



The History of Virginia's Protection and Advocacy System

July 2014

From the August 20, 2012 Report on the Transition of the Virginia Office for Protection and Advocacy to a Private Nonprofit Entity:

The Commonwealth's experience with the federal protection and advocacy system has been evolving towards greater independence over the last four decades. Virginia's first Protection and Advocacy System, the Virginia Developmental Disabilities Protection and Advocacy System, was created in August 1977 by executive order. It was then an "Office" within the Office of the Secretary of Human Resources. Originally, the Office had the "authority to pursue legal, administrative and other appropriate remedies to insure the protection of the rights of" people with developmental disabilities, but shortly after its creation, the Governor removed the authority to pursue legal remedies.

Without that authority, the system did not meet the federal requirements. So, in 1981, Virginia withdrew from the federal Developmental Disabilities Program, and for a short period of time, Virginia did not have a federal protection and advocacy system. In 1982, Virginia returned to participating in the Developmental Disabilities Act program. However, the Office was prohibited from initiating litigation against another state agency without the Governor's written approval.

In 1984, in order to provide the agency with more legal authority, the Virginia General Assembly created the Advocacy Department for the Developmentally Disabled. The Director of the Department was appointed by the Governor. The Department had the authority to "[p]ursue administrative remedies with the appropriate state officials and recommend alternatives to the Secretary of Human Resources if a resolution to the problem is not attained."

In 1985, as part of the Virginians with Disabilities Act, the protection and advocacy system was renamed the Department for Rights of the Disabled. The General Assembly assigned specific authority to the Department to ensure enforcement of the Virginians with Disabilities Act.

In 1991, the United States Department of Health and Human Services (“HHS”), found that Virginia’s protection and advocacy system, then known as the Department for the Rights of Virginians with Disabilities, did not comply with federal law, because of its lack of independence. HHS determined that the statutory requirement for gubernatorial approval prior to initiation of litigation was inconsistent with the Developmental Disabilities Act’s requirement of independence. “If gubernatorial approval must be obtained prior to the pursuit of court action, then the Virginia P&A does not have the required authority to pursue legal remedies as mandated by law.” In response, Virginia considered various options, and in the end, amended the statute to remove the gubernatorial approval requirement and other limitations in order to assure greater independence for the program.

Throughout the 1990s, however, the Department for the Rights of Virginians with Disabilities encountered serious interference with its independence. The Department faced delays or prohibitions in hiring necessary staff, prohibitions on travel, and limits on certain kinds of actions.

In response to demands from the disability community for still greater independence, in 2002, Virginia legislatively established the Virginia Office for Protection and Advocacy (VOPA) as an “independent state agency,” Va. Code Ann. § 51.5-39.2(A), with independent litigating authority. Pursuant to state law, VOPA operated independently of the Executive Branch and independently of the Attorney General. As a state agency, however, VOPA still faced some limitations on its ability to recruit and hire qualified staff and on its ability to use its resources. VOPA also had a politically-appointed Governing Board.

The 2002 legislation resulted from years of efforts by advocates for people with disabilities who contended that Virginia’s protection and advocacy system needed more independence from the executive branch to properly perform its watchdog function. Those efforts were based on persistent complaints that the System was ineffective and unwilling to criticize or sue state agencies. Indeed, VOPA’s predecessor acknowledged that it had “been stymied, historically, in carrying out its duties.” When the legislation was enacted in 2002, the Governor at the time explained that the statute removed the protection and advocacy system from the executive branch “to ensure that these systems are able to function with the required independence and autonomy.”

Update since the 2012 Transition Report

From the time of its creation, VOPA fought to assert its independence from state government. The fight often required VOPA to turn to the courts for assistance. In 2005, VOPA successfully sued the Commonwealth in federal court to gain access to information.

VOPA was granted access to the information, but because it was a state agency, VOPA was denied any attorneys’ fees. *VOPA v. Reinhard*, 405 F.3d. 185 (4th Cir. 2005). Some years later, VOPA again sued the Commonwealth for access to information. This time, the federal court of appeals ruled that as a state agency, VOPA could not even sue another

state agency. *VOPA v. Reinhard*, 568 F3d 110 (4th Cir. 2009). VOPA appealed that decision to the United States Supreme Court, which found that VOPA did, in fact, have the ability to sue the state, *VOPA v. Stewart*, 130 S.Ct. 3493 (2011), and the Commonwealth ultimately produced the information sought.

During the 2012 session of the Virginia General Assembly, the legislature passed and the governor signed a bill calling for the transition of the Virginia Office for Protection and Advocacy to transition out of state government to a private nonprofit organization, no later than January 1, 2014. The VOPA Board supervised the transition, creating the disAbility Law Center of Virginia.

The dLCV became the state's designated protection and advocacy system on October 1, 2013. The dLCV operates with a self-appointing 11 member Board of Directors, chosen to meet the requirements of the dLCV's eight federal programs and to meet the needs of a private nonstock corporation. The dLCV is now fully independent of state government.