

**Virginia Office for Protection and Advocacy (VOPA)**

**Disabilities Advisory Council (DAC) Meeting**

**VOPA Conference Room – Richmond, VA**

**October 8, 2010**

**Members Present** Barbara Barrett, Larry Friederichsen, Melissa Meade, Lisa Ritchie (Chair), Linda VanAken (Vice-Chair)

**Members Absent** Betty Friederichsen, Shirley McInnis, Arva Priola, Mary Jane Sufficool, Monica Wiley

**Guests Present** Charles Cooper (VOPA Governing Board member), Carl Scott Meade

**Staff Present** Sherry Confer (Deputy Director), Kim Mendella (Executive Assistant)

*For portions:* Paul Buckley (Managing Attorney), Colleen Miller (Executive Director)

**Call to Order** Lisa Ritchie, Chair, called the meeting to order. Mr. Ritchie asked everyone present to introduce themselves.

**Public Comment** Carl Scott Meade stated that he was a plaintiff in a VOPA case on restaurant accessibility. Mr. Meade and his son recently toured the restaurant and were pleased with the accessibility improvements. Colleen Miller stated that the restaurant is part of chain with 36 locations in Virginia and there are plans to improve them all.

Ms. Ritchie spoke on behalf of an individual who planned to attend the meeting but could not. Over the years, there have been many improvements with accessibility and providing accommodations to people with disabilities. This individual is grateful for agencies like VOPA who help protect the rights of people with disabilities.

**Executive Director Report**

**Progress on Objectives**

Ms. Miller started her discussion with the Medicaid decertification of the Hancock Geriatric Center at Eastern State Hospital (ESH). VOPA knows about past negative surveys conducted by the State licensing office but does not know what exactly led to the decertification. Ms. Miller stated that information is not public until the corrective action plan is accepted. The center maintains that decertification is not due to patient care. Medicaid funding is scheduled to cease on October 12 unless the corrective

action plan is approved. If the corrective action is not approved, the current population may be transferred to other facilities. VOPA does not want this to happen as the center's population is vulnerable and problems may arise if people are moved.

Linda VanAken asked if the 16 death investigations mentioned in the report is a high number. Ms. Miller stated that 16 investigations represent a small portion of what VOPA selects to investigate. Over 800 Critical Incident Reports (CIR) are reported to VOPA a year. Charles Copper asked if state police investigate every death that occurs in state facilities. Ms. Miller responded by saying "no," but noted that incidents of sexual assault are investigated by state police. There is a nation-wide issue that abuse and deaths of elders and people with disabilities are not taken seriously. Vulnerable individuals may not be able to communicate or fear reporting due to retaliation from caretakers. VOPA is working with elder advocacy groups to address this issue.

Ms. Miller referred the Council to VOPA's work with the University of Virginia (UVA). UVA was very progressive and worked hard to make the campus' public areas accessible, including landscaping changes. VOPA selected Virginia Tech for FY11. Ms. Barrett suggested that VOPA write a press release praising the university for increasing accessibility. Melissa Meade stated that often historical areas refuse to make accessibility changes and UVA is a great example by creating an accessible space that maintains the historical integrity of the college campus.

Ms. Miller updated the Council on the VOPA project on Assistive Living Facilities (ALF) that receives Auxiliary Grant funds. VOPA staff planned to visit 316 ALFs in Virginia to provide voter rights training and to survey living conditions. Many ALFs are not appropriate for the populations they serve and some are allowed discriminate against non-ambulatory individuals. VOPA assisted ALF residents completing voter registration forms and absentee ballots. VOPA has heard reports that some voter registration offices have been denying absentee ballots for people with disabilities for not providing enough details on the form. VOPA will follow-up with the issue.

A Council member asked if VOPA's comments on the

Virginia Department of Transportation (VDOT) 6-year plan were well received. VOPA has not received any feedback. Ms. VanAken stated that VDOT's budget is primarily for roads but not for true transportation such as buses.

### **Litigation Report**

Ms. Miller stated that the case Arc of Virginia, Inc. vs. Kaine et al was withdrawn by the Arc. This case arose out of Virginia's plan to build a new segregated institution to "replace" Southeastern Virginia Training Center (SEVTC). Initially, the case was dismissed on the grounds that the new center would not violate the Americans with Disabilities Act (ADA) as the building was not built yet and that no-one was selected for placement in it. Our client appealed the case being dismissed but has since withdrawn the case.

Ms. Miller referred the Council to the case of Client vs. JRN, Inc. VOPA notified JRN of a potential lawsuit concerning restaurant accessibility and JRN cooperated. VOPA and the Council is pleased that there will be a lot of accessibility reforms in a part of the State that previously seemed resistant to change.

Ms. VanAken asked for the status of the case of Client vs. the Virginia Department of Motor Vehicles (DMV). The case involves a current employee who requested accommodations but were denied them. The employer threatened termination and requested more road testing than required for other employees in the similar positions. VOPA filed a complaint with the Virginia Department of Human Resource Management's Office of Equal Employment Services, Federal Equal Employment Opportunities Commission, and issued a failure to accommodate complaint. Ms. VanAken is very pleased with VOPA's advocacy and is very interested with the case's outcome.

### **Work Session – Disabilities Advisory Council Annual Report**

Sherry Confer, Deputy Director, facilitated the work session discussion on the DAC Annual Report. Ms. Confer directed everyone to be honest and to talk about things that worked for the DAC and things that did not. Topic suggestions included travel arrangements, staff interaction and support, meetings times and dates, and work VOPA completed or did not complete during the past fiscal year.

Ms. Meade is very pleased with VOPA's work concerning children with disabilities in educational settings. Ms. Ritchie

suggested more work is required with providing interpreter services in schools for children who are deaf or hard of hearing.

Ms. VanAken praised VOPA's use of resources with the ALF project that provided residents with information on voting rights as well as surveying living conditions.

Ms. Barrett is happy with VOPA's presence and monitoring of state operated facilities throughout Virginia.

Ms. Barrett believes more work is needed for advocacy for people with Traumatic Brain Injuries (TBI). Veterans are returning from conflict areas with TBI and are not receiving the necessary care or services. Ms. Barrett is surprised that federal level funding for the Protection and Advocacy for Traumatic Brain Injuries (PATBI) grant has not increased. Ms. Barrett suggested working with the Wounded Warrior programs to provide outreach to an under-represented population.

Ms. VanAken really appreciated the trainings and presentations at the Council meetings. Ms. Meade like that she receives the meeting packet well in advance so she has plenty of time to review the materials prior to the meetings.

Council members were concerned about the number of litigation cases VOPA undertakes. Council members believe that all parties have the same desires to help people with disabilities and that it is cheaper to talk than to sue. Ms. Confer noted that litigation is the last resort and that VOPA has several levels of advocacy that staff proceed through. It was clarified that the items noted on the litigation report are not full-blown court cases.

Council members are happy with VOPA's case currently before the U.S. Supreme Court stemming from VOPA's attempt to gain access to peer review materials related to an abuse and neglect investigation. Council members are also pleased with VOPA's case against the lottery as it brings attention to accessibility issues in the community. Council members want the Litigation Report to provide more background information.

Council members are appreciative of VOPA's work with

DRS but believe more needs to be done. Council members talked about experiences dealing with individual DRS representatives but want more system-wide advocacy.

Ms. Meade states that schools are often ashamed or fear talking about seclusion and restraint. Ms. Meade thanks VOPA for addressing the issue and starting a dialogue to end these practices with children with disabilities.

Ms. Confer asked the Council about their thoughts on the pilot joint meeting between the DAC, PAIMI Advisory Council and the VOPA Governing Board in July 2010. Ms. VanAken said the major disadvantage was that the DAC meeting portion was very short. Also, during the joint session part, there were too many people to start a discussion. Council members asked if the joint meeting saved money. Council members like that VOPA tried to be innovative in an attempt to save money.

**Greetings from the Governing Board**

Mr. Cooper introduced himself to the Council as a member of the VOPA Governing Board and Chair of the Finance Committee. The Board approved the FY11 objectives at the last meeting in September and thanked the DAC for their valuable input. Mr. Cooper gave a comprehensive overview of the September Governing Board meeting.

**Committee Reports**

**Finance Committee** – Linda VanAken

Ms. VanAken stated that VOPA is currently transitioning its financial IT systems and that should go into effect this calendar year. The Accounting Manual is currently being revised and should be completed by January 2011.

**Internal Policy**

Ms. Confer stated that two policies were approved by the Board. They were Service Disagreements and Complaints.

**Goals and Public Awareness**

Ms. Confer stated that the committee made finishing touches to the proposed FY11 objectives before the Board meeting. The Board approved the FY11 objectives.

**Membership on Committees**

Ms. Confer told the members present that there is a DAC vacancy on the Internal Policy Committee. The Internal Policy Committee reviews the VOPA internal operating policies.

**Other Business****Meeting Minute Structure**

The Council discussed streamlining the minutes. All agreed to decrease the level of detail.

**Presentation –  
Critical Incident  
Reports**

Paul Buckley, VOPA Managing Attorney, introduced himself to the Council and began his report about CIR from state-operated facilities. Mr. Buckley discussed the legal requirements for notifying VOPA about incidents from state operated facilities, what constitutes as a CIR, and how the data is compiled and used by VOPA. Mr. Buckley stated that there are 16 state operated facilities, of those, five are training centers, also known as Intermediate Care Facilities for the Mentally Retarded (ICF/MR). The term ICF/MR is a level of service and includes two key phrases: active treatment and home-like environment. The intention of ICF/MR placement is that one will be admitted to learn skills that allow one to live in a less restrictive environment.

Mr. Cooper asked if there was a law to inform VOPA about corrective action plan for CIR. Mr. Buckley stated that there is a 15-day follow-up report known as the “Report of Known Facts,” this is an internal abuse and neglect report. Often these internal reports are protected peer review investigations that VOPA does not have access to. Mr. Copper inquired if the problem was fixed in the scalding case that VOPA recently publicized on the website. Mr. Buckley stated that he followed up with the Deputy Commissioner to make sure that the ICF/MR in question is a safe environment.

Ms. VanAken stated that 800 (CIRs) a year appeared to be a large number. Mr. Buckley said that this number may include recreational accidents and may not be indicative of abuse or neglect. However, it appears that when you adjust the numbers to census that some facilities may be under reporting incidents. Also, CIRs do not include forms of abuse or neglect where there are no physical injuries such as financial exploitation or verbal abuse. VOPA does not hear about these incidents unless someone makes an anonymous report to VOPA. VOPA does routinely visit each and every facility in the state. VOPA staff has unrestricted access to the facilities to make unannounced visits any time of the day.

**July 2010  
Minutes**

Ms. Ritchie referred the Council to the meeting minutes from July 2010. Ms. Ritchie asked if there was a motion to accept the minutes as written. Ms. Barrett made a MOTION

to accept the minutes as written. Larry Friederichsen SECONDED the MOTION to accept the minutes as written. The MOTION carried unanimously.

**Other Business**

Ms. Miller presented Mr. Friedrichsen with a plaque for his dedication and commitment to the mission of the Disabilities Advisory Council. Mr. Friedrichsen was on the DAC for four years along with his wife, Betty, who could not attend this meeting. Mr. and Mrs. Friedrichsen’s term will expire at the end of this meeting.

**Membership**

Ms. Ritchie stated that a majority of the current members’ terms will expire in 2012. Therefore, Ms. Ritchie asked everyone to go back to their communities to let them know that the DAC is currently accepting applications for membership.

Ms. Meade volunteered to be the DAC representative on the VOPA Governing Board’s Internal Policy Committee.

**Travel Vouchers**

Ms. Mendella reminded the Council to submit their travel vouchers. Ms. Mendella asked the Council member present if they would like to participate in the direct deposit program and assisted those that wanted to participate.

Ms. Ritchie asked the Council if there was a motion to adjourn the meeting. Ms. VanAken made a MOTION to adjourn the meeting. Ms. Barrett SECONDED the MOTION to adjourn the meeting. The MOTION carried unanimously.

FINAL MINUTES

12/10/10

Date

**Virginia Office for Protection and Advocacy  
Mission Statement**

Through zealous and effective advocacy and legal representation, to: protect and advance legal, human, and civil rights of persons with disabilities; combat and prevent abuse, neglect, and discrimination; and promote independence, choice, and self determination by persons with disabilities.