

## RSA-227 – Annual Client Assistance Program (CAP) Report

State: Virginia

Fiscal Year: 2012

### Designated Agency Identification

Name:	Virginia Office for Protection and Advocacy
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### Operating Agency (if different from designated agency)

Name:	Not Applicable
Address:	
City:	
State:	
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### Additional Information

Name of CAP Director/Coordinator:	Colleen Miller, Executive Director
Person to contact regarding report:	Elizabeth Fischer Nagji, Staff Attorney
Contact Person Phone:	(804) 225-2042

## Part I: Agency Workload Data

### A. Information and Referral Services (I&R) (Multiple responses not permitted)

1. Information regarding the Rehabilitation Act	1474
2. Information regarding Title I of the ADA	1346
3. Other information provided	1190
4. Total I&R services provided (Lines A1+A2+A3)	4010
5. Individuals attending trainings by CAP staff (approximate)	663

### B. Individuals served (An individual is counted only once during a fiscal year. Multiple counts are not permitted for Lines B1-B3.)

1. Individuals who are still being served as of October 1 (carryover from prior year)	9
2. Additional individuals who were served during the year	42
3. Total individuals served (Lines B1+B2)	51
4. Individuals (from Line B3) who had multiple case files opened/closed this year. (In unusual situations, an individual may have more than one case file opened/closed during a fiscal year. This number is not added to the total in Line B3 above.)	17

### C. Individual still being served as of September 30

Carryover to next year. This total may not exceed Line I.B3.	12
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### D. Reasons for closing individuals' case files (Choose one primary reason for closing each case file. There may be more case files than the total number of individuals served to account for those unusual situations, referred to in Line I.B4, when an individual had multiple case files closed during the year.)

1. All issues resolved in individual's favor	60
2. Some issues resolved in individual's favor (when there are multiple issues)	36
3. CAP determines VR agency position/decision was appropriate for the individual	2
4. Individual's case lacks legal merit; (inappropriate for CAP intervention)	0
5. Individual chose alternative representation	1
6. Individual decided not to pursue resolution	1
7. Appeals were unsuccessful	0
8. CAP services not needed due to individual's death, relocation, etc.	0
9. Individual refused to cooperate with CAP	0
10. CAP unable to take case due to lack of resources	0
11. Other (Please explain on separate sheet)	0

### E. Results achieved for individuals

1. Controlling law/policy explained to individual	47
2. Application for services completed	3

3. Eligibility determination expedited	8
4. Individual participated in evaluation	3
5. IPE developed/implemented	19
6. Communication re-established between individual and other party	7
7. Individual assigned to new counselor/office	9
8. Alternative resources identified for individual	3
9. ADA/504/EEO/OCR complaint made	0
10. Other	
11. Other (Please explain): No outcome as client declined services.	1

## Part II. Program Data

### A. Age

1. 21 and under	9
2. 22 – 40	11
3. 41 – 64	29
4. 65 and over	2
5. Total (Sum of Lines A1 through A4. Total must equal Line I. B3.)	51

### B. Gender

1. Females	27
2. Males	24
3. Total (Lines B1+B2. Total must equal Line I.B3.)	51

### C. Race/Ethnicity

1. Hispanic or Latino	3
<i>For individuals who are non-Hispanic/Latino only</i>	
2. American Indian or Alaskan Native	0
3. Asian	1
4. Black or African American	25
5. Native Hawaiian or Other Pacific Islander	0
6. White	20
7. Two or more races	1
8. Race/ethnicity unknown	1

### D. Primary disabling condition of individuals served

1. Blindness (both eyes)	2
2. Other visual impairments	6
3. Deafness	0
4. Hard of hearing	2
5. Deaf-blind	0
6. Orthopedic impairments	6
7. Absence of extremities	0
8. Mental illness	15
9. Substance abuse (alcohol or drugs)	0
10. Mental retardation	5
11. Specific learning disabilities (SLD)	2
12. Neurological disorders	8

13. Respiratory disorders	1
14. Heart and other circulatory conditions	0
15. Digestive disorders	0
16. Genitourinary conditions	0
17. Speech impairments	1
18. AIDS/HIV positive	0
19. Traumatic brain injury (TBI)	3
20. All other disabilities	0
21. Disabilities not known	0
22. Total (Sum of Lines D1 through D21. Total must equal Line I. B3.)	51

#### **E. Types of individuals served**

1. Applicants of VR Program	16
2. Clients of VR Program	36
3. Applicants or clients of IL Program	0
4. Applicants or clients of other programs and projects funded under the Act	7

#### **F. Source of individual's concern**

1. VR agency only	49
2. Other Rehabilitation Act sources only	7
3. Both VR agency and other Rehabilitation Act sources	0
4. Employer	4

#### **G. Problem areas**

1. Individual requests information	4
2. Communication problems between individual and counselor	10
3. Conflict about services to be provided	26
4. Related to application/eligibility process	19
5. Related to IPE development/implementation	3
6. Other Rehabilitation Act-related problems	8
7. Non-Rehabilitation Act related	0
8. Related to Title I of the ADA	1

#### **H. Types of CAP services provided**

1. Information/referral	5
2. Advisory/interpretational	37
3. Negotiation	38
4. Administrative/informal review	3
5. Alternative dispute resolution	6
6. Formal appeal/fair hearing	4
7. Legal remedy	7
8. Transportation	0

### **PART III. Narrative**

#### **a. Type of agency used to administer CAP:**

External – Protection & Advocacy.

**b. Sources of funds**

Source of funding	Amount Received	Amount Spent
Federal funds	268,031	97,267
State funds		
Program Income		
Private		
All other funds (carryover)	122,392	122,392
Total from all sources	390,423	219,656

**c. Budget for current and following fiscal years**

Category	Current Fiscal Year FY12	Next Fiscal Year FY13
Wages & Salaries	149,603	173,068
Fringe Benefits (FICA, unemployment, etc.)	47,812	60,311
Materials/Supplies	923	1,160
Postage	370	504
Telephone/Internet		
Organization memberships/Subscription	1,156	1,813
Travel	7,103	6,502
Training	455	455
Equipment Purchase/Repair		
Temporary Personnel Services	649	251
Indirect Costs	18,845	26,248
Miscellaneous	3,389	3,647
Total Budget	230,305	273,959

**d. Number of person-years**

Type of position	Full-time equivalent	% of year position filled	Person-years
Professional			
Full-time	13.25	75	13
Part-time			
Vacant			
Clerical			
Full-time	6	100	6
Part-time	7	100	5
Vacant			

**e. Summary of presentations made:**

VOPA conducted 13 trainings to 321 clients and staff at the Woodrow Wilson Rehabilitation Center and regional state rehabilitation offices, private rehabilitation centers, and consumer and advocacy groups about employment rights and protections under Americans with Disabilities Act and Virginia Disabilities Act. VOPA used video-conferencing technology such as Skype for four presentations. The technology allowed us an increased statewide access to individuals

with disabilities. We connected with 100 individuals receiving vocational rehabilitation services and staff from several Centers for Independent Living and local Department of Aging and Rehabilitative Services (DARS) offices. We provided them office hours and training on our FY 2012 objectives and general legal rights.

To educate about options and barriers regarding transition from school to work, VOPA presented statewide outreach and trainings to diverse groups about a variety of topics including, but not limited to, employment rights under the ADA, work incentives, and vocational rehabilitation services. For example, VOPA gave two presentations to 38 high school students, teachers, and DARS case workers. VOPA also participated in a fair for high school students, providing the above-mentioned information to at least 100 students and their families. Furthermore, VOPA conducted trainings for five child-advocacy organizations, comprising of 73 students, parents, teachers, and advocates regarding Powers of Attorney, transition services, and vocational rehabilitation rights. With an added focus of special education rights of children in foster care, VOPA gave two presentations to 31 foster care or adoptive parents and advocates.

To educate individuals about work incentives and barriers to work, VOPA trained 55 clients and staff of DARS and Virginia Department for the Blind and Vision Impaired (DBVI) at two separate locations – Woodrow Wilson Rehabilitation Center (WWRC) and Virginia Rehab Center for the Blind and Vision Impaired (VRCBVI). Both locations serve individuals statewide, including those from underserved areas.

Through our Speakers Bureau, VOPA routinely provides training, speaking engagements, and presentations that are related to the Office's current Goals, Focus Areas, and Objectives (priorities). VOPA's website provides a link for public to request for a Speaker's Bureau presentation. VOPA also provides exhibits and materials for fairs, conferences, and meetings on request. Whenever a presentation is conducted about VOPA in general, it also addresses the CAP work that we do.

We did our outreach and training related to CAP work in conjunction with other funding streams. It is logical to our constituents and more practical for VOPA to provide presentations and training on related topics regardless of the funding source.

#### **f. Involvement with advisory boards**

VOPA has two (2) Advisory Councils: The Disabilities Advisory Council (DAC) and the Protection and Advocacy for Individuals with Mental Illnesses (PAIMI) Advisory Council. The Councils' primary responsibility is to advise the protection and advocacy system on policies and priorities to be carried out in protecting individuals with disabilities. This function helps VOPA to identify underserved and unserved Virginians.

VOPA participates on the Virginia State Rehabilitation Council (SRC) for the Department for Aging and Rehabilitative Services (DARS) and the SRC for the Department for the Blind and Vision Impaired (DBVI). The Rehabilitation Act of 1973, as amended, requires the establishment of a Statewide Rehabilitation Council to be appointed by the Governor.

In FY 2012, Virginia's Governor appointed a VOPA Disability Rights Advocate to the DARS SRC. This council provides advice to DARS regarding vocational services provided pursuant to Title I and Title VI of the Federal Rehabilitation Act, including development of the State plan and completion of the federally required needs assessment. VOPA's involvement in this SRC

positively impacted Virginians with disabilities. For example, in FY 2012, DARS proposed to change its appeal policy, including language that would have changed how often appeal rights are given when an individual is denied services. Due to our advocacy, DARS dropped this language. Therefore, whenever an individual's Individualized Plan for Employment is changed, he or she is provided information about his or her appeal rights.

Also, the Governor appointed a VOPA Disability Rights Advocate to DBVI SRC in late FY 2012. This SRC provides advice for creating opportunities in career development and employment-related services to individuals who are blind or visually impaired.

**g. Outreach to unserved/underserved populations:**

VOPA provided several CAP-related trainings in southwestern and western Virginia where individuals with disabilities are historically underserved by disability-related service providers and advocacy efforts, due to these areas' rural nature and economic climate. VOPA conducted trainings at Woodrow Wilson Rehabilitation Center (WWRC) in Fishersville, VA and Virginia Rehab Center for the Blind and Vision Impaired (VRCBVI) in Richmond, VA. Both locations serve individuals statewide, including those from underserved areas.

**h. Alternative Dispute Resolutions:**

We routinely use alternative dispute resolutions (ADR), including negotiation, mediation, informal review, and administrative review. VOPA staff assists clients with self-advocacy efforts with entities such as the Department of Aging Rehabilitative Services (DARS) and the Department for the Blind and Vision Impaired (DBVI). VOPA's policy is to resolve disputes with DARS and DBVI at the lowest level. Often, the presence of VOPA staff quickly encourages the "provider" to resolve problems prior to the client resorting to more formal legal remedies, including a request for a Fair Hearing. In most cases, more clear and direct communication is the optimum resolution. In all CAP cases, we engage in ADR to the maximum extent possible. VOPA always conducts significant negotiation prior to considering litigation.

VOPA provided legal representation for seven (7) clients in Fair Hearings against DARS and DBVI. VOPA resolved most cases during settlement negotiations. In several other cases, VOPA successfully achieved the clients' goals in the Fair Hearings that reached the litigation level.

Greg really wanted to work. He is homeless and has an intellectual disability; work is the most meaningful thing in his life. He completed a vocational evaluation as part of his Intake process at DARS. He had spent most of his adult life working in the Merchant Marines, but his disability no longer permitted him to work in that field. He was determined to be a productive member of society and decided he wanted to work in a funeral home. He needed DARS' help in overcoming his barriers to employment. However, DARS decided that Greg was too disabled to benefit from vocational rehabilitation (VR) services. Instead of determining eligibility, it put Greg on a Trial Work Experiences (TWE) status, telling him that DARS needed "clear and convincing evidence" that he was employable. Greg worried that DARS would close his case at the end of the TWE period, and therefore, not provide the services he desperately needed to overcome his barriers to employment. He contacted VOPA for advocacy assistance. VOPA represented Greg at a Fair Hearing, alleging that DARS failed to follow its own policy correctly to determine his eligibility for VR services, and that he should be found eligible for VR services. Agreeing with Greg and VOPA, the Hearing Officer ordered DARS to both find Greg eligible for services and provide him the VR services he needed to maximize his employment potential.

In a similar case, Marsha, a recent high school graduate with significant intellectual disability, was determined to work. While unsure about which field she wanted to pursue, she knew she wanted to work with people, perhaps at a restaurant. She wanted to be a productive member of society. She applied for VR services at DARS, hoping she could complete a vocational evaluation to ascertain her strengths and skills. She also wanted to participate in a job shadowing or internship opportunity. However, DARS felt that she was not competitively employable. Accordingly, DARS placed her case in TWE status until it could determine with “clear and convincing evidence” that Marsha was competitively employable. Marsha and her parents disagreed with DARS decision. VOPA represented Marsha at a Fair Hearing, alleging that DARS failed to follow its own policy correctly to determine her eligibility for VR services, and that Marsha should be found eligible for VR services. DARS also failed to provide Marsha a notice informing her that she had a legal right to appeal DARS’ decision about her eligibility status. Had VOPA not informed Marsha, she would have not known that she had this legal right. At the Fair Hearing, the Hearing Officer agreed with Marsha and VOPA and ordered DARS to find her eligible for VR services. The Hearing Officer also agreed that DARS failed to follow its own policy in providing appeal rights to Marsha. DARS appealed the Hearing Officer’s decision through the Administrative Review process at the Governor’s Office. VOPA represented Marsha in that appeal, too. The Governor’s Office reaffirmed the Hearing Officer’s decision. As a result, Marsha got an opportunity to participate in the internship program at Positive Vibe Café in Richmond, Virginia. She graduated successfully from the program. At her graduation, the program director commended her commitment to great job performance and her excellent social skills!

#### **i. Systematic Advocacy:**

VOPA addressed two systematic issues with the Department of Aging and Rehabilitative Services (DARS), one of which also involved the Department for the Blind and Vision Impaired (DBVI).

VOPA successfully advocated DARS to change its policy regarding eligibility determinations. In two cases, VOPA found that DARS had refused to find clients eligible for services because, in its words, it did not have clear and convincing evidence to prove that they were eligible. Both federal regulations and DARS policy state that clients must be found eligible unless DARS has clear and convincing evidence that they are not. DARS changed its practice, emphasizing that clients are presumed eligible for services.

In addition, VOPA collaborated with DARS and DBVI to advocate for appropriate paratransit services in the Richmond area. VOPA contacted the GRTC Transit System (GRTC) and requested a meeting to discuss concerns about its application process. VOPA had also heard that GRTC might reduce its service areas. VOPA, DARS, and DBVI met with GRTC, who assured the group that there are no plans to reduce its paratransit service area. Also, GRTC agreed to address accessibility concerns about its website and its application process.

#### **j. Interesting Cases:**

In FY12, VOPA addressed 114 requests for CAP services, serving 51 individuals. VOPA provided technical assistance, short-term assistance, and case representation to individuals who had disputes with the Department of Aging and Rehabilitative Services (DARS) or the Department for the Blind and Vision Impaired (DBVI). Disputes involved eligibility determinations, vocational rehabilitation (VR) services, Individualized Plan of Employments

(IPE), and transition services.

#### Technical Assistance and Short Term Assistance

VOPA provided technical assistance and short-term assistance in 43 cases, tailored to each individual's specific complaints. Typical technical assistance included the provision of written information about DARS, its application process for VR services, its appeal system, and instructions on how to request an Informal Administrative Review, Mediation, and Fair Hearings.

#### Case Services

VOPA provided representation in 71 cases in which clients had complaints with DARS or DBVI regarding eligibility, VR services, and transition services. In each case, VOPA advocated for a client to be found eligible for service and to receive an IPE. In some of these cases, we requested appropriate VR services and appropriate transition planning.

#### Eligibility

Cindy was afraid she might lose her job. She is blind. She applied for VR services at DBVI. Cindy felt that, in order to work competently, she required assistive technology accommodations to address her visual impairment needs. She was getting severe headaches from her JAWS headphones device, becoming unable to complete her work competently. She requested accommodations at her place of work to no avail. She applied for VR services to help her retain her current employment and to possibly find alternate employment that provides the accommodations she needs to maximize her employment potential. However, DBVI found her ineligible because she was already employed. On Cindy's behalf, VOPA filed a Fair Hearing Request to challenge DBVI's decision. During the settlement negotiation, VOPA provided evidence demonstrating Cindy's imminent risk of losing her job based on a recent performance improvement plan. As a result of the negotiations, DBVI agreed to reverse its decision, determining that Cindy was eligible for VR services. VOPA also successfully advocated that DBVI provide Cindy a new counselor, as her initial counselor both improperly determined eligibility and was inattentive to her concerns.

In a second case, VOPA successfully represented Jan at an Informal Administrative Review after DARS found her ineligible for VR services at the end of her TWE. VOPA successfully argued that DARS did not provide Jan with an appropriate TWE opportunity.

#### VR Services

Mike was in a job training program, but DARS refused to provide him with any assistive technology. Without providing Mike an assistive technology evaluation, DARS arbitrarily determined that he did not need it. Through mediation, VOPA successfully advocated that DARS provide Mike an internship opportunity, tailored to his specific skill set, to help determine the skills and assistive technology supports Mike needs to attain employment. DARS also agreed to provide Mike with \$150 towards hygiene expenses during this internship program.

In a second case, VOPA filed for a Fair Hearing after DARS refused to provide Peter with a monthly maintenance while he attended the vocational rehabilitation center. They did not give a reason for their refusal. Shortly before trial, DARS settled, agreeing that they failed to follow their policy regarding maintenance. It then provided Peter a monthly stipend.

Endora wanted to be a business analyst, but DARS refused to provide her an opportunity to

participate in a training program that she needed to achieve her employment goal. DARS felt that she did not need this training program, even though she selected this training program through informed choice. VOPA filed a Fair Hearing request on her behalf, which prompted DARS to agree to provide the training program for Endora.

In a fourth case, Larry felt that he did not have a good relationship with his DARS counselor. He believed that the counselor did not provide the services he needed to achieve his employment goal. On his behalf, VOPA successfully assisted to reestablish positive communication between Larry and his counselor. Once the doors of positive communication opened up, DARS agreed to provide Larry tutoring services, a tape recorder, and flash drive to help him achieve his goal of attaining his college degree.

### Transition from School to Work

VOPA represented high school students to ensure that they receive appropriate transition services at school to prepare them for life after graduation. In all cases, VOPA advocated that the student receive an appropriate Individualized Education Plan (IEP) transition plan, incorporating information about DARS services, their voting rights, and benefits planning.

In one case, VOPA represented Cindy, a seventeen-year old high school student whose school failed to provide transition planning services when she turned 14 years old, as required by federal and state law. VOPA assisted Cindy and her IEP team to develop and implement an appropriate transition plan that addressed her needs related to her disability. VOPA also ensured that Cindy participated at an intake meeting with DARS, advocating for DARS to find her eligible for VR services, which it ultimately did.

Samantha was done with school – she just wanted to leave. As a student with intellectual disability, she was frustrated and wanted to move on. However, the school neither developed an appropriate or realistic transition plan nor established contact with DARS. VOPA represented Samantha to ensure that the school division to develop a transition plan, along with a DARS counselor, the school division’s transition coordinator, and the special education director of the school division. This team developed an effective transition plan tailored to Samantha’s needs related to her disability. The plan also included job shadowing opportunities at a clerical office and nursing home, situational assessments, volunteering opportunities at a local theatre group, goals to develop independent living skills, and a goal to be able to read signs, including danger signs and stop signs.

In similar case, VOPA facilitated a transition meeting for Darren who neared exit from high school without an appropriate and realistic transition plan. Again, in this case, VOPA ensured that the school division included the proper participants to develop the transition plan. Tailoring Darren’s needs related to his disability, his team developed a detailed transition plan that included vocational classes, on-the-job training and assessment for employment skills, resume building, interview skills, and basic life skills related to his personal needs and safety.

### **k. On-line information/outreach:**

VOPA maintains a website that posts our federal grants’ goals and objectives. We also post notices for the Governing Board’s and VOPA’s Advisory Councils’ meetings, job vacancies, announcements, VOPA publications, Speakers’ Bureau requests, and disability-related links. The annual public comment process is also posted and visitors can participate online. VOPA’s website, however, does not have the capacity to count “hits” whenever someone views it.

VOPA uses a “VOPA alert,” an email distribution list service to communicate with our constituents. In the past year, “VOPA alert” notified constituents of important legal and legislative developments, as well as changes in other service agencies.

VOPA also uses “The Directors’ Blog” on our website. VOPA offers this blog to alert the public about VOPA activities, as well as news and developments in disability law. VOPA also uses the blog to obtain feedback about our work.

**Signature and title of CAP program director:**

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Colleen Miller, Executive Director

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Date