

## PAIR FY 12 PPR

### RSA-509 - Protection & Advocacy of Individual Rights (PAIR) Program Performance Report

Virginia (Virginia Office for Protection and Advocacy) - H240A110047 - FY2012

#### General Information

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#### Part I. Non-Case Services

##### A. Individual Information and Referral Services (I&R)

Multiple responses are not permitted.

1. Individuals receiving I&R within PAIR priority areas ..... 665
2. Individuals receiving I&R outside PAIR priority areas ..... 1,741
3. Total individuals receiving I&R (lines A1 + A2)..... 2,406

##### B. Training Activities

1. Number of trainings presented by PAIR staff ..... 24
2. Number of individuals who attended training (approximate)..... 1,367

##### C. Information Disseminated to the Public

1. Radio and TV appearances by PAIR staff ..... 1
2. Newspaper/magazine/journal articles ..... 0
3. PSAs/videos aired ..... 0
4. Hits on the PAIR/P&A website ..... n/a
5. Publications/booklets/brochures disseminated ..... 1,060
6. Other (specify separately)

**Describe the trainings presented by PAIR staff. Be sure to include information about the topics covered, the training methods used, and the purpose for the training. Use separate sheets if necessary.**

Using PAIR and other funding sources, VOPA conducted dozens of trainings in varied settings in geographically diverse locations to educate Virginians with disabilities and their friends, families, teachers, and advocates about their rights, effective methods of self-advocacy, and

remedies available if those rights are violated. Most of these trainings were small-group, interactive presentations with integrated question and answer sessions, intended to educate the public about special education and transition rights, employment rights, choice and self-direction, alternatives to guardianship and accessibility requirements under the Americans with Disabilities Act (ADA).

VOPA provided presentations about special education rights and transition services to seven parent support groups across the state. The presentations took place in a personal roundtable discussion forum which allowed the parents, advocates and educators to have their own unique questions answered while VOPA provided important information on navigating acquisition and management of Individualized Education Programs (IEPs), Behavior Intervention Plans (BIPs), assistive technology (AT), vocational rehabilitation and transition plans and benefits such as Social Security.

We trained two Hispanic advocacy groups on special education rights. These presentations encompassed general special education rights, assistive technology and VOPA's ability to provide advocacy to address these issues. One of the trainings led to a radio interview on the topics which was aired via a popular radio station for the Hispanic community in Central Virginia.

We offered multiple trainings on employment rights for people with disabilities. We reached thirteen rehabilitation centers and job clubs. Our trainings advised people with disabilities of their rights to reasonable accommodations, whether or not to disclose a disability, how to request an accommodation, and what to do if discrimination occurs. The training methods used included direct discussion, lecture and Skype (video-teleconferencing).

Three advocacy groups who serve Virginians with disabilities attended presentations on choice, self-direction and the right to live in the most integrated environment. The purpose of these presentations was to provide information to empower individuals with disabilities to be strong self-advocates in a small group forum.

VOPA advocated for alternatives to guardianship via twenty nine presentations on advance directives to several unique groups of individuals with disabilities, advocates and parents including community services boards, collegiate mental health law clinics, mental health clubhouses, parent support groups and day support centers. The presentations were hands-on and lecture and discussion structured to explain the differences in power of attorney as compared to guardianship.

Another training opportunity allowed VOPA to meet with two advocacy groups from a medical foundation and club for the deaf and explain accessibility requirements in medical settings to individuals with disabilities including physical barriers and effective communication issues.

VOPA routinely provides training and speaking engagements through our Speakers Bureau. The Speakers Bureau is comprised of VOPA staff who are available to provide training and presentations that are related to the Office's current Goals, Focus Areas, and Objectives. The Speakers Bureau currently has its own page on the VOPA website and there is a link for the public to make request a for a Speakers Bureau presentation. VOPA also provides exhibits and materials for fairs, conferences, and other functions. Whenever a presentation is conducted about VOPA in general, it addresses some of the work we do related to PAIR.

The VOPA "Directors' Blog" is a way of alerting the public to news and developments in disability law, sharing activities of the Office, and getting feedback about how we're doing.

## Part II. Individuals Served

### A. Individuals Served

Count individual once per FY. Multiple counts not permitted for lines A1 through A3.

1. Individuals still served as of October 1 (carryover from prior FY) ..... 14
2. Additional individuals served during the year ..... 73
3. Total individuals served (lines A1 + A2) ..... 87
4. Individuals w. more than 1 case opened/closed during the FY.  
(Do not add this number to total on line A3 above.) ..... 15

- B. Individuals served as of September 30 22 individuals (28 cases)  
Carryover to next FY may not exceed total on line II. A.3 above

### C. Problem Areas/Complaints of Individuals Served

1. Architectural accessibility..... 21
2. Employment ..... 18
3. Program access .....
4. Housing..... 10
5. Government benefits/services ..... 14
6. Transportation ..... 4
7. Education ..... 16
8. Assistive technology .....
9. Voting.....
10. Health care..... 25
11. Insurance .....
12. Non-government services..... 2
13. Privacy rights.....
14. Access to records.....
15. Abuse.....
16. Neglect.....
17. Other ..... 2

### D. Reasons for Closing Individual Case Files

1. Issues resolved partially or completely in individual favor ..... 75
2. Other representation found..... 2
3. Individual withdrew complaint..... 6
4. Appeals unsuccessful.....
5. PAIR Services not needed due to individual's death, relocation etc. ....
6. PAIR withdrew from case .....
7. PAIR unable to take case because of lack of resources .....
8. Individual case lacks legal merit .....
9. Other (please explain) ..... 1  
(Non-responsive client)

### E. Intervention Strategies Used in Serving Individuals

List the highest level of intervention used by PAIR prior to closing each case file.

1. Technical assistance in self-advocacy ..... 39
2. Short-term assistance..... 16
3. Investigation/monitoring.....
4. Negotiation ..... 26

5. Mediation/alternative dispute resolution.....	1
6. Administrative hearings .....	
7. Litigation (including class actions) .....	2
8. Systemic/policy activities .....	

**Part III. Statistical Information on Individuals Served**

**A. Age of Individuals Served as of October 1**

Multiple responses not permitted.

1. 0 – 4 .....	
2. 5 – 22 .....	15
3. 23 – 59 .....	50
4. 60 – 64 .....	9
5. 65 and over .....	13

**B. Gender of Individuals Served**

Multiple responses not permitted.

1. Females .....	46
2. Males.....	41

**C. Race/Ethnicity of Individuals Served**

1. Hispanic/Latino of any race .....	1
<i>For individuals who are non-Hispanic/Latino only</i>	
2. American Indian or Alaskan Native .....	
3. Asian .....	
4. Black or African American .....	26
5. Native Hawaiian or Other Pacific Islander.....	1
6. White .....	56
7. Two or more races.....	3
8. Race/ethnicity unknown.....	

**D. Living Arrangements of Individuals Served**

Multiple responses not permitted.

1. Independent .....	63
2. Parental or other family home.....	20
3. Community residential home .....	
4. Foster care .....	
5. Nursing home .....	1
6. Public institutional living arrangement.....	
7. Private institutional living arrangement .....	
8. Jail/prison/detention center.....	
9. Homeless .....	2
10. Other living arrangements .....	1
11. Living arrangements not known .....	

**E. Primary Disability of Individuals Served**

Identify the individual's primary disability, namely the one directly related to the issues/complaints

1. Blind/visual impairment.....	6
2. Deaf/hard of hearing.....	13

3. Deaf-blind.....	
4. Orthopedic impairment .....	13
5. Mental illness.....	5
6. Substance abuse.....	
7. Mental retardation.....	
8. Learning disability.....	2
9. Neurological impairment.....	19
10. Respiratory impairment .....	2
11. Heart/other circulatory impairment.....	6
12. Muscular/skeletal impairment .....	17
13. Speech impairment.....	
14. AIDS/HIV .....	1
15. Traumatic brain injury .....	1
16. Other disability.....	3

**Part IV. Systemic Activities and Litigation**

A. Systemic Activities

- |   |           |
|---|-----------|
| 1. Number of policies/practices changed as a result of non-litigation systemic activities | 2         |
| 2. Number of individuals potentially impacted by policy changes                           | 1,363,920 |

Describe your systemic activities. Be sure to include information about the policies that were changed and how these changes benefit individuals with disabilities. Include case examples of how your systemic activities impacted individuals served.

**Virginia Is for Lovers – including those with disabilities!**

VOPA received confirmation from The Virginia Tourism Corporation that they have taken steps to increase the accuracy and reliability of accessibility information listed on their website, [www.Virginia.org](http://www.Virginia.org). Previously, they did not require a business to confirm that they met the Americans with Disabilities Act Accessibility guidelines. Now any new business will be required to affirm that they meet the guidelines before getting the Accessibility icon displayed with their listing. In addition, any existing business will be prompted to update their listings with this information. If a business had previously checked the accessibility icon, they are now prompted to read the guidelines and verify that they are, in fact, accessible. Each attraction must now affirmatively state that they have an accessible entrance, access to goods and services, useable restrooms, and parking and drop-off areas before they can have the accessible icon associated with their attraction. Links to the guidelines are provided to educate the businesses on accessibility requirements. Thousands of businesses and attractions in Virginia must review accessibility guidelines before they can request the accessible icon. We hope that upon realizing how easy many of these accommodations are to achieve, many businesses will take the necessary steps to attain accessibility to receive the logo in their ads, thereby increasing access to these attractions for people with disabilities.

**Parents now have more effective access to mediation to resolve education issues**

VOPA successfully ensured that students and parents will have the right to be represented by an attorney or advocate in the Virginia Department of Education mediation process. Previously, the Virginia Department of Education (VADOE) mediators had refused to allow attorneys and advocates to speak for their clients, even when the clients wanted them to. As a result of our efforts, VADOE changed its policy and practice and, with VOPA, trained its mediators and employees to implement the change. Students and parents now have the right to acquire legal services to ensure their concerns are addressed and they are adequately represented in mediation sessions.

## **Improving Community Services**

VOPA continued our community survey project. We surveyed eight Medicaid Waiver Group Homes and seven Assisted Living Facilities in Staunton, Harrisonburg and Winchester using two survey instruments we developed. Our surveys included a comprehensive overview of the safety and condition of the homes. VOPA inspected the residents' current living environment and identified and addressed concerns. We identified inadequate ramps, bathrooms and doorways, made sure the facilities are clean and verified that the emergency preparedness plans meet the unique needs of the residents of the home. We conducted these surveys using multiple funding sources. VOPA hopes to draw attention to the necessity of greater resources to be used for oversight of these facilities to protect the residents and identify and necessary policy changes for the future. VOPA is continuing this project in FY 13.

### **B. Litigation/Class Actions**

- |  |           |
|--|-----------|
| 1. Number of individuals potentially impacted by changes as a result of PAIR litigation/class action Efforts | 1,318,245 |
| 2. Number of individuals named in class actions  | 0         |

Describe your litigation/class action activities. Explain how individuals with disabilities benefited from your litigation activities. Be sure to include case examples that demonstrate the impact of your litigation.

After almost seven years of litigation, the Virginia Lottery agreed to survey all of its lottery retailers within a three year period and require all retailers to be fully compliant with the Americans with Disabilities Act Accessibility Guidelines unless they were exempted from compliance. As of the close of this fiscal year - the second in the three year cycle of surveys - the Lottery has completed 3,288 surveys and only seven retailers were exempted from compliance. People with disabilities now have exponentially increased access to private businesses selling lottery tickets. These retailers sell necessities such as food, milk, newspapers and other items as well as Lottery tickets giving people with disabilities greater independence and access to their community.

In support of *United States v. Virginia*, VOPA filed an amicus brief arguing that training centers are not safe. Using data we collected from hundreds of investigations over the last several years, we laid out in stark detail to the court the abuse and neglect that occur in training centers. We also summarized the safety provisions of the agreement and showed how, if entered, it would protect all Virginians with disabilities. The Court held a hearing to determine whether to enter the agreement. VOPA asked the Court for an opportunity to be heard, so that we could point out the value the settlement agreement have for all people with disabilities. Although the Court declined to let us argue, on August 23, 2012, the Court approved the agreement. Thousands of people with disabilities will now have the opportunity to live in integrated community settings and will benefit from improvements to community services and oversight.

The Medicaid "fair hearings" process remains challenging for Virginians. In 2011, VOPA represented a client in a Medicaid appeal. As a part of that representation, VOPA requested that the Virginia Department of Medical Assistance Services (DMAS) forward copies of all records it intended to rely upon at the hearing. Rather than comply with both federal and state law, DMAS instead dumped boxes and boxes of documents, never identifying the specific documents they would use. After the hearing, we complained about the due process violation, and DAS then reversed its decision. In FY12, after negotiations with the Attorney General's office, DMAS agreed to train all staff working on appeals about the requirement to provide the evidence DMAS will rely upon at trial. However, in two subsequent appeals in FY 12, DMAS failed to do so again, instead doing another document dump. In both cases, VOPA filed Motions in Limine

stating that DMAS had violated state and federal law. We also attached a copy of the settlement agreement with DMAS to prove that the violation was not excusable. Unfortunately, in both cases, the Hearing Officer refused to sanction DMAS. As a result, VOPA filed a complaint with CMS regarding the failure to comply with the agreement among other due process violations. The complaint will be litigated as part of an FY 13 project.

Mary is from a military family and has struggled with change her whole life. Her Oppositional Defiant Disorder diagnosis led to an IEP with behavioral accommodations. Mary had a behavioral incident and was suspended for eleven days from school. Her mother complained that she was not provided with a Manifestation Determination Review (MDR), even though state and federal regulations require an MDR whenever a student is suspended for ten days or more. VOPA agreed to represent the client in a VADOE complaint contesting the suspension and failure to provide an MDR. We drafted and filed the Complaint. While the complaint was pending, we resolved the matter with the school by agreeing to withdraw the complaint in return for the school expunging all records of the suspension from the student's records and from all records in the school's possession, custody and control. The school now understands Mary's disability better and will not hold her accountable for behaviors that manifest as a result of supports it did not provide.

Kyle and Emily met while they were drug addicts living in the Washington DC streets. They fell in love, cleaned up, married and moved to Roanoke, Virginia. Early in their marriage, Emily was diagnosed with HIV syndrome. Rather than give up, she became an advocate for other people with HIV/AIDS and an educator telling people about ways to remain HIV free. As Emily's disease progressed, she became more and more dependent upon Kyle for support. Kyle learned about VOPA and, through our advocacy, helped Emily access the HIV/AIDS Waiver. Through the Waiver, she received attendant care and other services that allow her to stay home and provided her with what she needed daily. In November 2011, a mismanaged re-assessment of her abilities by the Department of Medical Assistance Services led to termination of her Waiver. VOPA agreed to represent Emily in an appeal. Kyle told us that Emily would die without her Waiver services - that she would have to go into a nursing home and that he did not think she could survive there. He said, after all she had done for people with AIDS, the least the state could do was provide her with what she needed so she could die in her own bed. We filed Motions, requested and received subpoenas, gathered evidence including affidavits from Emily's health care providers, and put together an evidence book showing that DMAS' decision was incorrect. During the pendency of the appeal, the HIV/AIDS waiver was merged into the Elderly and Disabled Waiver (EDCD), and Emily was transferred to the EDCD Waiver pending the outcome of her appeal. Just prior to hearing, we reached a settlement agreement. The settlement agreement stated that DMAS would allow Emily to continue on the EDCD Waiver and would not seek to recoup any of the cost of the services it provided while the case was pending. In other words, Emily could continue to receive the services she needed to stay at home. Emily's dignity and safety were preserved.

## **Part V. PAIR'S Priorities and Objectives**

### **A. Priorities and Objectives for the Fiscal Year Covered by this Report**

For each of your PAIR program priorities for the fiscal year covered by this report, please:

1. Identify and describe priority.
2. Identify the need, issue or barrier addressed by this priority.
3. Identify and describe indicators PAIR used to determine successful outcome of activities pursued under this priority.

4. Explain whether pursuing this priority involved collaborative efforts by other entities. If so, describe this collaboration.
5. Provide the number of cases handled under the priority. Indicate how many of these, if any, were class actions.
6. Provide at least one case summary that demonstrates the impact of the priority.

**Goal: Children with disabilities receive and appropriate education**

Focus Area: Appropriate therapy and services for children with disabilities

Needs/Issues/Barriers Addressed:

Based on public comment, VOPA experience, and the level of requests for services in this area, receiving appropriate therapies and services in order to participate in public education is still difficult for children with disabilities and their families.

Indicators for Success Include the Completion of the Following Objectives:

1. Train advocates and parents from Hispanic or Latino families regarding special education rights and assistive technology.
2. Protect the rights of children in special education in the mediation process by training Department of Education Mediators.
3. Develop a fact sheet on the use of Early and Periodic Screening, Diagnosis and Treatment (EPSDT) funding for medically necessary therapy and services in school settings. Distribute to all school districts.
4. Develop a fact sheet for parents and children in special education on their rights in the mediation process.
5. Increase the number of special education advocates by training law students at the University of Richmond Disability Law Clinic.
6. Increase self-advocacy by providing Technical Assistance or Short Term Assistance to all callers who complain that they or their children were denied appropriate special education therapy and services.
7. Represent children in foster care or an adoptive placement who have been denied special education services due to inadequate evaluations or assessments.
8. Represent children from Hispanic or Latino families who have been denied special education services due to inadequate evaluations or assessments.
9. Represent children who have improperly been denied needed and appropriate special education therapy or services.
10. Represent children from the above objectives in Due Process Hearings or complaints with the Virginia Department of Education (VDOE) Complaints. Obtain "prevailing party" attorneys fees where appropriate.
11. Inform the Department of Education of any failures by its mediators to respect parents' or children's rights in the mediation process. Obtain corrective action where appropriate.



Collaborative Efforts: VOPA collaborated with multiple agencies to accomplish our objectives. They included the Virginia Department of Education, Virginia Hispanic Liaison Office, Virginia Hispanic Chamber of Commerce, University of Richmond Disability Law Clinic and public school systems throughout Virginia.

Number of Cases Handled: 48 total / 4 PAIR

Case Summary for each indicator that demonstrates the impact of the priority:

1. VOPA provided training to the Director and two advocates at the City of Richmond Hispanic Liaison Office and the Director and founder of the Virginia Hispanic Chamber of Commerce (VHCC) and Director of Passport to Education. We also recorded a segment on one of VHCC's radio shows which aired in August, and addressed legal issues of interest to people with disabilities. VOPA also provided technical assistance to two callers with questions on this issue.
2. VOPA trained Virginia Department of Education (VDOE) mediators. The training was part of a round table discussion regarding the role of attorneys in mediation. All VDOE mediators were present, as was senior VDOE staff. The training focused on what our clients expect from the mediation process and how, when our clients choose to be represented by us in mediation, they expect us to speak on their behalf. Other topics included respect between mediators and attorneys and actual or perceived bias on the part of mediators.
3. VOPA developed a fact sheet on the use of Early and Periodic Screening, Diagnosis and Treatment in schools to fund therapy and services. The fact sheet was sent to every school district in the Commonwealth.
4. VOPA created a fact sheet to help students, parents and advocates better understand the mediation process and their rights in it. As noted above, through VOPA advocacy, VADOE changed its policy and practice of limiting the role of attorneys in mediation. Together, we trained mediators and employees regarding the change. This project was designed to give parents and students information about their rights, including their right to have an attorney represent them at mediation.
5. VOPA had five law student interns in FY2012. In addition, VOPA met with the director of the University of Richmond School of Law Disability Law Clinic and discussed ways we can work together to help educate law students working in the Clinic. We will begin our work together in the fall, 2012-2013 semester.
6. VOPA provided short term assistance to more than twenty-six parents and children who complained that they were denied appropriate services. Four of these children were served under PAIR. All callers receive information tailored to their particular request. Technical assistance often includes information about how to request evaluations, to request behavioral assessments, to file Due Process, and to request mediation.

Case Examples: VOPA assisted Eric, a young man with craniofacial disorder. We spoke with Eric's mother and discussed her concerns at length regarding educational speech and occupational therapy as well as issues with bullying and harassment. VOPA brainstormed and provided strategies to allow for effective communication with the school to resolve the issues.

We also provided assistance by reviewing an Individualized Education Program (IEP) for Javon, a student with Attention Deficit Hyperactivity Disorder and providing in-depth

suggestions for additional accommodations and modifications to allow him to be successful in the classroom which his mother used for an IEP meeting.

7. VOPA assisted two clients under this objective using other funding.

Case Examples: Kelsey was adopted by her family five years ago. She has diabetes and reactive attachment and mood disorders which led to issues with impulsive behaviors at school such as stealing and gorging on food. Kelsey's mother was originally seeking an IEP, but based upon review of the case, VOPA suggested a 504 plan, since academic performance and accommodations were not the problem. As a result of VOPA's advocacy, Kelsey was able to successfully acquire a 504 plan which provided supervision throughout the day to monitor her impulsive behaviors.

Zach is a foster child with ADHD and emotional disturbance who was denied an IEP and adequate accommodations to maintain focus and performance. VOPA carefully reviewed the IEP and medical and educational documentation. During the eligibility process the school found Zach eligible for the IEP. VOPA then identified several accommodations through a school psycho-educational assessment, to help with focus and redirection and the school agreed to provide the accommodations VOPA suggested. Zach now was positive redirection at school to manage his behaviors.

8. We provided technical assistance to two callers responding to presentations on special education services provided in part with PAIR funds.
9. VOPA represented children who were denied appropriate therapy services in twenty cases using other funding sources.

Case Examples: Timmy is fifteen and needed in depth educational occupational therapy hours from the school to be academically successful. VOPA advocated for Timmy at mediation to receive more therapy hours per his doctor's recommendation. As a result of our advocacy, the school increased Timmy's occupational therapy services from three days a week, thirty minutes a day provided by a school employee to five days a week, thirty minutes a day performed by an outside specialist with a concentration on sensory integration. Timmy now is learning the skills he needs to manage his school environment successfully.

Will needed appropriate therapy from the school system to address his autism. VOPA successfully advocated for him at a mediation session to receive Applied Behavioral Analysis (ABA) therapy. Based on VOPA's advocacy, the school agreed to contract with an outside Board Certified Behavioral Analyst to provide ABA training to Will's school teachers and administrators. The school agreed that the outside Analyst would evaluate Will's progress twice per year and make new recommendations as needed. Will was finally given access to the service he needed to succeed.

10. VOPA resolved all of its educational therapy and services cases this year, either through direct advocacy or mediation, without the need to file a VDOE Complaint or Due Process. There was one instance where we anticipated filing a VDOE Complaint and a case was opened with the intent of doing so. However, before we could file, the school agreed to provide the services and school placement desired by the child's parent. This case was managed with other funding.

11. VOPA has not witnessed or heard of any mediators failing to respect the rights of children or parents since VDOE agreed to the training described above in Number 2 of this Section.

**Goal: Children with disabilities receive and appropriate education**

Focus Area: Children who are suspended or who are at risk for long-term suspension

Needs/Issues/Barriers Addressed:

Based on public comment, VOPA experience, and the level of requests for services in this area, inadequate behavior supports in order to participate in public education is still an on-going issue for children with disabilities and their families. VOPA has made a commitment to continuing these efforts in FY 2013.

Indicators for Success Include the Completion of the Following Objectives:

1. Represent children who received a long-term suspension or who are at risk of receiving a long-term suspension due to the lack of an appropriate Functional Behavioral Assessment or Behavioral Intervention Plan and advocate for them to receive services in the least restrictive environment.
2. Represent children from the above objective in Due Process Hearings or VADOE Complaints. Obtain "prevailing party" attorneys' fees where appropriate.
3. Increase self-advocacy by providing Technical Assistance or Short Term Assistance to all callers who complain that they or their children have been suspended or are at risk of a long-term suspension.

Collaborative Efforts: VOPA collaborated with the Virginia Department of Education and multiple public schools systems across Virginia.

Number of Cases Handled: 30 Total / 9 PAIR

Case Summary for each indicator that demonstrates the impact of the priority:

1. VOPA represented eight children who received or were at risk of a long term suspension due to inappropriate or absent FBAs or BIPs. All of these cases were managed using other resources.

Case Example: Ivory needed a Functional Behavioral Assessment to evaluate her behaviors related to her difficulty in communication, her frustration arising from it, and negative behaviors including swatting and running away. VOPA requested a Board Certified Behavioral Analyst to conduct a Functional Behavior Assessment (FBA) to determine the cause of the behaviors. After the FBA was complete, the analyst and VOPA participated at an IEP meeting with the school and parents. The school agreed to incorporate behavioral intervention strategies recommended by the analyst and to monitor and report Ivory's progress relating to her behavioral goals. Ivory is now safer at school.

2. In this grant, VOPA represented one child in a VDOE complaint regarding an improper suspension. A summary of Mary's case can be found in Part IV. Systemic Activities and Litigation, Section B. of this report.
3. VOPA provided technical assistance or short term assistance to twenty-six children who are at risk of a long term suspension due to inappropriate Functional Behavioral Analysis (FBAs) or Behavioral Intervention Plans (BIPs). Nine of these were PAIR cases. All callers received

technical assistance tailored to their specific complaints. Typical technical assistance included written information on how to request Functional Behavioral Assessments and Independent Educational Assessments, how to request mediation, how to file VDOE Complaints, and how to request Due Process.

Case Example: VOPA helped John's mother learn how to represent him at a Manifestation Determination Review (MDR) hearing, telling her to discuss and describe how John's behaviors are a manifestation of his disability. The mother reported that she used the strategies we suggested and prevailed at the MDR, and her child's suspension was reversed.

**Goal: People with disabilities have equal access to government services**

Focus Area: Access to state and federal government services

Needs/Issues/Barriers Addressed: This Goal and Focus Area allow VOPA to enforce Title II of the Americans with Disabilities Act (ADA) on a systemic basis.

Indicators for Success Include the Completion of the Following Objectives:

1. Represent individuals denied access to a government building or services due to architectural barriers, lack of accommodations for a hearing or visual impairment, or denial of the use of a service animal.
2. Represent individuals with disabilities regarding the denial of Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits by the Social Security Administration at the appeal level, at less than the standard fee approved by the Social Security Administration.
3. Survey publicly-operated attractions listed on the Virginia Tourism website in a selected region for compliance with ADA accessibility requirements, and advocate for posting of accessibility information on their websites or other publications. Pursue corrective action as appropriate.
4. Inform the Virginia Department of Tourism of the need to provide accurate accessibility information regarding attractions listed on the Virginia Tourism website. Pursue corrective action as appropriate.
5. Investigate compliance with the ADA's accessibility requirements at a public college or university, focusing on public areas. Obtain corrective action as appropriate.
6. Monitor implementation of the settlement agreement in *Winborne v. Virginia Lottery*. Obtain corrective action as appropriate.
7. Advocate or litigate, in collaboration with other advocacy organizations, for a para-transit provider to continue or expand its services.

Collaborative Efforts: VOPA collaborated with the Social Security Administration, Virginia Regional Transit, Virginia Department of Tourism, Hardesty-Higgins Visitors Center/Valley Turnpike Museum and Massanutten Library in Harrisonburg, City of Waynesboro, State Arboretum of Virginia, Natural Chimneys Park in Augusta County, Rockfish Gap Visitors Center in Afton, James Madison University, Greater Richmond Transportation Service, Virginia Department for the Blind and Visually Impaired, and Coordinated Area Transportation System

Number of Cases Handled: 29 Total / 20 PAIR

Case Summary for each indicator that demonstrates the impact of the priority:

1. VOPA resolved over eleven PAIR cases under this objective regarding barriers to government building or services.
2. Case Examples: Bobby is a 66-year-old Vietnam Veteran who uses a wheelchair. He could not enter his son's school due to a locked accessible entrance and no signage. There were also an inadequate number of accessible parking spaces at the school. VOPA successfully negotiated with the school, which provided new signage to indicate accessible entrance points, two new accessible spaces, railing on a ramped entrance and a signal device on a locked accessible entrance. Bobby and many other individuals with disabilities can now safely access the school.

Debbie and Janice use power wheelchairs to travel. They were both denied the right to use the Coordinated Area Transportation System (CATS) in Waynesboro. The bus driver would not let them on the bus because they were in wheelchairs. VOPA challenged this denial and after a careful investigation, CATS adopted a procedure for safe transportation for individuals using qualified mobility devices and agreed to provide wheelchairs on the bus which will allow the person to be wheeled on the lift and secured in a wheelchair space. Debbie and Janice now have access to the community once more.

3. VOPA assisted nine clients under PAIR in understanding the process for filing appeals and reviewing documentation after being denied Social Security Disability or SSI. VOPA represented individuals before an Administrative Law Judge in two cases under other funding streams. VOPA prevailed in those two cases, earning previously denied benefits for the clients and attorney's fees for the office.
4. Historical sites can be accessible, too. VOPA completed five Title II surveys in the Shenandoah Valley targeted region. VOPA first addressed accessibility concerns with the Hardesty-Higgins Visitors Center/Valley Turnpike Museum and Massanutten Library in Harrisonburg. As a result of our negotiation, Hardesty-Higgins installed three brand new historically accurate and ADA compliant pine ramps and added an accessible threshold to the entrance points and the Valley Turnpike Museum. It was particularly gratifying that an historical site could be made accessible without compromising the historic authenticity of the attraction. Negotiation with the Massanutten Library led to the Library purchasing and replacing the cylinders in the automatic door closures to resolve an excessive door weight issue.

People in Waynesboro now have greater access. VOPA successfully negotiated with the City of Waynesboro regarding issues with the curb cuts and paths of travel in the downtown area. Waynesboro shared the "Waynesboro Downtown Streetscape Phase II Project" scheduled for 2013 which will resolve all of our concerns.

VOPA addressed accessibility concerns with path of travel, parking and an entrance at the State Arboretum of Virginia. The Arboretum created a new ADA compliant parking space and committed to a comprehensive ADA survey from the University of Virginia to make sure they are completely compliant.

VOPA addressed accessibility concerns at Natural Chimneys Park in Augusta County. As a result of our negotiation, the Park corrected an accessibility issue with a pool by adding a

chair lift, has plans for accessible trail around the park which will fix parking issues, and is reviewing restrooms and showers. They will also install accessibility signage.

At the Rockfish Gap Visitors Center in Afton, the owner addressed our concerns by adjusting aisle widths and adjusting product location for turn radius consideration for individuals with mobility devices. The staff also agreed to more prominently feature accessible versions of attractions and materials.

5. How do you know if your tourist destination will be accessible to you? VOPA coordinated with Virginia Tourism to increase the accuracy and reliability of accessibility information listed on the Virginia Tourism website, [www.Virginia.org](http://www.Virginia.org). Previously, the system in place did not require a business to confirm that they met the Americans with Disabilities Act Accessibility Guidelines, nor did it include links to those guidelines. Now, however, any new business will be required to affirm that they meet the guidelines before getting the Accessibility icon displayed with their listing.

Each attraction must now affirmatively state that they meet the ADA Accessibility Guidelines for an accessible entrance, access to goods and services, usability of restrooms, and parking and drop-off areas before they can have the accessible icon associated with their attraction. Links to the guidelines are provided to educate the businesses on accessibility requirements. In addition to increasing the accuracy of accessibility information, VOPA has now ensured that thousands of businesses and attractions in Virginia must review accessibility guidelines before they can request the accessible icon.

6. VOPA successfully surveyed several buildings and features on the James Madison University (JMU) campus, and found that a number of these were not accessible to people who use a mobility device. JMU responded that in addition to our concerns, they were also involved in a Department of Justice investigation. They assured us that our issues, relating to accessible route maps, handicap parking spaces, the location of bus stops, sidewalk signage and obstructions, after-hours dining options and dorm access, issues relating to access and terrain, and a flooding tunnel with no alternate accessible route, would be corrected. The Office of Disability Services is being moved to a more accessible location, and JMU will be updating its website to increase disability information and ease access to that information.
7. As a result of VOPA's successful litigation against the Virginia Lottery, after almost 7 years of litigation, the Lottery agreed to survey all of its lottery retailers within a 3 year period and require all retailers to be fully compliant with the Americans with Disabilities Act Accessibility Guidelines unless they were exempted from compliance. As of the close of this fiscal year - the second in the three year cycle of surveys - the Lottery had completed 3,288 surveys and only 7 retailers were exempted from compliance.
8. Don't cut back on paratransit services, we demanded. VOPA collaborated with DRS and the Department for the Blind and Vision Impaired (DBVI) to advocate for appropriate paratransit service in the Richmond area. We met with the area's public transportation service, Greater Richmond Transit System (GRTC) to discuss concerns about GRTC's application process and concerns that it would reduce its service area. GRTC assured us that there are no plans to reduce its paratransit service area. Also, GRTC agreed to work with DBVI to address accessibility concerns about its website and its application process.

It should also be noted that the two cases involving the Coordinated Area Transportation System, in Objective Number 1 of this section were also linked with this objective.

## **Goal: People with disabilities have equal access to government services**

Focus Area: Reasonable accommodations for individuals in public housing or receiving public assistance in housing

Needs/Issues/Barriers Addressed: Many Virginians with disabilities face barriers with acquiring reasonable accommodations to allow them to safely and independently live in the community.

Indicators for Success Include the Completion of the Following Objectives:

1. Provide technical assistance to individuals regarding housing discrimination due to their disability or denial of a reasonable accommodation in housing under the Fair Housing Act.
2. Represent individuals who reside in public housing or receive public housing assistance regarding housing discrimination due to their disability or denial of a reasonable accommodation.

Collaborative Efforts: VOPA collaborated with apartment managers and physicians to provide technical assistance and case level services to our clients.

Number of Cases Handled: 8 TOTAL / ALL PAIR

Case Summary for each indicator that demonstrates the impact of the priority:

1. VOPA assisted four individuals under this objective to receive reasonable accommodations to maintain a safe living environment

Case Example: Chris lives on the second floor of large apartment complex. He uses a walker for his cerebral palsy and cannot safely travel down steps. His apartment complex has two elevators, but chose to shut them down during certain times of the day and evening for 'safety reasons'. This resulted in Chris being stuck in his apartment. In the event of an emergency, he was forced to call a maintenance employee of the building to dangerously help him down the steps. VOPA negotiated with the apartment management and as a result they changed their elevator policy and made the elevator operational 24 hours per day. Chris can have peace of mind now that he can safely enter and exit his building.

2. VOPA also assisted four individuals under this objective to receive reasonable accommodations.

Case Example: Wilma had an accessible parking space at her apartment designated with a sign exclusively for her use as a result of VOPA's past advocacy efforts. This year, the property manager at Wilma's apartment took away the sign, leading other residents to use the space. Due to Wilma's significant mobility limitations the distance she had to travel to park at the other accessible spaces was far too great for her. It put her health at risk. VOPA assisted her, and the apartment management put the sign back up with the same language indicating it was for her use only. Wilma can now safely access her apartment once more.

## **Goal: People with disabilities live in the most appropriate integrated environment**

Focus Area: Maximize Individual Choice and Self Direction

Needs/Issues/Barriers Addressed: This Goal and Focus Area allow VOPA to educate and advocate for Virginians with disabilities to live as independently as possible and make informed decisions based upon their own choices.

Indicators for Success Include the Completion of the Following Objectives:

1. Train a self-advocacy group on choice, self-direction, and the legal right to live in the most integrated environment.
2. Inform consumers, family members, and service providers about alternatives to guardianship by providing ten (10) trainings at conferences and programs.
3. Train three (3) groups of high school students, family members, and educators about alternatives to guardianship and Powers of Attorney.
4. Working with other advocacy groups, develop statewide training curriculum for advance directive peer advisers.
5. Represent two (2) individuals in proceedings to prevent, modify, or terminate guardianship where the individual has capacity or has regained capacity.
6. Represent twenty-five (25) individuals in preparing a health care directive or power of attorney as an alternative to guardianship.
7. Inform policymakers about the need for increased personal choice and self-direction for individuals with disabilities through participation on the Virginia Public Guardianship and Conservatorship Advisory Board.

Collaborative Efforts: VOPA collaborated with multiple agencies including the Hope House Foundation, Diversity Day Support in Chesterfield, University of Virginia, VOCAL, Mental Health America of Virginia, Virginia Department of Behavioral Health and Developmental Services (DBHDS), Virginia Public Guardianship and Conservatorship Advisory Board and parent support groups.

Number of Cases Handled: 36 Total / 7 PAIR

1. VOPA gave a presentation at the Hope House Foundation, an advocacy group for individuals with developmental disabilities for a group of seventeen consumers and self advocates regarding self advocacy, choice, and self-direction.
2. VOPA presented twenty-three trainings on alternatives to guardianship to approximately eight-hundred people at assisted living facilities, a state hospital, centers for independent living, a day treatment center, a clubhouse, and at state-wide conferences
3. VOPA trained high school students, family members, and educators at Diversity Day Support Center in Chesterfield, It's a New Day Support Center in Powhatan and a private parent support group in Henrico County. Forty-five people attended.



4. VOPA presented five trainings to advanced directive peer advisors including a law school clinic and community service boards. VOPA worked with representatives from the University of Virginia, VOCAL, Mental Health America of Virginia and DBHDS to develop the basic framework and content for the advanced directives curriculum.
5. VOPA represented four individuals under this objective. One was a PAIR client.  
Case Example: James called VOPA because he received a copy of a letter from the court saying that his sister filed for temporary or permanent Guardianship of him. He is forty-seven and is deaf and has cerebral palsy. He has successfully made his own life decisions for many years. While one sister petitioned, James had support from other family members and VOPA challenging this action. VOPA's efforts in monitoring this case have kept James living independently and the petition was revoked. This case is still open for monitoring to protect James right to independence.
6. VOPA has represented approximately thirty-two individuals in preparing a health care directive or power of attorney as an alternative to guardianship and six of these were PAIR clients. These documents allowed our clients to receive the support they need to make informed decisions about healthcare.
7. VOPA worked with the Virginia Public Guardianship and Conservatorship Advisory Board about the need for increased personal choice and self-direction for individuals with disabilities, particularly focusing on issues relating to the consolidation or elimination of state services and agencies that serve citizens subject to guardianship.

**Goal: People with disabilities live in the most appropriate integrated environment**

Focus Area: Equal Access to Public Accommodations under the ADA

Needs/Issues/Barriers Addressed: This Goal and Focus Area allow VOPA to enforce Title III of the Americans with Disabilities Act (ADA) on a systemic basis.

Indicators for Success Include the Completion of the Following Objectives:

1. Develop outreach tools concerning the ADA Title III regulations, including a Continuing Legal Education course.
2. Survey private attractions listed on the Virginia Tourism website ([www.virginia.org](http://www.virginia.org)) in a selected region for compliance with ADA Title III. Seek corrective action where necessary.
3. Represent individuals who have been denied access to a place of public accommodation due to architectural barriers or inaccessible parking, or denial of a service animal. Obtain attorneys fees where appropriate
4. Advocate or litigate for private businesses who are under a contract with a state agency and were surveyed in the prior fiscal year to become accessible to people with disabilities. Obtain "prevailing party" attorneys fees where appropriate.
5. Survey private businesses who are under a contract with a state agency to determine if they are accessible to people with disabilities. Provide Technical Assistance letters to inaccessible businesses outlining what they must do to become accessible.

Collaborative Efforts: VOPA collaborated with the Museum of the Shenandoah Valley, Belle Grove Plantation, Shenandoah Arts Center, P. Buckley Moss Museum, Rockfish Gap Country

Store, Eastern Buffet Restaurant in South Hill, Bermuda Square Shopping Plaza in Chester, Rapport Companies, and the Virginia State Bar.

Number of Cases Handled: 11 Total / All PAIR

Case Summary for each indicator that demonstrates the impact of the priority:

1. VOPA created a thorough and comprehensive training presentation and handouts which were presented at a VOPA staff meeting and submitted to the Virginia State Bar for CLE credit and approved. These materials have been utilized by staff at trainings, and may be modified in 2013 and utilized for outreach to the private bar.
2. VOPA surveyed and inspected over a dozen attractions listed on the Virginia.org website, and focused on the following:

The Museum of the Shenandoah Valley agreed to add parking spaces and change a loose parking surface, as well as add accessible picnic areas, audio tours, and generally increase accessibility of pathways and doorways.

The Belle Grove Plantation agreed to add a new accessible space at the top parking lot, scrape back gravel on the lower level spaces and path of travel to the accessible entrance and add signage to designate the accessible entrance. They are completing a work plan to address the uneven paths of travel.

The Shenandoah Arts Center improved the entrance to their building and one internal studio as well as a gift shop. They also adjusted a threshold barrier to the unisex restroom, and changed instructions to certain displays, as well as relocated exhibits, to increase access.

The P. Buckley Moss Museum agreed to increase parking and access aisles and routes, as well as relocate seating to increase accessibility. The museum has also agreed to modify thresholds that create barriers to exhibits, and added alternate formats for people with vision impairments.

The Rockfish Gap Country Store agreed to modify its aisles where display items encroached on a safe path of travel. They also agreed to update information on their website relating to inaccurate information about accessibility.

3. VOPA completed eleven cases under this objective, all under PAIR.  
Case Examples: Andrea uses a wheelchair and faced two inaccessible entrances and excessive door weight at a private attorney's office in Norton, Virginia. VOPA negotiated with the attorney and as a result he conceded to 'locate a space on the first floor, which will be available to all visitors to our office' which is now the entrance point for 'individuals with accessibility issues'. Andrea and others now have access to his office.

Eddie faced multiple accessibility barriers at the Bermuda Square Shopping Plaza in Chester, Virginia. As a result of VOPA's advocacy, the property management agreed to renovate the parking lot and completed an additional \$26,000 in work which included elimination of an inaccessible island, re-striping three existing accessible spaces and multiple cross walks, created three new ADA compliant ramps, converted all non-compliant accessible spaces into ADA compliant spaces (including two new van accessible spaces) and eliminated an inaccessible ramp. Eddie and thousands of others now can access over a dozen businesses in this large shopping plaza.

VOPA was contacted by Michelle, a prior VOPA collaborator, regarding two large shopping plaza parking lots in Woodbridge and Manassas, Virginia. VOPA surveyed and identified multiple issues including a lack of adequate parking spaces, concerns with curb cuts and paths of travel. VOPA then met with the property management at both parking lots, discussed our concerns and they agreed that the parking and accessibility issues were inadequate and needed to be addressed. Thousands of Virginians with disabilities now have greater access to all the retail settings at these locations.

4. Of the public accommodations surveyed last year, all either agreed to come into compliance with the ADA or went out of business. Therefore, we did not file any litigation under this objective.
5. Throughout the year, VOPA surveyed public accommodations contracting with the state. We reviewed the surveys, most of which found no accessibility problems. We wrote technical assistance letters to those where we found problems.

**Goal: People with disabilities are employed to their maximum potential**

Focus Area: Employment rights under the ADA

Needs/Issues/Barriers Addressed: VOPA seeks to increase access to reasonable accommodations in the workplace, resulting in greater employment opportunities for people with disabilities.

Indicators for Success Include the Completion of the Following Objectives:

1. Train groups of clients and staff at Woodrow Wilson Rehabilitation Center and regional DRS offices, and consumers at state and private rehabilitation centers on employment rights.
2. Train consumer or advocacy groups in a selected geographic region regarding employment rights under the ADA and VDA.
3. Promote training on “Employee and Applicant Rights under the ADA” for a fee to trade groups, employers and others, and to parties as part of settlement agreements in ADA employment cases.
4. Provide technical assistance to individuals regarding employment rights or discrimination based on disability under Title I of the ADA or the Virginians with Disabilities Act.
5. Represent individuals who have been denied reasonable accommodations in employment under the ADA in mediation or administrative proceedings before the Equal Employment Opportunity Commission or Virginia Human Rights Council.

Collaborative Efforts: VOPA collaborated with Woodrow Wilson Rehabilitation Center, Virginia Transition Forum, Virginia’s Community College System, Petersburg Area Rehabilitation Center, Virginia Department of Rehabilitative Services (DRS) and the Equal Employment Opportunity Commission (EEOC).

Number of Cases Handled: 22 Total / 18 PAIR

Case Summary for each indicator that demonstrates the impact of the priority:

1. VOPA conducted ten trainings to hundreds of attendees at the Woodrow Wilson Rehabilitation Center and regional DRS offices on employment rights for people with disabilities. These presentations reached students seeking work for the first time, adults in physical or occupational therapy looking to return to work, the participants of the Virginia Transition Forum, and Veterans with disabilities seeking work, and students at Virginia's Community Colleges who have a disability. These presentations were conducted throughout the state, and at locations where diverse populations could be reached. They were done both live and using video-conferencing to increase the number of presentations that could be completed within the allocated resources.
2. VOPA provided a one hour ADA Employment Rights Training for an Advocacy Group at Piedmont Community College in Charlottesville. There were three case workers from the CSB, one counselor and eleven students from Piedmont. VOPA also discussed the Client Assistance Program. VOPA then provided training on employment protections to thirty eight consumers and six staff at the Petersburg Area Rehabilitation Center, and a one hour training on employment rights to twenty individuals at the J. Sergeant Reynolds Community College in Richmond.
3. VOPA completed materials which have been submitted for Continuing Legal Education Credit and have been used at trainings and presentations, but was not able to find any groups interested in utilizing this training for a fee or offering it as a part of a settlement. The materials created have been presented to VOPA staff, for CLE credit for VOPA attorneys, and will be incorporated into future efforts to recruit attorneys to provide services to VOPA clients.
4. VOPA provided technical assistance to nineteen individuals regarding employment rights or discrimination under the ADA. Fifteen of these individuals were PAIR clients. One client sent the following note relating to the information provided:  
  
"Because of the previous information you gave me, I got the courage to file an EEOC complaint and Human Rights complaint. The EEOC complaint is currently active... I just want to say thank you!! You gave me the knowledge I needed and the courage to go forth with something that me and several other employees needed to do a long time ago."
5. VOPA had three open cases with clients for whom complaints have been filed with the EEOC and additional cases where a settlement was mediated.

Case examples: Wendy was a long-term employee of a national home-improvement store. She had a long history of excellent performance reviews and customer satisfaction. In the course of treatment for her medical condition, she needed to take a medication that caused her to have balance issues, and she could therefore temporarily not climb ladders to check inventory. A frustrated customer became impatient, but rather than provide the reasonable accommodation of having an available colleague retrieve an item from a high shelf, Wendy was terminated. VOPA filed an EEOC complaint on Wendy's behalf and after formal mediation Wendy received \$18,500, and has since found a new job and continues to live independently in the community.

Rose was part of a school cafeteria team responsible for preparing meals at an elementary school. When new recipes came along, Rose required an accommodation incorporating American Sign Language to learn the recipes. Rather than provide the accommodation, the employer fired Rose. VOPA filed an EEOC complaint on Rose's behalf, and engaged in

multiple mediation sessions, at one time receiving an offer of more than one year of Rose's salary. While this case did not settle in FY2012, it is likely VOPA's advocacy will result in Rose's compensation for this violation of her rights.

Heidi is a bright, energetic young woman who has long worked at McDonald's with willing co-workers who accommodated her deafness through various means. A recurring problem, however, arose whenever Heidi needed to be contacted by telephone for revisions to her work schedule, as management insisted on the "phone in" policy despite the fact that Heidi cannot hear. VOPA and Heidi met with store ownership, only to find that the owner had no idea that this problem existed, and policies were immediately modified to allow Heidi to utilize other technology such as text messaging and email to communicate with her managers. Heidi continues her work and remains an excellent employee for the restaurant.

**Goal: People with disabilities have equal access to appropriate and necessary health care**

Focus Area: Denial of needed and appropriate Medicaid services

Needs/Issues/Barriers Addressed: Medicaid services are critical to the continued health and safety of many of the individuals VOPA serves. The Medicaid system in Virginia has multiple programs which can be complicated to access and understand. VOPA's experience with service requests in this area demonstrates that this need continues to grow throughout the state.

Indicators for Success Include the Completion of the Following Objectives:

1. Increase self advocacy by providing Technical Assistance or Short Term Assistance to all callers complaining that they were denied appropriate transportation services by the Department of Medical Assistance Services (DMAS) or its contractor Logisticare.
2. Increase self advocacy by providing advocacy organizations serving people who use Medicaid non-emergency transportation through DMAS or its contractor Logisticare with information including VOPA's model complaint.
3. Represent individuals denied needed and appropriate Medicaid services under a Waiver Program. Priority will be given to individuals denied assistive technology or environmental modifications.
4. Represent children denied needed and appropriate Medicaid services under the EPSDT program.
5. Advocate or litigate to ensure that DMAS complies with state and federal regulations and its own policy regarding the provision of evidence it intends to present at Medicaid Appeal hearings.
6. Advocate or litigate to ensure that DMAS Hearing Officers apply an appropriate and uniform Burden of Proof in Medicaid Appeal Hearings.

Collaborative Efforts: VOPA collaborated with the Virginia Department of Medical Assistance Services and Logisticare.

Number of Cases Handled: 40 Total / 9 PAIR

Case Summary for each indicator that demonstrates the impact of the priority:

1. VOPA provided Technical Assistance or Short Term Assistance to all callers complaining that they were denied appropriate transportation services by the Department of Medical Assistance Services (DMAS) or its contractor Logisticare. One PAIR client was provided information on how to track data and make a complaint.
2. VOPA has submitted two “systemic” complaints to DMAS asking that they investigate the services provided to people who were injured while using Logisticare. VOPA was unable to contact the victims, despite several attempts, so they are not clients. Instead, we provided DMAS with information that we had on the injuries and asked that DMAS conduct an investigation and inform us of the results. We await their findings.
3. VOPA completed six cases under PAIR for this objective.  
Case Examples: As reported earlier, Emily had been receiving services under the AIDS Waiver and lost her Waiver due to a mismanaged re-assessment of her abilities by the Department of Medical Assistance Services. VOPA fought for Emily and she is now receiving services under the EDCD Waiver. Greater detail about this case can be found in Part IV, Section B of this report.

Unfortunately, the other five cases managed under PAIR were investigated and there was not merit to proceed with or lack of resources prevented us from doing so. Additional funding would allow for greater case and project work in this area.

4. Under PAIR, VOPA represented two children denied appropriate services under the EPSDT program. We additionally handled fifteen other cases under this objective under other funding streams.

Case Example: Alden’s autism creates significant communication limitations. His mother requested an iPad to use as a communication device via Medicaid. VOPA worked with Alden’s doctor and therapist to draft a Letter of Medical Necessity (LMN) to support the request. We then worked with Alden’s Waiver Case Manager to submit the request. The request was initially declined, because the Department of Medical Assistance Services (DMAS), who manages Virginia’s Medicaid program, requested that the Case Manager provide more information but she did failed to do so. VOPA corrected that failure. We worked directly with Alden’s doctor to provide a new LMN to justify the specific type of iPad requested and then worked with the Case Manager to submit the request. DMAS approved the request. Alden received a 32 giga byte iPad 2 with Wi-Fi and 3G coverage, as well as the necessary applications to support the device. Alden can now express himself and communicate effectively to allow for greater independence.

5. VOPA encountered serious problems in the Medicaid fair hearing process. For example, in one hearing we requested that DMAS forward copies of all records it intended to rely upon at the hearing. Both federal and state laws require DMAS to provide such records, upon request. When DMAS failed to do so, we filed a Motion in Limine seeking to bar DMAS from presenting any evidence. After the trial, VOPA stated that DMAS had violated our client's right to due process, and DMAS granted VOPA's client the relief he sought. VOPA then filed a new complaint with CMS regarding the failure to comply with the agreement among other due process violations. This complaint will be litigated as part of an FY 13 project.
6. In this Fiscal Year, VOPA set out to ensure that other people would not be subject to an unlawful burden of proof. After negotiations with the Attorney General's office, DMAS agreed

that its hearing officers would be trained each year on the appropriate burden of proof to apply in Medicaid appeals and that the burden would be "preponderance of the evidence."

**Goal: People with disabilities have equal access to appropriate and necessary health care**

Focus Area: Accessibility of medical offices and clinics under the ADA and Rehabilitation Acts

Needs/Issues/Barriers Addressed: Medicaid services are critical to the continued health and safety of many of the individuals VOPA serves. The Medicaid system in Virginia has multiple programs which can be complicated to access and understand. VOPA's experience with service requests in this area demonstrates that this need continues to grow throughout the state.

Indicators for Success Include the Completion of the Following Objectives: This Goal and Focus Area allow VOPA to address the need for greater architectural access and effective communication for people with disabilities using medical facilities.

1. Train two (2) community based advocacy or consumer groups on ADA accessibility requirements in medical settings, including physical barriers and effective communication issues.
2. Represent five (5) individuals with disabilities regarding physical barriers in violation of the ADA that impede access to health care facilities and services.
3. Represent seven (7) people who are deaf or hard of hearing to ensure that they receive alternate aids and services from their health care providers to ensure effective communication. Obtain "prevailing party" attorneys' fees where appropriate.

Collaborative Efforts: VOPA collaborated with the Potomac Health Foundation, Staunton Deaf Club, Bernstein Companies and private physicians across the state

Number of Cases Handled: 24 Total / 20 PAIR

Case Summary for each indicator that demonstrates the impact of the priority:

1. VOPA successfully trained seventy individuals with disabilities and advocates at two consumer advocacy groups. These groups were the Potomac Health Foundation in Woodbridge and Staunton Deaf Club in Staunton. The trainings included discussion of AT to facilitate effective communication. We cited computers, keyboards, and other types of non-auditory devices that could be used to assist with communication as examples. The groups gave VOPA positive feedback.
2. VOPA completed 11 cases, all under PAIR in which we addressed physical barriers in health care facilities.

Case Examples: Michelle has limited physical strength due to her disabilities and faced three barriers while trying to access a medical office in Reston located inside a large office complex building. First, the front exterior doors had constant malfunctioning of automatic features. Interior restroom doors had an excessive weight and interior suite doors to access her doctor had an excessive weight. VOPA negotiated with the building property management who promptly adjusted the closure on the door of the interior restroom doors located close to the doctor's office and resolved the malfunction of the automatic features. During our negotiation with the first company, we were informed that the last door of concern, the interior suite door leading to the office was managed by another company. We

then negotiated with this company who recognized the excessive door weight of the suite glass door and adjusted it. This large office complex building is now accessible for all individuals.

Terrance uses a wheelchair due to amputation of his legs earlier in life. He contacted VOPA after a hospitalization in which he was not provided with an accessible room in the hospital. He faced issues with a parking lot and adequate van accessible spaces as well. VOPA drafted a letter of concern to the hospital on the client's behalf. The hospital provided a response letter addressing all of these issues to ensure this would not happen in the future to the client or other patients with disabilities.

3. VOPA represented thirteen PAIR clients under this objective who are deaf or hard of hearing to ensure that they receive appropriate sign language interpreters for medical appointments. In each case, VOPA contacted the person's doctor and provided the doctor with information about its obligation to provide an interpreter to patients who need interpreters to communicate effectively. Each case was successfully resolved. VOPA secured interpreters for people at hematologists, dentist, cardiologists, nephrologists and gastroenterologists.

## **B. Priorities and Objectives for Fiscal Year 2013**

Please include a statement of priorities and objectives for the current fiscal year (the fiscal year succeeding that covered by this report), which should contain the following information:

1. a statement of each priority;
2. the need addressed by each priority; and;
3. a description of the activities to be carried out under each priority.

### **Goal: Children with disabilities receive an appropriate education**

Focus Area: Appropriate therapy and services for children with disabilities with IEPs of 504 Plan

Needs/Issues/Barriers Addressed: Based on public comment, VOPA experience, and the level of requests for services in this area, receiving appropriate therapies and services in order to participate in public education remains a high priority and area of concern for children with disabilities and their families.

Indicators for Success Include the Completion of the Following Objectives:

1. Develop a fact sheet for parents and children on the services available under a 504 Plan.
2. Provide self-advocacy education rights presentation to parent or child advocacy groups regarding special education rights and assistive technology, and an overview of VOPA services.
3. Increase self-advocacy by providing Technical Assistance (TA) or Short Term Assistance to all callers who complain that they were denied appropriate therapy or services in Individualized Education Programs (IEPs) or 504 Plans.
4. Represent children who have improperly been denied needed and appropriate therapy or services in their IEPs or 504 Plans.



5. Represent children from Hispanic or Latino families who have been denied special education services due to inadequate evaluations or assessments.
6. Identify one county, city or region and collaborate with one or more advocacy groups to provide training to students, parents and advocates on the special education eligibility process and services available in IEP and 504 Plans.

**Goal: Children with disabilities receive and appropriate education**

Focus Area: Children who are suspended or who are at risk for long-term suspension

Needs/Issues/Barriers Addressed: Based on public comment, VOPA experience, and the level of requests for services in this area, many children in Virginia still face inadequate behavioral evaluations and services to accommodate their disabilities and avoid disciplinary action.

Indicators for Success Include the Completion of the Following Objectives:

1. Increase self-advocacy by providing TA or STA to all callers who complain that they or their children have been suspended or are at risk of a long-term suspension.
2. Represent children who received a long-term suspension or who are at risk of receiving a long-term suspension due to lack of an appropriate Functional Behavioral Assessment (FBA) or Behavioral Intervention Plan (BIP) and advocate for them to receive services in the least restrictive environment.
3. Identify one county, city or region and collaborate with one or more advocacy groups to provide training to students, parents and advocates on their rights in the special education disciplinary process and their right to file for Due Process and other remedies.
4. Identify one school division and investigate whether children with disabilities are disproportionately suspended or expelled.

**Goal: People with disabilities have equal access to government services**

Focus Area: Access to State and Federal Government Services

Needs/Issues/Barriers Addressed: VOPA will seek local and systemic change to increase the quality of life for people with disabilities by removing barriers to government services.

Indicators for Success Include the Completion of the Following Objectives:

1. Increase access to courts and court services by people with disabilities by training Virginia court clerks on the accessibility requirements of the ADA and the obligation to make programs and services fully and equally accessible.
2. Represent individuals denied access to a government building or services due to architectural barriers, failure to provide reasonable accommodations, or denial of the use of a service animal.
3. Represent individuals regarding allegations of disability discrimination in public housing.
4. Represent individuals with disabilities regarding the denial of Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits by the Social Security

Administration at the appeal level. Preference will be given to individuals who have been denied representation by private counsel.

**Goal: People with disabilities live in the most appropriate integrated environment**

Focus Area: Maximize Individual Choice and Self Direction

Needs/Issues/Barriers Addressed: VOPA will educate and assist individuals with creation of Advance Directives and modification or termination of guardianships to allow for maximized individual choice. We will also respond to legislation and inform policy makers as needed to protect the rights of personal choice and self-direction.

Indicators for Success Include the Completion of the Following Objectives:

1. Represent individuals in proceedings to prevent, modify, or terminate guardianship where the individual has capacity or has regained capacity.
2. Represent individuals in preparing a Healthcare Directive or Power of Attorney as an alternative to guardianship, with a preference for those who attend a VOPA training.
3. Respond to all proposed legislation, regulation, or policy changes that appear to violate legal rights in substitute decision-making proceedings.
4. Inform policymakers about the need for increased personal choice and self-direction for individuals with disabilities through participation on the Virginia Public Guardianship and Conservatorship Advisory Board.

**Goal: People with disabilities live in the most appropriate integrated environment**

Focus Area: Equal Access to Public Accommodations

Needs/Issues/Barriers Addressed: VOPA will seek local and systemic change to increase the quality of life for people with disabilities by removing barriers to the enjoyment of places of public accommodation, including tourist locations and retail businesses.

Indicators for Success Include the Completion of the Following Objectives:

1. Represent individuals who have been denied access to a place of public accommodation due to architectural barriers, inaccessible parking, or denial of a service animal.
2. Identify one county, city, or region that is a destination for tourists and survey thirty public accommodations of various types (e.g. hotels, restaurants, and retail establishments) to determine if they are accessible to people with disabilities. Provide technical assistance letters to inaccessible businesses outlining what they must do to become accessible.
3. If any of the businesses surveyed in the above objectives are under contract with a state agency, inform that state agency when the business is out of compliance with state and federal law and obtain corrective action.
4. Survey five (5) private attractions listed on the Virginia Tourism website ([www.virginia.org](http://www.virginia.org)) in a selected region for compliance with ADA accessibility requirements, and advocate for posting of accurate accessibility information. Seek corrective action where necessary.

## **Goal: People with disabilities are employed to their maximum potential**

Focus Area: Employment rights under the ADA

Needs/Issues/Barriers Addressed: VOPA seeks to increase access to reasonable accommodations in the workplace, resulting in greater employment opportunities for people with disabilities.

Indicators for Success Include the Completion of the Following Objectives:

1. Train clients and staff at Woodrow Wilson Rehabilitation Center and regional DARS offices, and consumers at state and private rehabilitation centers on employment rights.
2. Train consumer or advocacy groups regarding employment rights under the ADA and VDA.
3. Develop a Virginia State Bar-approved Continuing Legal Education program on disability rights in employment and offer at no charge to attorneys who agree to provide a no-cost consultation or serve as a referral attorney to a person with a disability who alleges discrimination.
4. Provide technical assistance to fifteen (15) individuals regarding employment rights or discrimination based on disability under Title I of the ADA or the Virginians with Disabilities Act.
5. Represent individuals who have been denied reasonable accommodations in employment under the ADA in mediation or administrative proceedings before the Equal Employment Opportunity Commission or Virginia Human Rights Council.

## **Goal: People with disabilities have equal access to appropriate and necessary health care**

Focus Area: Denial of needed and appropriate Medicaid services

Needs/Issues/Barriers Addressed: Medicaid services are critical to the continued health and safety of many of the individuals VOPA serves. The Medicaid system in Virginia has multiple programs which can be hard to understand. VOPA's experience with service requests in this area demonstrates that this need continues to grow throughout the state.

Indicators for Success Include the Completion of the Following Objectives:

1. Create a fact sheet giving Medicaid recipients, parents, and advocates seeking assistive technology through the EPSDT program technical information on how to write an effective Letter of Medical Necessity. Distribute the fact sheet to advocacy groups statewide and to all callers requesting this information.
2. Represent individuals denied needed and appropriate Medicaid services under a Waiver Program or under the Early Periodic Screening, Diagnosis, and Treatment (EPSDT) program.
3. Advocate for DMAS to require that employees and agents conducting eligibility screenings for Elderly or Disabled with Consumer Direction (EDCD) Waiver eligibility receive training in EDCD Waiver eligibility standards.

4. Advocate or litigate to ensure that the DMAS Appeals Process complies with applicable federal and state Due Process requirements.

**Goal: People with disabilities have equal access to appropriate and necessary health care**

Focus Area: Access under the ADA and Rehabilitation Act to Healthcare Facilities and Services

Needs/Issues/Barriers Addressed: This Focus Area allows VOPA to address the need for greater architectural access and effective communication for people with disabilities using medical facilities.

Indicators for Success Include the Completion of the Following Objectives:

1. Train community based advocacy or consumer groups on ADA accessibility requirements in medical settings, including physical barriers and effective communication issues.
2. Represent individuals with disabilities denied access to healthcare facilities or services under the ADA due to architectural barriers, failure to provide reasonable accommodations, or denial of the use of a service animal.

**Part VI. Narrative**

Narrative

- A. Sources of funds received and expended
- B. Budget for the fiscal year covered by this report
- C. Description of PAIR staff (duties and person-years)
- D. Involvement with advisory boards (if any)
- E. Grievances filed under the grievance procedure
- F. Coordination with the Client Assistance Program (CAP) and the State long-term care program, if these programs are not part of the P&A agency

**A. Sources of funds received and expended**

Source of Funding	Amount Received	Amount Spent
Federal	387,704	292,262
State		
Program Income		
Private		
All other funds		
Total (from all sources)	387,704	292,262

**B. Budget for the fiscal year covered by this report**

Category	Prior Fiscal Year- FY11	Current Fiscal Year FY12
Wages/salaries	287,344	197,208
Fringe benefits (FICA, unemployment, etc.)	96,278	58,643
Materials/supplies	1,637	1,232
Postage	425	492
Telephone		
Rent -		
Travel	7,944	7,554

Copying	425	369
Equipment (rental/purchase)		
Temporary Personnel Services	1,345	756
Indirect Costs	26,248	26,248
Miscellaneous	18,619	14,910
Total	440,264	307,412
Indirect costs		
Miscellaneous		
Total Budget		

**C. Description of PAIR staff (duties and person-years)**

Type of Position	FTE	% of year filled	Person-years
Professional			
Full-time	12.5	75	12
Part-time	1	50	.5
Vacant			
Clerical			
Full-time	6.0	100	6
Part-time	1.5	100	1
Vacant			

**D. Involvement with advisory boards (if any)**

VOPA has two Advisory Councils known as the Disabilities Advisory Council (DAC) and The Protection and Advocacy for Individuals with Mental Illnesses (PAIMI) 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. Both Councils have consumer representation. The Council Chairs are non-voting members of the VOPA Governing Board. Council members participate on the Governing Board Committees. On those Committees, the Council members do have an equal vote.

VOPA participates on the Virginia Rehabilitation Council for the Department for the Blind & Vision Impaired (DBVI) and the Department of Rehabilitative Services (DRS). The Rehabilitation Act of 1973, as amended, requires the establishment of the Rehabilitation Councils to be appointed by the Governor. The amendments identify specific organizations to be represented on the Councils. The Rehabilitation Councils advise the VR programs in development of the State plan and completion of the federally required needs assessment. The Councils also assist with customer satisfaction surveys, training or employment opportunities, and completion of the required Annual Report on the status of VR services in the State. VOPA serves on both Councils to represent the interest of people with disabilities.

**E. Grievances filed under the grievance procedure: NONE**

**F. Coordination with the Client Assistance Program (CAP) and the State long-term care program, if these programs are not part of the P&A agency**

CAP is part of VOPA.

Coordination with the State Long-Term Care Ombudsman Program (through the Virginia Department of Aging) is particularly important during the legislative session.

The Department of Medical Assistance Services (DMAS) is the primary source of funding for the long-term care system in Virginia. VOPA coordinates with them on an as needed basis.

**Certification**

Signed

Signed

Signed By Colleen Miller, Esq.

Title Executive Director

Signed Date

**System Information**

The following information is captured by the MIS.

This form has been approved for use by OMB through Jun 30, 2014.

Last updated on:

Last updated by:

Completed on:

Completed by:

Approved on:

Approved by:

**OMB Notice**