages the OSHP to reconsider conducting another retention study of future cadets, which will inform the OSHP as to whether the changes implemented at the Academy following the previous study were effective and what other changes may help with retention of cadets. Conducting additional retention studies may identify issues impacting retention of female cadets and afford the OSHP the opportunity early-on to address any identified issues and preserve the investment it has made in hiring sworn personnel.

V. Retention

As discussed in Section II. A. of this Report, the Safe Streets Act regulations require the DPS to assess its efforts to retain employees.¹⁴² Training opportunities, equal employment, and family leave policies contribute to an organization's ability to retain employees.

A. In-Service Training

The Safe Streets Act regulations require a recipient to conduct an annual self-assessment of its training programs to determine whether the programs treat women equitably.¹⁴³ If the assessment indicates that female employees, as compared to their male counterparts, do not receive equitable training opportunities, the recipient should provide a written narrative in its EEOP describing what timely steps it will take to correct the deficiency.¹⁴⁴ The OSHP did not provide the OCR with any information indicating it has a system for annually monitoring whether female troopers have equitable access to its training programs.

All sworn personnel from the rank of trooper through colonel must complete annual mandatory in-service training. The training topics vary yearly as selected by the Colonel's Office, however, the courses have consistently included Taser Recertification and Personal Protective Equipment Mask Checks. In addition to the in-service training, all sworn officers must annually complete Civil Disturbance Training, which, according to state law and the OPOTC, requires annual requalification on all OSHP-issued firearms.¹⁴⁵ All sworn field personnel must also annually recertify in the use of electronic speed-measuring devices, which includes Radar, LIDAR, or laser training.¹⁴⁶ Finally, per state law, all sworn field personnel must recertify on the BAC Data Master and the Intoxilyzer 8000 breath-testing machines.¹⁴⁷

The Collective Bargaining Agreement (CBA),¹⁴⁸ Article 37.01, Education and Incentive Training, sets forth the terms and conditions for external training opportunities for sworn staff at conferences,

¹⁴¹ See C. Moon Reed, *With hopes of diversity, Metro hosts boot camp for women*, LAS VEGAS SUN, Sept. 6, 2018, <https://lasvegassun.com/news/2018/sep/06/with-an-aim-at-increasing-diversity-metro-hosts-a/>.

¹⁴² 28 C.F.R. §§ 42.203(a), (c)(3), .304.

¹⁴³ *Id.* § 42.303(c)(3).

¹⁴⁴ *Id.* § 42.304(g)(1).

¹⁴⁵ OHIO ADMIN. CODE § 109:2-13-02; Ohio Police Office Training Commission, Annual Firearms Re-Qualification Program, Policy No. 109.801.

¹⁴⁶ See OSP 200.04, Speed Measuring Devices § (C) (May 18, 2011).

¹⁴⁷ OHIO ADMIN. CODE § 3701.53-09 (2019).

¹⁴⁸ CBA, Agreement between the State of Ohio and the Ohio State Troopers Association (Sept. 29, 2016-June 30, 2018). The CBA was effective on September 29, 2016, with an agreed termination date of June 30, 2018. Due to pending negotiations, however, the parties agreed to extend the existing CBA and its terms and conditions through December 31, 2018. The

seminars, and workshops. The training can focus on remedial skills, developing an employees' expertise, or career advancement. The OSHP stated it considers all employee training requests and recommends to employees training that is necessary to fulfill the agency's objectives. Employees must submit all requests for training in writing and through the chain of command. The CBA also establishes the terms and conditions for tuition reimbursement for all troopers who have completed the initial probationary period. In regard to continuing education, subject to the limits of the education fund and during the CBA's two-year contractual period, the OSHP reimburses troopers and sergeants for tuition and eligible fees up to \$7500. Employees with the rank of Lieutenant and above, who are not covered by the CBA, are reimbursed up to \$2500 for an undergraduate degree and up to \$3500 for a graduate degree.

As for training opportunities, the female troopers with whom the OCR spoke did not raise any concerns about training opportunities, either in general or in comparison to their male colleagues.

B. EEO Policies, Practices, and Related Training

Under the Safe Streets Act's nondiscrimination provisions and its implementing regulations, the DPS must protect its employees from employment discrimination, including harassment and retaliation.¹⁴⁹ The DPS has policies to prevent employment discrimination, harassment, and retaliation, and it offers to employees a training program on these policies. Employees have multiple ways to file complaints, all to ensure compliance with the Safe Streets Act and other federal and state laws prohibiting discrimination. The DPS has also designated an equal employment opportunity officer (EEO Officer) to implement and monitor its EEOP, as the Safe Streets Act regulations require.¹⁵⁰

1. EEO Policies on Discrimination, Harassment, and Retaliation

The DPS has policies and procedures that address the prevention and prohibition of discrimination, harassment, and retaliation, and the investigation and resolution of complaints about these matters. Specifically, DPS-501.29, Equal Employment Opportunity (EEO Policy) memorializes the DPS' commitment that discrimination, harassment, and retaliation is prohibited in the workplace. The EEO Policy states DPS's intent "to prohibit all forms of unlawful harassment, discrimination, and retaliation based upon race, color, religion, genetic information, sex (including sexual harassment, sexual orientation), national origin (ancestry), disability, age (40 years or older), and military status (past, present, or future) in hiring and employment practices."¹⁵¹ The policy requires employee compliance with the stated protections and sets forth as its statutory authority, Title VII and state laws and orders.¹⁵² In addition to employee compliance, the EEO Policy outlines supervisory and management reporting requirements, and steps that they should take when they witness, receive notice of, or otherwise discover behavior characterized as discrimination, harassment, or retaliation.¹⁵³ The EEO Policy has defined what constitutes discrimination, harassment (including sexual harassment), and retaliation, and what the resulting discipline is for employees who engage in prohibited conduct.¹⁵⁴

current CBA was effective January 11, 2019, through June 30, 2021. The OCR only reviewed, and references in this Report, the prior CBA that ended on December 31, 2018.

¹⁴⁹ 34 U.S.C. § 10228(c)(1); 28 C.F.R. § 42.203(b)(9).

¹⁵⁰ 28 C.F.R. § 42.304(i).

¹⁵¹ DPS, Equal Employment Opportunity, DPS-501029 (June 29, 2017) [hereinafter EEO Policy].

¹⁵² The other authorities cited are OHIO REV. CODE Chapter 4112; OHIO ADMIN. CODE, Rule 123:1-49-02 and Rule 4501-2-6-02; State of Ohio Exec. Order 2011-05K; and the Genetic Information Nondiscrimination Act of 2008.

¹⁵³ DPS, EEO Policy § A(6).

¹⁵⁴ *Id.* § A.

As for reporting discrimination, harassment, or retaliation, the EEO Policy sets forth the process to report and file a complaint. The EEO Policy states that employees, customers, clients, or applicants may report discrimination, harassment, or retaliation to their supervisors, the EEO Program Manager, or the Administrative Investigations Unit.¹⁵⁵ The EEO Policy states that employees are not required to report discrimination to a supervisor or the accused.¹⁵⁶ In lieu of filing a complaint internally with the DPS, the EEO Policy advises employees that they may elect to file a complaint externally with the Ohio Department of Administrative Services, Equal Opportunity Division; the Ohio Civil Rights Commission; or the U.S. Equal Employment Opportunity Commission.¹⁵⁷

An employee may make a complaint either in writing or verbally, and the employee may choose either an informal or formal process, depending on the employee's preference and the nature of the claim. If employees elect to pursue complaints informally, they may speak with either their supervisors or the EEO Program Manager.¹⁵⁸ As the DPS explained to the OCR, once an employee files a complaint, an EEO officer then schedules an interview with the employee to discuss the claims. During the interview, the EEO officer gathers additional information about the claims and notifies the employee of the filing options, which include initiating a formal investigation within DPS or referring the complaint to an external agency. If the complaint is informal, the DPS stated that it would not issue written findings nor is there an appeals process.

If an employee elects, or the situation warrants, a formal investigation, the complaint investigation process is mandated by either DPS policy, DPS-100.01, Administrative Investigations (DPS Investigations Policy),¹⁵⁹ which applies only to non-patrol employees or OSP-103.19, Administrative Investigations (OSHP Investigations Policy),¹⁶⁰ which applies only to OSHP employees, both sworn and non-sworn.

The stated purpose of the DPS Investigations Policy is to provide DPS employees, contractors, and officials guidelines for reporting and handling administrative complaints or allegations of misconduct.¹⁶¹ The Policy's intent is "to supplement, not replace, the rights and obligations of employees to report violations of law, any DPS or Division work rule, regulation, policy, procedure, other departmental directives under the whistleblower statutes, administrative code, or any other applicable statutes."¹⁶² The DPS Investigations Policy explains that the DPS receives internal complaints in person, in writing, or telephonically, and it outlines how employees can initiate an administrative investigation with the Administrative Investigations Unit (AIU), the office responsible for conducting formal investigations.¹⁶³ The DPS Investigations Policy also explains the responsibilities of employees, supervisors, the AIU and DPS legal staff.¹⁶⁴

The stated purpose of the OSHP Administrative Investigations Policy, among other things, is "[t]o provide guidelines for initiating and conducting administrative investigations when there has been an

¹⁵⁵ *Id.* § E(2).

¹⁵⁶ *Id.* § E(2)(b).

¹⁵⁷ *Id.* § E(3).

¹⁵⁸ *Id.* § E(2)(c).

¹⁵⁹ DPS, Administrative Investigations, DPS-100.01 (July 25, 2018) [hereinafter DPS Investigations Policy].

¹⁶⁰ OSHP, Administrative Investigations, OSP-103.19 (May 23, 2018) [hereinafter OSHP Investigations Policy].

¹⁶¹ DPS Investigations Policy.

¹⁶² *Id.* at § I.

¹⁶³ DPS Investigations Policy at § II(B).

¹⁶⁴ DPS Investigations Policy at § IV.

allegation or when a supervisor has reasonable cause to believe that an employee has violated any law, rule or regulation, policy, procedure, or any other Division directive.”¹⁶⁵ The Policy is thorough and addresses a number of topics, including the following: (1) reporting responsibility; (2) when an administrative investigation is not required; (3) administrative investigation procedures to include specific procedures for CBA unit members; (4) criminal conduct; (5) legal rights of employees, request for representation, interviews, follow-up and disposition; (6) annual auditing and reporting; (7) procedures for specific incidents, reporting forms, and discipline options for CBA unit members.¹⁶⁶ The Policy states that AIU is immediately notified of “complaints involving allegations of corruption, brutality, misuse of force, breach of civil rights, sexual harassment, or criminal misconduct,” and has memorialized a process for investigating allegations.¹⁶⁷

2. Notification and Training on the EEOP and EEO Policy

The DPS states in its EEOP that it notifies employees of the EEOP by posting it on the Department’s intranet, which is accessible to all employees; posting it in employee break areas; and attaching it to the EEO Policy. In its 2018 EEOP, the DPS expanded its notification efforts, stating it will also share and discuss the EEOP with Recruitment command and staff, distribute it to all supervisors and department heads, and send an electronic and hard copy memorandum to all employees to notify them that the EEOP is available upon request. In terms of external notification, the DPS stated it notifies the public about the EEOP by posting it on the DPS website; the DPS also notifies applicants and contractors about the EEOP, informing them of its availability upon request.

As for notifying employees about the EEO Policy, the DPS states it notifies new employees of the policy on their first day of employment, as the policy appears in the Policies Hub folder on the Department’s intranet, which is accessible to all employees.¹⁶⁸ The DPS explained that all new employees must review the policy within the first three days of their employment; if an employee does not sign-off on the policy, indicating that the employee read and agrees with the policy, within the first week, the system sends the employee an auto-generated reminder. If two weeks pass and the employee has yet to sign-off on the policy, the employee’s supervisor receives an auto-generated notification to follow-up with the employee. If the employee still does not sign the policy despite all previous reminders, a member of DPS Human Resources contacts the employee directly.

The DPS trains all employees on its EEO Policy, which includes sexual harassment and complaint procedures, through posting the policy on the intranet and requiring employees to review the policy and attest, through an electronic signature, that they reviewed the policy. As for the OSHP cadets, the DPS EEO office provides a two-hour training on the EEO Policy to all cadets within the first two weeks of the start of a TRS. All other DPS employees, both sworn and non-sworn, receive the EEO Policy annually through the intranet, and they must review and electronically sign it. In the fall of 2017, the DPS sponsored approximately ten training sessions covering EEO and sexual harassment; every supervisor, sworn and non-sworn, had to attend this in-person training. All non-supervisory employees had to complete an online training program covering sexual harassment and EEO. Finally, as the DPS explained to the OCR, the State of Ohio has a training program for all new supervisors, which includes a four-hour session on diversity and inclusion entitled, *Appreciating and Engaging our Differences*. In

¹⁶⁵ OSHP Administrative Investigations Policy.

¹⁶⁶ *Id.* at 1-12.

¹⁶⁷ *Id.* at § A(1).

¹⁶⁸ The DPS also explained to the OCR that it notifies employees of all related updates to the EEO policies by posting updates on the Policies Hub page on the employee intranet.

terms of tracking employee completion of the EEO Policy trainings, the DPS stated the Policies Hub monitors online employee activity on the EEO Policy training, and the DPS Human Resources tracks in-person training with a sign-in sheet.

During the period examined in this Review, the DPS reported receiving nine internal complaints of sex discrimination from both sworn and non-sworn DPS and OSHP staff. Two of the complaints were filed with the Equal Employment Opportunity Commission (EEOC) and the DPS. The EEOC dismissed both matters for lack of probable cause. The DPS conducted an administrative investigation of both matters pursuant to the DPS Investigations Policy and issued a no probable cause finding in both cases. One complaint was filed directly with the Ohio Civil Rights Commission and the EEOC; the Complainant requested mediation and the DPS agreed to participate. The mediation resulted in the resignation of the employee names in the complaint with no further disciplinary action. In the remaining six complaints, an administrative investigation was conducted pursuant to the OSHP and DPS Investigations Policies. Investigations in these six complaints yielded the following results: two complaints were deemed founded, resulting in the termination of the employees named in the complaint; two complaints were deemed founded, resulting in various forms of employee discipline, including a three-day suspension, demotion, transfer, and in both cases, a “last chance agreement,” stipulating termination if the employee failed to comply with the terms of the agreement; and two of the complaints were unfounded.

During onsite interviews, all the troopers with whom the OCR spoke indicated they were aware of, and generally recalled receiving training on, the EEO Policy and related procedures, including how to file a complaint. The command staff members with whom the OCR spoke indicated their awareness of the EEO Policy and the required procedures for responding to a complaint of discrimination, including sex discrimination and sexual harassment. Additionally, none of the troopers with whom the OCR spoke observed inappropriate behavior involving male and female troopers; also none witnessed a male supervisor treating a female trooper differently than a male trooper. Some troopers reported, however, overhearing male troopers using disrespectful language when referring to females. In this regard, one trooper opined that maybe the male troopers were joking and thought nothing more of the comments. Another trooper reported overhearing similar comments on multiple occasions and spoke to the male troopers about their comments.

3. Family Leave Policies

Adopting and maintaining adequate family leave policies is an important component of retaining female employees.¹⁶⁹ The DPS has memorialized family leave policies applicable to all DPS employees, including sworn OSHP personnel, in DPS-501.01, Adoption/Childbirth Leave (Family Leave Policy);¹⁷⁰ the CBA also memorializes family leave policies for its members within the terms of the negotiated agreement.¹⁷¹ The stated purpose of the Family Leave Policy is “to provide employees up to six weeks of continuous leave for parental care immediately following the birth or adoption of a child.”¹⁷² The policy sets forth the eligibility requirements,¹⁷³ leave and benefit amounts, the rules for coordinating family leave with other leave such as disability leave, and the process for requesting leave under the

¹⁶⁹ See THE WHITE HOUSE, PRESIDENTIAL MEMORANDUM—MODERNIZING FEDERAL LEAVE POLICIES FOR CHILDBIRTH, ADOPTION AND FOSTER CARE TO RECRUIT AND RETAIN TALENT AND IMPROVE PRODUCTIVITY (2015), <http://go.usa.gov/x9P8U>.

¹⁷⁰ DPS, Adoption/Childbirth Leave, DPS-501.19 (June 20, 2014) [hereinafter Family Leave Policy].

¹⁷¹ See CBA art. 46-49.

¹⁷² See Family Leave Policy.

¹⁷³ One of the eligibility requirements of the Family Leave Policy is that the employee must be the biological parent or legal guardian of the newly born or adopted child. Regarding this eligibility requirement, however, the CBA extends eligibility only to biological parents. See Family Leave Policy § A; CBA art. 49.09 (A).

policy.¹⁷⁴ The CBA also addresses alternative work options, such as light duty status for pregnancy.¹⁷⁵ The Family Leave Policy also has provisions in accordance with the Fair Labor Standards Act for nursing mothers.¹⁷⁶ The provision allows nursing mothers to take a reasonable break and have access to designated lactation areas within DPS facilities.¹⁷⁷ Both the Family Leave Policy and the CBA contain express provisions covering adoption expenses in lieu of leave benefits.¹⁷⁸ Finally, the DPS has adopted a policy that affords protections to all employees under the Family and Medical Leave Act (FMLA) of 1993,¹⁷⁹ which provides for twelve weeks of leave per twelve-month period for incapacitation resulting from pregnancy; prenatal medical care or childbirth; caring for a child after birth or placement for adoption or foster care; caring for an employee's spouse, child, or parent with a serious health condition; or the serious health condition of an employee, rendering the employee unable to perform the job.¹⁸⁰ As mentioned in Section V. of this Report, prior to attending a TRS, all cadets must attend a mandatory meeting with human resources personnel to receive an overview of topics such as leave, benefits, and pay.¹⁸¹

During the OCR's onsite interviews, both male and female troopers offered a variety of responses on the topic of family leave. Troopers of both sexes stated that the OSHP considers itself "family-oriented," however, those same respondents said that the OSHP can do more to improve existing policies in the areas of both maternity leave and returning to duty following the birth of a child. Troopers stated that the OSHP command could be "more understanding," towards women who are returning to duty following maternity leave. One trooper stated there are limited options for female troopers on patrol who are breastfeeding. Troopers further stated that troopers who hold primary parenting responsibilities within their family may not seek advancement opportunities because of childcare challenges; consequently, troopers who could be strong candidates for promotion do not pursue advancement opportunities. When the OCR asked troopers how the OSHP could address this issue, troopers stated that identifying and offering childcare options may help. The OCR also asked troopers if they had any recommendations for retaining female troopers. In addition to the above responses, troopers generally suggested offering alternative work schedules that would allow female troopers to better manage family responsibilities, and developing a mentorship program pairing junior and senior female troopers.

4. Promotions and Representation of Women in the Ranks

Based on the DPS's 2018 EEOP and attached Law Enforcement Category Rank Chart, females occupied 9.21%, or 147, of all OSHP sworn positions and 5.8%, or 30, of all sworn management positions with the rank of sergeant or higher.¹⁸² The thirty females in management occupy the following ranks: (19) Sergeants, (6) Lieutenants, (3) Staff Lieutenant, (1) Captain, (1) Major, (0) Lieutenant Colonel, and (0) Colonel.¹⁸³ While the 2018 EEOP reflects an increase in representation of women among all ranks when compared to the 2016 EEOP in which women represented 8.2%, or 129, of all sworn positions, the

¹⁷⁴ See Family Leave Policy §§ A-E, G.

¹⁷⁵ See CBA, Transitional Return to Work, art. 46.06.

¹⁷⁶ Fair Labor Standards Act of 1938, 29 U.S.C.A. § 207(r) (West 2019).

¹⁷⁷ See Family Leave Policy § H.

¹⁷⁸ *Id.* at § F; CBA art. 49.09.

¹⁷⁹ DPS, Family and Medical Leave, DPS-501.11 (June 23, 2014) [hereinafter FMLA Policy]; Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601-2654 (2018).

¹⁸⁰ See FMLA Policy § A.

¹⁸¹ See *infra* Section V. A.(2)(g).

¹⁸² See 2018 EEOP 9 (on file with the OCR).

¹⁸³ *Id.*

2018 EEOP also showed a minor decrease of women in sworn management positions from the 2016 EEOP which showed 6.2%, or 31, women filled these positions.¹⁸⁴

While onsite, the OCR spoke with both male and female troopers about the opportunities for promotion. Overall, female troopers had no complaints about the promotional process, with the exception of two female troopers who felt that females had to apply multiple times for a promotion before being selected. Most interesting was the feedback that the OCR received from male troopers. On more than one occasion, male troopers commented on the lack of females in senior management positions. One male trooper noted the recent advancement of the first female to the position of major.¹⁸⁵ Male troopers also said that the OSHP should “push” women to go after advancement opportunities. When asked if there are any particular policies or practices that would make them especially likely to remain on the force, a few female troopers cited the variety of positions available beyond patrol and opportunities for advancement.

As discussed in Section V. B. of this Report, the DPS has an existing policy to conduct exit interviews of all employees.¹⁸⁶ During the voluntary exit interview process, employees are asked to provide a reason for their departure.¹⁸⁷ The OCR requested and reviewed the exit data, including the exit interviews; during the time period of this Review, 72 women departed the OSHP. Of that number, 24 cited retirement as the reason for departure; the DPS classified the remaining 48 women who left as resigning. Of the 48 resignations, 32, or two-thirds, were cadets who resigned while at the Academy.¹⁸⁸ The remaining 16 resignations represented commissioned troopers.

D. Recommendations

The OCR makes the following retention-related recommendations to assist the OSHP's efforts to retain female troopers:

- To comply with the Safe Streets Act, the OSHP must design a system for annually monitoring its training programs and the opportunities for training, to determine whether they are equitable for female troopers.¹⁸⁹ The assessment would involve the following: list each training opportunity for troopers, identify the sex of the troopers who applied for the training program and the sex of the troopers selected for the training program, and provide the rationale for selecting or rejecting each applicant. The OSHP should also examine whether it sufficiently notifies troopers of available training opportunities, supplies adequate information to troopers about the selection process for training programs, and provides equitable training opportunities to male and female troopers.

¹⁸⁴ Compare 2018 EEOP 9 (on file with the OCR), with 2016 EEOP 9 (on file with the OCR).

¹⁸⁵ Subsequent to the OCR's onsite interviews with troopers, the OSHP realized the promotion of two female troopers to senior management positions. Lieutenant Colonel Marla Gaskill was promoted on March 19, 2019, and is the highest ranking female at the OSHP, and Major Robin Schmutz was promoted on March 28, 2019. See *About Us: Senior Staff*, OSHP, <http://www.statepatrol.ohio.gov/about-staff.aspx> (last visited Sept. 13, 2019).

¹⁸⁶ See *supra* note 111 and accompanying text. See also DPS-501.18, In and Out Processing of New, Transferring, and Exiting Employees § (C) (2013).

¹⁸⁷ *Id.*

¹⁸⁸ See *infra* Section V. B. (discussing the reasons cadets resign from the Academy); *supra* notes 115-116 and accompanying text; Retention Study at 3.

¹⁸⁹ 28 C.F.R. § 42.303(c)(3).

- To further examine the resignation of women from the force, the OCR encourages the OSHP to reconsider the SAU recommendation to conduct a retention study of cadets following their commissioning, and as they progress through their careers as troopers. While the Study covered cadet resignations through April 2015, which covers a portion of the time period examined in this Review, it did not review cadet resignations subsequent to April 2015, nor did it examine resignations of commissioned troopers.
- The OSHP should consider developing a formal mentorship program for female troopers, along with a leadership training program.¹⁹⁰ A lack of mentoring opportunities and leadership development can present a barrier to advancement and promotion for women.
- The OSHP should ensure supervisors receive training on the relevant policies related to limited duty assignments to ensure these assignments are afforded in an equitable manner and consistent with the terms of the CBA. To assist in the accommodation and retention of pregnant employees, the OSHP should encourage supervisors to grant limited duty assignments whenever possible. The OSHP should also ensure that it is accommodating nursing mothers consistent with the provisions of the Family Leave.
- Based on OCR's conversations with OSHP troopers during our onsite review, the OSHP should explore the possibility of offering childcare benefits, part-time employment, job-sharing arrangements, and alternative work schedules, when feasible, to allow troopers to better manage family responsibilities.

VII. Conclusion

Based on the foregoing, the OCR concludes the DPS and the OSHP are in substantial compliance with the requirements of the Safe Streets Act and its regulations governing employment practices affecting the recruitment, selection, and retention of female entry-level troopers. This Report contains recommendations to assist the OSHP in strengthening its recruitment, hiring, and retention of female troopers. The OCR is available to offer technical assistance to assist the DPS and OSHP in implementing these recommendations.

At this time, the OCR is administratively closing this Compliance Review. The OCR wishes to thank OSHP staff, especially Colonel Richard Fambro, Major Chuck Jones, Major David Church, Lieutenant Anetra Sims-Byrd, and Captain Charles Linek, for assisting OCR staff throughout the course of this Review. The closure of this Review is limited to the specific facts of the matter that the OCR investigated, and does not preclude the DOJ from taking additional appropriate action to evaluate the compliance of the DPS or the OSHP with any of the laws that the DOJ enforces. Closing this Review also does not affect the obligation that the DPS or the OSHP may have to comply with all applicable federal laws and regulations during which time they remain subject to such laws and regulations.

The DPS and OSHP should be mindful that federal laws protect from retaliation persons who participated in the OCR's Review. Any person alleging harassment, intimidation, or retaliation may file a complaint with the OCR, and if warranted, the OCR would investigate the complaint.

¹⁹⁰ The Advancing Diversity in Law Enforcement initiative identified these programs as essential to providing underrepresented officers with the "support, guidance, and resources they need to succeed on the job, enjoy their careers, and earn promotions." Advancing Diversity in Law Enforcement, *see supra* note 67, at 33–34, 44.

Sincerely,

X *Michael L. Alston*

Michael L. Alston

Director

Signed by: MICHAEL ALSTON