

**VIRGINIA OFFICE FOR PROTECTION AND ADVOCACY (VOPA)**

**DISABILITIES ADVISORY COUNCIL (DAC)  
MEETING**

**Final Minutes**

**March 12, 2009**

**VOPA Office, Richmond, Virginia**

- Members Present:** Betty Freidrichsen, Larry Freidrichsen, Shirley McInnis (Chair), Melissa Meade, Arva Priola, Lisa Ritchie, Mary Jane Sufficool, Linda VanAken, Monica Wiley
- Members Absent:** Melanie Paul
- Guests Present:** Barbara Barrett, Kim Lett, Anne McDonnell  
*For portions:* Elizabeth Priaulx (VOPA Governing Board member) (by telephone)
- Staff Present:** Kim Mendella, Colleen Miller (Executive Director)  
*For portions:* Lisa Shehi, Celia Yette
- Call to Order/  
Welcome/Introductions:** Shirley McInnis called the meeting to order and asked everyone present to introduce themselves.
- Public Comment:** No public comment was offered.
- December 2008 Minutes:** Ms. McInnis asked the Council members to review the minutes from the last meeting in December. Council members wanted to clarify that meeting dates for June, September, and December are on Fridays when historically they have been on Thursdays. Kim Mendella reminded the Council that some members had conflicting schedules that prevented them from attending meetings on Wednesdays and Thursdays, and Friday meetings worked for everyone. Colleen Miller stated that she was present for portions during the December meeting and needed to be included in the minutes. Ms. Miller also noted some typos. Ms. McInnis asked if there was a motion to accept the minutes as amended. Betty Freidrichsen made a MOTION to accept the minutes as amended. Linda VanAken SECONDED the MOTION to accept the minutes as amended. The motion carries unanimously.
- Presentation: Overview** Anne McDonnell, Executive Director of the Brain Injury

**of Brain Injury  
Association of Virginia**

Association of Virginia (BIAV), started her presentation by talking about the significant issues currently facing the BIAV. In the last few years there has been a 400% increase in the number of calls to the BIAV. Individuals with traumatic brain injury (TBI) are being discharged from acute level hospitals to nursing homes where they can receive long-term care. Often nursing homes do not have the capabilities to rehabilitate people with TBI. Ms. McDonnell also stated that Community Service Boards (CSBs) do not treat people with known brain injury. Ms. McDonnell stated that brain injury is disease causative and disease accelerative. Individuals with brain injury are very likely to have had a pre-existing psychiatric diagnosis or develop a co-morbid psychiatric condition. CSBs are legally mandated in Virginia to provide crisis services to any Virginian in crisis. The claim that CSBs will not serve anyone with a history of brain injury regardless of the presence of a psychiatric illness is discriminatory under the Americans with Disabilities Act (ADA) as it is denying treatment based on the person's disability. Ms. McDonnell continued to state that people with brain injury are more prone to every psychiatric diagnosis. Children with brain injury are at increased risk to develop schizophrenia. Depression, bipolar, anxiety and mood disorders all have a relationship to brain injury.

Arva Priola asked Ms. McDonnell if people with brain injury are being assessed for hearing loss. Ms. McDonnell said that it depends on where the person with brain injury goes. If the brain injury is severe enough, the person is admitted to a hospital and a hearing screening usually occurs. However, if you consider the fact that 75% of all brain injuries fall under the category of mild to moderate, most people with brain injury are not screened as they are not even being diagnosed with a brain injury. Often people with mild to moderate brain injury are described to have a concussion or a bump on the head. March is the Brain Injury Awareness month and the BIAV has been campaigning to make the public aware that concussions are in fact brain injury.

Ms. McDonnell moved the presentation to talk about the military and service men and women returning from

active combat with brain injuries. The latest report from the Department of Defense says that 20% of soldiers sustain brain injury during their time in combat theater. The latest numbers estimate 360,000 soldiers with some level of brain injury. Brain injury has been in every American war and has gone by the name of shell shock or post-traumatic stress disorder (PTSD). PTSD is sometimes a valid diagnosis and often co-morbid with TBI. Treatment for PTSD can be very detrimental for a person with a diagnosis of TBI. The military has always provided brain injury rehabilitation, but has seen an increase since the start of the current conflict. There are a lot of service men and women sustaining brain injuries due to blasts. There is a percussive wave resulting from blasts that has an effect on internal organs and the brain swells as a result.

At the Federal level there are two separate entities that soldiers may access to receive services related to TBI treatment. They are the Department of Defense (DoD) and the Department of Veteran Affairs (VA). The DoD 'owns' service men and women until they are medically discharged from service. A lot of soldiers sustaining mild brain injury never go to the VA as they are not medically discharged from service and are handled internally in the DoD. Soldiers can receive services through the Community Based Health Care Organizations and the Warrior Transition Unit. However, both are short-term programs and service men and women are often returned to active duty while recovering from brain injury. Once medically discharged from service, soldiers become the responsibility of the VA. Often the DoD and the VA do not talk to each other so it can take some time before paperwork is transferred.

McGuire is one of four designated polytrauma sites in the United States for the VA. These polytrauma sites are not designated due to any specialty or expertise, but are designated because the site has the physical plan capabilities to be a large VA hospital. Also, soldiers are not necessarily assigned to polytrauma site closest to where they are from, but assigned based on bed availability. There are not a lot of Virginians at McGuire. McGuire is now developing the expertise to help soldiers with brain injuries.

In the past, the VA population has been mostly older veterans with chronic illnesses. It has been difficult for the hospital to deal with the increase populations of young soldiers with young families coming into the wards. At McGuire there are good staff doing the best they can do on an individual level. The VA is a federal bureaucracy so change is slow, but there is a definite improvement in the care and capacity to serve soldiers with brain injury. There is a transitional living program at McGuire, however, in theory transitional living programs requires that the person is living outside the facility with supports to develop skills to return to their communities. The BIAV has ongoing discussions with the VA about the better utilization of community partners. The VA stance in the past has been that they can take care if their own, however, this has been changing.

DAC members asked what the prognosis of a person with TBI. Ms. McDonnell stated that cognitive rehabilitation can mitigate some of the symptoms of mild brain injury cognitive deficits. The VA will pay for inpatient cognitive rehabilitation; however, once the acute level care is no longer required, the soldier is moved to out-patient care. The VA insurer will not pay for out-patient cognitive rehabilitation.

**Staff Presentation:  
Overview of VOPA's  
work on Traumatic Brain  
Injury with the Military**

Celia Yette, VOPA Disabilities Rights Advocate, addressed the DAC about VOPA's work concerning TBI and the military. Prior to September 2003, VOPA did not have access to veteran's facilities in the state of Virginia. As a result of VOPA winning the case against James W. Dudley (Director) and Hunter Holmes McGuire Medical Center, an agreement was signed on September 11, 2003 allowing access into the facility. This agreement set the precedence for other state Protection and Advocacy Systems to gain access to VA facilities in their respective states. The settlement agreement required VA hospitals in Virginia to display P&A posters in VA facilities; include P&A brochures in admission packets; quarterly training for patients by P&A staff; and annual staff training by P&A staff.

Ms. Yette moved to talk about VOPA's current objective concerning TBI and the military.

Inform recipients of medical services through the Department of Veterans Affairs of their rights through three (3) trainings at veteran's facilities or organizations, including to individuals with Traumatic Brain Injury and with mental illness.

Since obtaining access to the VA facility, VOPA has mailed letters, visited the Polytrauma/Spinal Cord Injury Unit, visited with the Paralyzed Veterans of America, and presented on voter rights prior to the Presidential election. Upcoming activities include training at veteran's facilities and organizations and disability rights and resources presentations.

Linda VanAken inquired about the voting rights training. Ms. Yette stated that initially it was difficult to gain access to present specifically about voter rights as the VA was concerned about partisanship. During the first visit, VOPA staff realized that a lot of patients were out of state so VOPA staff returned with out of state absentee ballots. As a result, VOPA reviewed about 50 applications.

Colleen Miller added to the presentation that it can be difficult to discharge somebody from a VA hospital to the community as there are often no services available. Ms. Miller stated that as an example, the Salam VA hospital created services just to be able to discharge one patient. Ms. McDonnell stated that Virginia spends \$1000 per person with mental retardation but only \$16 per person with TBI. Ms. Miller stated that one of VOPA's grants deals with TBI and may even be the smallest grant. In the last eight years TBI funding has been zeroed out in the President's budget, so much of the advocacy on the congressional level has been to keep the funding. Ms. McDonnell stated that for most people with brain injury, the brain injury does not have to be a lifelong disability. With good and proper care you can overcome the effects of brain injury. The only way to develop good and proper care is to fund the research to develop it.

**Executive Director's  
Update**  
• **1<sup>st</sup> Quarter Progress**

Ms. Miller asked the DAC if there was anything in particular they wanted her to discuss in her Executive Director's update to the DAC. Ms. VanAken asked for

**for FY09 Goals and Focus Areas**

- **Litigation Report**

an update of the lottery case. Ms. Miller stated that the lottery is a program operated by the state and the ADA asserts that the state cannot run a program that is not accessible to people with disabilities. Also, the state cannot contract with businesses that are not accessible to people with disabilities. VOPA sued the lottery stating they are operating a program that is not accessible and are contracting with businesses that are not accessible. VOPA sued the lottery in state court and received a ruling that the lottery cannot hold its contractors to a particular standard. VOPA then appealed and recently brought the case to the Virginia Supreme Court. It could be some time before a decision is made. Ms. VanAken said that what she heard in the media sounded like VOPA will win the case.

Ms. Miller informed the DAC that the State Budget is still not complete and is now with the Governor who has an opportunity to make additional changes. The legislature has asked for continued funding for South Eastern Virginia Training Center (SEVTC) and then called for the creation of a 75-bed facility. The Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) created a team to assess the residents of SEVTC and concluded that 20-23 residents could not move into the community today. However, if improvements were made in the community, those individuals could successfully move into the community. VOPA stated that there will be a violation of the ADA if the state builds the 75-bed facility when there is no need for it. There was also concern about the closure of the Commonwealth Center for Children and Adolescents in Staunton and not having the resources in the community. This is a very small facility and the length of stay is rather short. VOPA was concerned due to the perceived lack of planning involved.

Ms. Miller stated that there were some good developments in special education concerning the statute of limitations from when you can appeal a decision from a due process hearing. The Federal regulations set a minimum 30 day limit and the state was preparing to go with the absolute minimum. The first version of the bill extended the limit to one year

and then compromised to 180 days, or six-months. VOPA preferred to see the limitation to appeal set to one year but has seen the limitation used against parents. If a parent wins a due process hearing the school district would refuse to implement the order by considering whether to appeal the decision. The concern with the longer statute of limitation is once you are done with the due process hearing, the next step is to go into court which can be very expensive.

Ms. Miller continued to the Progress on Objectives report and reported that VOPA will not meet one of the objectives this fiscal year. The objective involves children transitioning from high school to employment or high-school to post-secondary education. DRS has closed the order of selection meaning that they are not going to serve any new clients. The order of selection groups people with disabilities into four different categories based on severity of disability. For many years DRS has only been serving people in category 1 or those with the most severe disabilities. It is now expected that DRS may open new cases in November 2009.

In the Litigation Report, Ms. Miller spoke about the litigation in Roanoke concerning business accessibility. VOPA had to go to court and is now waiting for the judgment. If VOPA wins, VOPA will receive attorney fees. The court case could have been avoided if the business simply followed VOPA's advice on how to fix the problem a year and a half ago. One of the difficulties with the ADA is that there is no penalty for violating the ADA. The only thing that can happen for businesses that fail to comply with the ADA is that they will be sued and told to comply.

Ms. VanAken asked about VOPA's budget. Ms. Miller stated that very little of VOPA's budget is from the state. VOPA is primarily funded by different Federal grants each with their own spending requirements. Melissa Meade asked if VOPA could create a reserve fund. Ms. Miller said that some grants allow for carryover, however, VOPA is currently operating in current year funding. Help America Vote Act (HAVA) is an anomaly in that there is no deadline to spend the money. It is very difficult to spend HAVA money as you

cannot use the money for litigation and there are only two elections a year. This year VOPA will be creative and use HAVA money to survey registrar offices. In order to register to vote at the registrar's office, people with disabilities may face inaccessible court houses; for example with steps to the building with heavy doors to pull open.

**Working Lunch**

Disabilities Advisory Council members and guests networked with VOPA staff.

**Governing Board Report**

Elizabeth Priaulx (Governing Board member) reported, by telephone, to the Council about the January 30, 2009 VOPA Governing Board meeting. In place of a training, the Board had a tour of VOPA's offices and talked with various staff members. Staff members talked about several projects that they are currently working on. This idea was brought up during April 2008 Board retreat as a way to improve Board and VOPA staff relations. Board members highly valued the tour and requested another tour in the future.

Ms. Priaulx talked briefly about the VOPA committee meetings. The Finance committee chair reported that VOPA was in the middle of an audit with the Auditor of Public Accounts. VOPA expects to hear the final report before the April Board meeting. The Public Awareness and Goals committee, which Ms. Priaulx chairs, reported to the Board the consideration of moving to a tri-annual cycle for goals and objectives as a means of reducing costs. Currently VOPA uses a bi-annual cycle of goals and objectives so every other year there is very focused outreach to survey constituents what the public believes VOPA should work on. The Council Relations and Public Policy committee meeting chair reported to the Board the difficulty to recruit new members to the Advisory Councils. The idea of a provisional appointment was brought forward to the Board and sent to the Executive Committee for consideration. Another idea to reduce costs is to have all the Advisory Council meetings in Richmond with the exception of one per year outside the VOPA office.

**Governing Board  
Committee Reports**

Ms. Miller reminded the DAC of the different Governing Board Committees: Finance Committee, Internal Policy Committee, Council Relations and Public Policy

Committee, Public Awareness and Goals Committee, Nominating Committee, and the Executive Committee. The Nominating and Executive Committee do not have Advisory Council members on the committees.

Public Awareness and Goals – Shirley McInnis stated that Ms. Priaulx covered what was reported to the Board.

Council Relations and Public Policy – Lisa Ritchie spoke about how the committee suggested that draft minutes from the Board meetings be included in the Advisory Council packets and the Advisory Council minutes be included in the Board packets. Also Governing Board members were encouraged to sign up in advance to present the Governing Board report to the Advisory Council so that there is a Governing Board member present at every Advisory Council meeting.

Internal Policy – Monica Wiley asked to become a member.

Finance – Linda VanAken asked to become a member.

#### **Other business**

- **Membership**
- **Travel voucher reminder**

#### **Other Business**

Mary Jane Sufficool addressed the Council about a project she is involved in called NICHE. NICHE is a housing project in Virginia Beach to give people with disabilities more housing options. NICHE believes people should not be segregated based on age, income or ability. NICHE started with a group of parents of children with disabilities. NICHE is currently looking for land as well as seniors and low to middle income families to help create this neighborhood.

#### **Travel Vouchers**

Ms. Mendella reminded the Council members to hand in their travel vouchers and ask her if they require help completing the forms.

#### **Membership**

Ms. Mendella introduced two guests who are interested to become members of the DAC: Barbara Barrett and Kim Lett.

#### **Adjournment**

Ms. McInnis made a MOTION to adjourn the meeting.

Mary Jane Sufficool SECONDED the MOTION to adjourn the meeting. The motion carries unanimously.

Final Minutes

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Date

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

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