



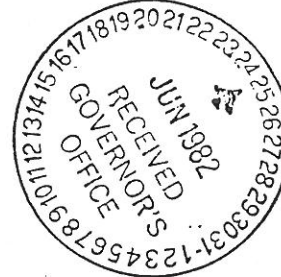
COMMONWEALTH of VIRGINIA

Office of the Attorney General
Richmond 23219

Gerald L. Baliles
Attorney General

Supreme Court Building
101 North Eighth Street
Richmond, Virginia 23219
804-786-2071

June 21, 1982



The Honorable Charles S. Robb
Governor of Virginia
State Capitol
Richmond, Virginia 23219

Dear Governor Robb:

This letter is to further articulate my recommendations to you on the legal procedures to be employed by the Commonwealth, should Virginia reenter the Federal Developmental Disabilities Program.

In my letter to you of May 12, 1982, I indicated the problems inherent in the program and suggested that, if you determine that it is in the best interests of the Commonwealth to reenter this program, the State Advocacy Office would be required to meet certain federal requirements; one of those would require the State Advocacy Office to have the authority to bring legal action against another state agency to enforce program requirements. That requirement poses several problems and is, arguably, unnecessary since the Governor can accomplish compliance by directing agency compliance.

It occurred to us that one suggestion to avoid the problem, and yet obtain federal approval, would be a requirement that the Advocacy Office obtain written approval from you and this Office prior to initiating litigation against another agency. This process, as I pointed out, would permit the State Advocacy Office for the Developmentally Disabled (State Advocacy Office) to pursue legal, administrative and other remedies, as mandated by federal law, and would enable the Commonwealth to ensure, without litigation, that the welfare of both the Commonwealth and its developmentally disabled citizens is adequately protected.

Upon further review of these issues, I have concluded that it would be inappropriate for the Attorney General to either approve or disapprove the initiation of litigation by the State Advocacy Office against another state agency. The Governor, however, as Chief Executive, is clearly authorized to approve or

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disapprove the initiation of litigation against a state agency by any other state agency which reports to him. Accordingly, I continue to believe that, if you determine that Virginia should reenter this program, you should require that the State Advocacy Office obtain your written approval before initiating litigation against any state agency that provides services to the developmentally disabled.

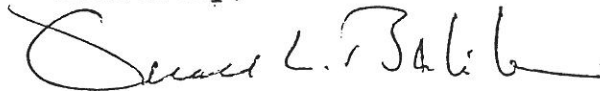
In making a determination of whether to approve the initiation of litigation, please feel free to discuss the matter with this Office. Should you request it, I will contact both the State Advocacy Office and the potential defendant to ascertain the merits of both positions. It will, of course, be your decision whether the litigation should be brought, or whether negotiations between the state agencies would be the appropriate method for resolving the dispute.

Should you authorize the initiation of litigation, I believe this Office may participate in any settlement negotiations between the State Advocacy Office and the defendant state agency.

I believe this letter, together with my letter of May 12, 1982, should resolve any doubt you may have as to your authority to require that the State Advocacy Office notify you and seek your approval before initiating litigation against a state agency. Please contact me if you have any additional questions.

With kind regards, I am

Sincerely,



Gerald L. Baliles
Attorney General

6:199

cc: The Honorable Joseph L. Fisher
Secretary of Human Resources

Mr. Timothy J. Sullivan
Executive Assistant
Office of the Governor

Mr. Jordan H. Goldman
Staff Assistant
Office of the Governor