



EXECUTIVE COMMITTEE NOTICE/AGENDA

Posted at www.scdd.ca.gov

DATE: Tuesday, December 10, 2013

TIME: 2 – 5 p.m.

LOCATION: DoubleTree by Hilton
2001 Point West Way
Sacramento, CA 95815

*Pursuant to Government code Sections 11123.1 and 11125(f), individuals with disabilities who require accessible alternative formats of the agenda and related meeting materials and/or auxiliary aids/services to participate in this meeting should contact Robin Maitino at (916) 322-8481 or email robin.maitino@scdd.ca.gov. Requests must be received by 5:00 pm on **December 5, 2013**.*

AGENDA

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| 1. CALL TO ORDER | J. Lewis |
| 2. ESTABLISHMENT OF QUORUM | J. Lewis |
| 3. WELCOME/INTRODUCTIONS | J. Lewis |

4. **PUBLIC COMMENTS**

*This item is for members of the public only to provide an opportunity to comments and/or present information to the Committee on matters **not** on the agenda. Each person will be afforded up to three minutes to speak. Written requests, if any, will be considered first. The Committee will provide a public comment period, not to exceed a total of seven minutes, for public comment prior to action on each agenda item.*

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DRAFT



State Council on Developmental Disabilities



STATE OF CALIFORNIA

Edmund G. Brown Jr.
Governor

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December 12, 2013

Ms. Debbie Baldwin
Executive Compensation Manager
CalHR
515 "S" Street, North Building, Suite 400
Sacramento CA 95811-7258

Dear Ms. Baldwin:

The State Council on Developmental Disabilities (SCDD) is an independent state agency established by federal and state law that advocates, promotes and implements policies and practices that achieve self-determination, independence, productivity, and inclusion in all aspects of community life for Californians with developmental disabilities and their families. The State Council (Council) consists of 31 voting members, all of whom are appointed by the Governor.

This letter serves as SCDD's request that CalHR consider changing the currently assigned exempt salary level of the Executive Director position from exempt level G to C (D or E). We believe that this adjustment is justified for a number of reasons including: the scope of authority and breadth of responsibility of the Executive Director and the State Council; a comparison of salaries of other State Council Directors from other states; and a comparison to other Directors and Executive Officers of other California state departments, boards and councils.

It should be noted that the State Council's membership has directed staff to submit this request because the classification of the Council's Executive Director at Category G has resulted in an inability to fill this critical vacant position despite a sustained nationwide recruiting effort.

In May 2013, the SCDD entered into a contract with CPS HR Consulting (CPS) to provide executive recruitment services leading to the employment of a new Executive Director. CPS has a stellar reputation in California State Government, having recruited the CEO of the California Board of Equalization, the CEO of the High-Speed Rail Authority, and the EO of the Board of Registered Nursing, to name just a few.

"The Council advocates, promotes & implements policies and practices that achieve self-determination, independence, productivity & inclusion in all aspects of community life for Californians with developmental disabilities and their families."

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Ms. Debbie Baldwin
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According to Pam Derby, the senior recruiter assigned to SCDD, CPS placed advertisements with eight national developmental disability/human services organizations as well as personally contacted 221 professionals in our field (See attached memorandum from Pam Derby). Ms. Derby described the response to this recruitment as "marginal" in that it yielded only 30 candidates, of which only four individuals were felt to have sufficient qualifications to even interview. The candidate ultimately chosen has declined the offer as her current salary is nearly 20% higher than the top of the Exempt Level G range. It should be noted that the applicant is a respected professional in our field who is the current Executive Director of an equivalent agency that is one third the size of the SCDD.

Ms. Derby indicated that many potential applicants declined to apply for the position because the compensation is viewed as inadequate for the significant scope of duties, the complexity and size of the SCDD and the cost of living in Sacramento.

Further, the salary range for the SCDD Executive Director is not comparable to other State Councils or other similar organizations. Although California is by far the largest of all State Councils on Developmental Disabilities, the salary for its Executive Director is only the 7th highest in the country (see attached chart). It should be noted that California received the highest allotment of federal funds (\$6,496,150) with the next highest state, Texas, receiving \$4,794,740. Too, California's Council is far more complex than the Councils in other states in its staffing, projects and state as well as federal obligations.

Unlike the State Councils in other states, which generally have from 3-10 employees, the California Council employs 89 employees in 13 regional offices in addition to the Sacramento Headquarters. Per the requirements of the federal Administration on Intellectual and Developmental Disabilities, our funding source, the SCDD is responsible for implementing the goals, objectives and initiatives contained in its State Plan (see attachment). The State Plan contains 15 ambitious wide-ranging goals. Among these goals are that the Council will develop, promote and take the lead role in advancing California's Employment First policy to expand the employment of people with developmental disabilities in the state. Other goals include addressing the changing landscape in health care through training and advocacy activities; expanding access to accessible housing; ensuring that emergency preparedness plans are responsive to people with disabilities; and educating first responders on the unique needs of people with disabilities. These are but a few of the activities that the Council sponsors in its capacity as California's lead agency in advocating on behalf of its 276,000 residents with developmental disabilities. Additionally, Welfare & Institutions Code 4520 et seq. lays out other mandates of the Council. That includes but is not limited to implementation of two Interagency Agreements (IA) with the Department of Developmental Services. One of the two IAs requires the Council to deploy staff to the state's five state developmental centers/state operated facilities to ensure that residents get appropriate and timely treatment. As you may be aware, the care of residents in California's developmental centers has been to focus of

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Ms. Debbie Baldwin
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numerous new articles, exposes and, in the past two years, several legislative hearings. The Council's work at the Developmental Center has been the subject of considerable scrutiny. In response, Council management is closely supervising these staff.

The Council's other IA requires us to conduct large-scale surveying of people with developmental disabilities and their family members (4,000 per year) to gauge their satisfaction with services received.

No other State Council has the breadth of responsibility that California does. Accordingly, the Council needs a chief executive with an equivalent breadth of experience.

In addition to the aforementioned issues of the Executive Director's scope of responsibility and comparisons of equivalent positions nationally, there is additionally a salary compaction issue within the Council staffing. The attached exhibit "Listing of Exempt Positions" includes the Senior Legal Counsel position which as of July 1, 2013 has a salary range of \$7,682-\$9,857. The incumbent is currently earning the maximum monthly salary of \$9,857. Were the Executive Director position to remain at Exempt Level G, effective 7/1/13 after applying the 3% longevity pay increase, the salary range would be \$8,976-\$10,000. Comparative analysis of the top step of these two positions reveals that the Executive Director's monthly salary only exceeds that of the Senior Legal Counsel by \$143 (\$10,000 - \$9,857) or 1.5%. In order to establish the generally accepted standard of a 10% to 15% differential between managers and staff reporting through them in an organization, the exempt level of the Executive Director position would need to be changed from G to C.

In conclusion, we look forward to working with you and your staff in establishing a satisfactory compensation structure that will allow the Council to successfully recruit a well qualified Executive Director to strengthen and advance our organization. Please contact me at (916) 322-8481 for further information or discussion.

Sincerely,

ROBERTA NEWTON
Interim Executive Director

Attachments

cc: Lisa McVay
Raquel Belmontes
Angelina Snarr
Jorge Aguilar

Exempt Salary Chart

July 2013

Exempt Category	Level Definitions	Salaries in Statute		DPA Established Exempt Salaries			Civil Service Excluded			
		Monthly Salary	Annual Salary	Monthly Min.	Monthly Max.	Annual Min.	Annual Max.	Level Definition	Mnthly Min.	Mnthly Max.
I. Management Positions:										
A.	Cabinet	11,881.83	142,582		15,020.83		180,250			
	All Others at Level A			11,376	12,674	136,512	152,088			
B.	Tier II Department Director	11,144.33	133,732	11,913.75	12,884.61	142,965	154,615			
	All Others at Level B			10,672	11,890	128,064	142,680			
C.	Chair - Major Boards	10,652.75	127,833	10,202	11,364	122,424	136,368			
	Member - Major Boards	10,324.75	123,897	9,885	11,015	118,620	132,180	Legal & Medical		13,782
D.	Major Chief Dep. (CEA V Equiv.)			9,755	10,865	117,060	130,380	CEA V	9,544	10,836
E.	Tier I Department Director	9,833.08	117,997	11,346.33	12,271.08	136,156	147,253			
	All Others at Level E			9,416	10,488	112,992	125,856			
F.	CEA IV Equivalent			9,215	10,267	110,580	123,204	CEA IV	9,018	10,237
G.	Ex. Officers, Major Boards			8,976	10,000	107,712	120,000			
	Chair - Medium Boards	9,341.58	112,099	8,945	9,963	107,340	119,556			
H.	Maj. Dept. Deputy Director			8,785	9,787	105,420	117,444	CEA III	8,594	9,759
	Small DD & Mbr. Med. Bds.	9,013.92	108,167	8,630	9,612	103,560	115,344			
I.	Asst. Agency Secretary I			8,369	9,325	100,428	111,900			
J.	Asst. Director (Line Program)			7,984	8,893	95,808	106,716	CEA II	7,815	8,874
K.	Asst. Agency Secretary II			7,616	8,484	91,392	101,808			
L.	CEA I Equivalent			7,261	8,088	87,132	97,056	CEA I	6,173	8,073
M.	SSM III Equivalent			6,922	7,710	83,064	92,520	SSM III	6,779	7,698
N.	SSM II/III Equivalent			6,605	7,357	79,260	88,284			
O.	SSM II Equivalent			6,297	7,015	76,564	84,180	SSM II (M)	6,173	7,012
II. Non-management Positions								SSM II (S)	5,576	6,929
P1.				6,155	6,652	73,860	79,824			
P2.	SSM I (Supervisory) Equiv.			5,831	6,340	69,972	76,080	SSM I	5,079	6,311
P2A	SSM I (Non-supervisory)			5,594	6,006	67,128	72,072			
P3.				5,339	5,762	64,068	69,144			
P4.	Assoc./AA II Level			4,424	5,499	53,088	65,988	Assoc./AA	4,400	5,508
P5.	SSA - Rg. C/AA I			3,676	4,557	44,112	54,684	SSA - Rg. C	3,658	4,579
P6.	SSA - Rg. B			3,071	3,786	36,852	45,432	SSA - Rg. B	3,050	3,819
P7.	SSA - Rg. A			2,821	3,451	33,852	41,412	SSA - Rg. A	2,817	3,529
P8.	Mgt. Svcs. Tech.			2,402	2,906	28,824	34,872	MST-Rg.A	2,495	3,125
P9.	(Grad) Student Assistant			2,079	2,474	24,952	29,688	GSA - Rg. A	1,799	2,353
Q1.	Executive Secretary II			3,299	4,128	39,588	49,536	Ex. Sec. II	3,288	4,116
Q2.	Executive Secretary I			2,956	3,868	35,484	46,416	Ex. Sec. I	3,020	3,782
Q3.	Secretary			2,630	3,359	31,440	40,308	Secretary	2,686	3,363

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INCOMPATIBLE ACTIVITIES POLICY

The California State Council on Developmental Disabilities (SCDD) adopted the attached Incompatible Activities Statement (IAS) in accordance with Government Code Section 19990. This IAS prohibits employees, board and Council members from engaging/participating in any activity that is incompatible with their official role as an employee/board/Council member.

Employees that do not comply with the IAS may be subject to disciplinary action and board/Council members may be subject to notice given to the appropriate appointing authority.

For purposes of this policy, a contractor is defined as a person or company that undertakes a contract to provide materials or labor to perform a service or do a job for the SCDD. A consultant is defined as a person who give advice because of their expertise (what they know) or profession (what they do.)

Incompatible activities include, but are not limited to:

1. Accepting employment (you or a close family member) from a contractor.
2. Serving as a consultant (you or a close family member) to a contractor.
3. Owning or having a financial interest in a contractor or their business.
4. Accepting any gift, money or any other thing of value from a contractor (including reimbursements for expenses.)
5. Using confidential information, time or any materials that belong to SCDD for personal use or the personal use of another person.
6. Using any SCDD resource for something or someone other than the SCDD.

If you are uncertain whether your outside work or activity could represent an incompatible activity, please contact the SCDD Executive Director for assistance.

STATEMENT OF INCOMPATIBLE ACTIVITIES STATE COUNCIL ON DEVELOPMENTAL DISABILITIES

Pursuant to Government Code section 19990, the prohibited activities enumerated below are inconsistent, incompatible, and/or in conflict with the duties of officers and employees of the State Council on Developmental Disabilities (SCDD).

1. Using the prestige or influence of an office or employment with the SCDD for the officer's or employee's private gain or advantage, or the private gain or advantage of another.
2. Using time, facilities, equipment or supplies of the SCDD for the officer's or employee's private gain or advantage, or the private gain or advantage of another.
3. Using confidential information acquired by virtue of employment by the SCDD for the officer's or employee's private gain or advantage, or the private gain or advantage of another.
4. Receiving or accepting money or any other consideration from anyone, other than the State, for performance of an act which the officer or employee would be required or expected to render in the regular course of hours of his/her state employment or as part of his/her duties as an officer or employee of the SCDD.
5. Performing an act or activity in a capacity other than that of an officer or employee of the SCDD when the act or activity performed is subject to direct control, inspection, investigation, review, audit or enforcement by the officer or employee or is normally subject to the direct control, inspection, investigations, review, audit or enforcement by the SCDD Area Board to which the officer or employee is assigned.
6. Directly or indirectly receiving or accepting any gift, service, gratuity, favor, entertainment, hospitality, loan or any other thing of value, from anyone who is doing or seeking to do business of any kind with the state, under circumstances from which it could reasonably be inferred that the gift, service, gratuity, favor, entertainment, hospitality, loan or any other thing of value was intended to influence him/her in his/her official duties or was intended as a reward of any official action on his/her part.

7. Subject to any other laws, rules, or regulations as pertain hereto, not devoting his/her full time, attention, and efforts to his/her state office or employment during his/her hours of duty as a state officer or employee.

8. Divulging confidential information, data or records of the SCDD to any person to whom the issuance of such information, data or records has not been authorized, or divulging or making use of any records of the SCDD for a mailing list or any other unauthorized purpose.

NAME: _____

Employee's signature below acknowledges receipt of the SCDD Statement of Incompatible Activities.

SIGNATURE

DATE

MEMORANDUM

DATE: December 22, 2013

TO: Michael Cohen, Director
915 L Street
Sacramento, CA 95814

FROM: Roberta Newton, Executive Director
1507 21st Street, Suite 210
Sacramento, CA 95811
(916) 322-8481

SUBJECT: Review of the Systems of Internal Control

In accordance with the Financial Integrity and State Managers Accountability Act of 1983, Government Code Sections 13400 through 13407, I am submitting the attached report describing the review of our systems of internal control for the biennial period ended December 31, 2013.

As statutorily required, the California State Council on Developmental Disabilities is in compliance with Government Code Section 12439.

Attachment



State Council on Developmental Disabilities



STATE OF CALIFORNIA

Edmund G. Brown Jr.
Governor

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1507 21st Street, Suite 210
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DEPARTMENT NAME: California State Council on Developmental Disabilities

ORGANIZATION CODE: 4100

INTRODUCTION :

In accordance with the Financial Integrity and State Manager's Accountability (FISMA) Act of 1983, the California State Council on Developmental Disabilities (SCDD) submits this report on the review of our systems of internal control for the biennial period ended December 31, 2013.

Should you have any questions, please contact Roberta Newton, Interim Executive Director, at (916) 322-8481 or via email: Roberta.Newton@scdd.ca.gov .

BACKGROUND :

The Mission and Vision of SCDD are:

Mission

The Council advocates, promotes and implements policies and practices that achieve self-determination, independence, productivity and inclusion in all aspects of community life for Californians with developmental disabilities and their families.

Vision

Californians with developmental disabilities are guaranteed the same full and equal opportunities for life, liberty and pursuit of happiness, as all Americans.

SCDD is established by state and federal law as a state agency mandated to ensure that people with developmental disabilities and their families receive the services and supports they need and participate in the planning and design of those services. Councils on Developmental Disabilities are established in each state through the federal Developmental Disabilities Assistance and Bill of Rights Act.

"The Council advocates, promotes & implements policies and practices that achieve self-determination, independence, productivity & inclusion in all aspects of community life for Californians with developmental disabilities and their families."

The Council's state mandated functions are defined in the California Welfare and Institutions Code (WIC), sections 4520 – 4570. The majority of the state statutes that govern services for individuals with developmental disabilities are found in WIC sections known collectively as the Lanterman Act.

The Council is composed of individuals with a developmental disability, parents and family members of people with developmental disabilities, and representatives of State departments that provide services to individuals with developmental disabilities. The Council consists of 31 members appointed by the Governor, with individual and family consumers representing a minimum of 60 percent of the membership. By law, the chairperson is an individual with developmental disabilities or family member. The Council meets at least six times yearly and is assisted in carrying out its mission by Council staff and local area board offices.

In January 2003, state legislation was passed that administratively merged the 13 independent Area Boards on Developmental Disabilities into the State Council. All area board employees became staff of the Council. One of the positive effects of the merger is that the Council now has a statewide network of local offices to better assist individuals with developmental disabilities and their families.

The Council headquarters is located in Sacramento and the 13 regional area board offices are located throughout California.

MAJOR PROGRAMS

The Council is responsible for developing and implementing a federally approved State Plan which identifies goals, objectives, and activities designed to improve and enhance the availability and quality of services and support to individuals with developmental disabilities and their families. The appointed Council members provide oversight to ensure system coordination, monitoring and evaluation.

The Council administers grants to community-based organizations that fund new and innovative services and supports to implement the federally required State Plan objectives and improve and enhance services for Californians with developmental disabilities and their families. The Program Development Grant Committee (PDGC) provides funding for new approaches to serving Californians with developmental disabilities that are part of an overall strategy for innovation and systemic change. Each

year the Council selects objectives from the federally required State Plan and solicits proposals that are new, innovative and cost effective in providing services to individuals with developmental disabilities and their families.

The area boards are an integral part of the Council and assist with advocacy, training, coordination and implementation of the Council's State Strategic Plan. Outcomes are reported for inclusion in reports to the federal government and the California Legislature. The boards provide a vital link in addressing the ongoing needs of Californians with developmental disabilities and their families. Their ties to the local community provide a rich source of information about future initiatives that hold the potential to improve the lives of people with developmental disabilities.

Additionally, the Council has two Interagency Agreements with the Department of Developmental Services. One requires that the Council deliver clients' rights and volunteer advocacy services to residents of the state's developmental centers and state operated facility. In order to carry out these responsibilities, Council staff are housed at the facilities so as to be accessible to residents, staff and family members. Additionally, the Council implements another interagency agreement with DDS to conduct assessments of individuals and families with developmental disabilities who live in community-based settings to determine their satisfaction with their services and supports

RISK ASSESSMENT

The Council relied heavily on the findings of two audits, a limited one conducted by the Department of Finance, Office of State Audits and Evaluations in March – May 2012 and a follow-up audit by the DHCS Financial Audits Branch (FAB) in November 2012 that expanded upon the DOF audit. Because these audits comprehensively describe deficiencies in the Council's control environment, management felt it was important to acknowledge these findings and identify where the agency has rectified the deficiencies and what corrections still remain.

EVALUATION OF RISKS AND CONTROLS

The DHCS FAB audit identified 10 findings which merited recommended actions. They are listed below, along with the SCDD's response and actions to date. In addition to the actions cited below, it should be noted that effective January 2013, the SCDD reconstituted its then-dormant Administrative Committee to provide ongoing oversight of the Council's administrative functions. The Administrative Committee members include an Assistant Secretary of CHHSA; an attorney, and a retired nonprofit executive with a Master's Degree in Public Administration. The Administrative Committee has met monthly since January. Among its activities, the Administrative Committee has overseen implementation of the staff Workplan that was developed to address the findings of the DOF and DHCS audits. The tasks identified in the workplan are cited below as they constitute the actions taken by the SCDD to address the audits' findings.

Finding #1 The previous SCDD Executive Director preferentially awarded a contract and engaged in a number of prohibited contracting practices.

Actions: The aforementioned Executive Director is no longer employed by the state. All staff and Council members have reviewed and indicated their understanding of state and federal Conflict of Interest and codes of conduct provisions. All contracts are now brought to the attention of the Administrative Committee. Contracts over \$5,000 are reviewed and acted upon by the Council.

Finding #2 The previous Budget Officer conducted little to no fiscal oversight of contracts, resulting in payments for nonallowable or undocumented expenses.

Actions: The aforementioned Budget Officer is no longer employed by the state. The agency's two contract analyst as well as staff counsel and the interim executive director have been attending DGS contract training classes including: Basic Acquisitions and Contracting Program, Evaluation Criteria, Documentation, Services Contracting and Statement of Work. One contract analyst was also registered for a Federal Grants Monitoring class that was unfortunately cancelled when the federal government shut down. The Council is also attempting to bring on a seasoned financial manager to serve as Deputy Director for Administration. However, the position is a Governor appointment and the Governor's Appointment office has encouraged the Council to hold off on that recruitment until a permanent Executive Director is installed. As a stopgap, the SCDD hired a SSMIII Retired Annuitant (RA) to begin to develop office policies and procedures to ensure that proper controls were in place. The RA did develop more detailed grant evaluation criteria; however she departed after a three month tenure.

Finding #3 Deficiencies were found in the expenditure reporting and record keeping by the Budget Officer.

Actions: The Council's new Budget Officer, in partnership with a retired annuitant manager, is tracking expenditures monthly and reconciling to Calstars. The Administrative Committee and Council now get quarterly expenditure reports broken out by area boards, grants and HQ.

Finding #4 DGS contracting requirements were not followed. The SCDD had no procurement and contracting manual.

Actions: Procurement analyst, contract analyst, legal counsel and Interim Executive Director have all completed DGS contracting classes. The Council has embarked on putting together a manual; however, we are hampered by continued staff vacancies.

Finding #5 SCDD staff lacked sufficient understanding of state contracting rules.

Actions: As noted above, staff has begun attending DGS classes. (Basic Acquisitions and Contracting", 40 hours, "Evaluation Criteria", "Documentation", "Services Contracting", Statement of Work.") Further, the contract analyst will be attending a two day class on monitoring federal grants in April 2014. (She was registered for the November class which was cancelled due to the federal shutdown.)

Finding #6 Contracts lacked specificity and measurable goals.

Actions: The aforementioned classes provided guidance on best practices for contract language. Contracts now include a link to STD 213 Exhibit C#37 Examination and Audit. Contracts are now reviewed by Legal Counsel and the Interim Executive Director (in lieu of the vacant Deputy Director for Administration) prior to sending to DGS OLS for review.

Finding #7 No staff was performing the duties of a contract manager.

Actions: With the continued vacancy of the Deputy Director for Administration who should fill this role as well as other key vacancies, monitoring of contracts continues to be a less than streamlined process. For grants/contracts that are initiated by the regional area board offices, area board staff are first level monitors. For statewide grants, the vacant Planning Specialist would ideally be the first line monitor. That role is now assumed by the Deputy Director for Policy and Planning for grants and the Interim Executive Director for contracts.

Finding #8 It did not appear that contracts necessarily complied with GC 19130(b), demonstrating that the work could not be performed by state employees.

Actions: With the staff vacancies, the Interim Executive Director has assumed this duty. Since the release of these audits, the Council terminated a \$290,000 Personal Services contract, replacing it with a smaller \$160,000 personal service contract and the addition of a FTE state employee position to implement previous segments of the previous larger PS grant.

Finding #9 There were insufficient controls at SCDD insofar as the Executive Director initiated all contracts. The Council ought to have approved them prior to execution but in reality, often did not.

Actions: The reconstitution of the Administrative Committee was intended to address the limited oversight that existed at the time. The Administrative Committee meets monthly and reviews all contracts. Those for amounts exceeding \$5,000 require Council approval.

Finding #10 Fiscal intermediaries were used, without getting the required DOF approval.

Actions: The Interim Executive Director circulated an advisory to all contract and HQ staff prohibiting the use of fiscal intermediaries.

Additional Findings Identified in DOF Management Letter of August 17, 2012:

- The Council had (and still does) many staff vacancies resulting in inadequate controls or segregation of duties.

Actions: The Council attempted to bring on a retired annuitant as a temporary fix. This effort was unsuccessful as we were unable to identify a candidate who could meet our needs and who wanted the position. The Council Chair, Interim Executive Director, and Deputy Director have all discussed this situation with the Governor's

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Appointment Office, CalHR and CHHSA staff. Nevertheless, the same vacant administrative positions that existed in May 2012, continue today.

- The then-Executive Director was secretive and did not practice transparency in financial affairs.

Actions: The Executive Director as of May 2012 has retired from state service. The Interim Executive Director has re-established the Administrative Committee to ensure that fiscal and administrative matters are publicly discussed. She also requested that DHCS FAB Unit conduct the more extensive audit to ensure that all deficiencies were known and addressed.

- SCDD exceeded its DGS delegated purchasing authority

Actions: All administrative staff have been made aware of state contracting rules and have attended DGS training.

- Contracting and invoicing practices and language could be improved.

Actions: See response to findings # 5 and 6 above.

SECURITY RISK ASSESSMENT CHECKLIST

Additionally, the Council's Information Security Officer, in concert with Executive Management, conducted an organization-wide risk management assessment using the Information Security Risk Assessment Checklist. It is important to note that as a free standing small agency, the Council contracts with the Department of Social Services (CDSS) for a variety of administrative support functions including but not limited to procurement, accounting services, and information technology support. The Council utilizes CDSS for network access, security and troubleshooting and as such, is reliant on CDSS policies for information security and other related issues. The assessment concentrated on potential threats to confidential client information as much of the Council's work is focused on assisting individuals with service needs.

In conducting this checklist, the Information Security Officer reviewed the checklist completed in 2011. The two weaknesses identified then were not properly acted upon. Hence, they continue to be risks. Below are the issues identified and the proposed action to remedy:

Section H, #4: Transmission Integrity and Confidentiality

Risk: While staff rarely have the need to transmit confidential information outside the state email system, these instances do arise. Staff is instructed to use encryption in those instances.

Action Proposed in 2011: The Council ISO will consult with OTech regarding use of a secure file transfer product and, in consultation with executive management, will establish a policy for its use by all staff who handle confidential information.

Revised Action: The Council ISO has met with OTech regarding the use of the secure file transfer product and is in the process of working with executive management and OTech to procure this service and establish a policy for staff who handle confidential information to utilize this service.

Section D, #7: Data Storage and Portable Media Protection

Risk: Some staff commonly utilize USB thumb drives that may contain confidential information.

Action Proposed in 2011: The Council ISO will investigate and procure secured thumb drives and, in consultation with executive management, establish a policy for their use.

Revised Action: After considering the option for secure USB thumb drives and their associated drawbacks and risk of loss, the Council ISO will work with executive management to establish a policy for staff to utilize the secure file transfer service offered by OTech to handle the Council's limited need to transfer confidential information.

VACANT POSITIONS

SCDD is in full compliance with Government Code Section 12439. During the current reporting period, as part of SCDD's Federal Sequester reduction plan included in the 2013-14 Governor's budget, two Community Program Specialist II positions were abolished per Government Code Section 12439.

CONCLUSION

The California State Council on Developmental Disabilities certifies that its systems of internal control are adequate.

Roberta Newton
Interim Executive Director

Pacific Alliance on Disability Self-Advocacy



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About ASAN

- Run by Autistic adults but has cross-disability focus and broader I/DD expertise;
- Founded in 2006 to combat lack of disability rights & self-advocate perspective in autism world;
- Chapters in 20 states and affiliates in Australia & Canada;
- Conducts public policy advocacy, technical assistance, programming around higher education and employment, Participatory Action Research and public education activities;

About PADSA

- Project run by Autistic Self Advocacy Network
- Funded by Administration on Intellectual and Developmental Disabilities
- Purpose: to provide technical assistance in organizational capacity building
- States: California, Montana, Oregon, Washington

Technical Assistance

- Focus is organizational capacity-building
- Peer to peer model
- Different from advising/facilitating
- Some technical assistance we provide:
 - Training
 - Strategy
 - Mentorship
 - Resources
 - Connecting to Other People

Implementation

- Baseline Assessment in Each State Underway
- State Coordinators
- State Plan for Self Advocacy
 - Dependent on needs of that state, interest of groups, our capacity, and resources available
- Cognitively Accessible Print & Online Resources
- Disability Policy Whiteboard Youtube Series
- Pacific Leadership Academy

Where Are We Now

- Interviewing and meeting with leaders
- Supporting self advocacy groups in completing self-assessments
- Planning technical assistance and training we'll provide in each state
- Hiring State coordinators
- Planning Leadership Academy

Future Capacity Building Priorities

- Diversity and Inclusion (people of color, Rural, diverse disability types, etc.)
- Grant-writing and Fund Diversification
- Meeting Facilitation and Member Recruitment
- Emerging Leadership & Youth Engagement
- 501c3 Status
- Improving Technology Utilization
 - Social Media Training
 - Salsa Platform

California

- California is really unique state...
- Big geographically and in population
- State Coordinators in both Northern and Southern California
- Tiers of Support:
 - Statewide support: Working with Statewide Self-Advocacy Network
 - Local support: Working with Bay Area People First, Self-Advocacy Association of LA, ASAN Sacramento, etc.
 - Print and Online Material Dissemination

How can DDC Support PADSA?

- We are requesting a \$50,000 investment
- Currently, we can support 15 Leadership Academy participants – investment would allow us to add an additional 8-10 people from CA, better reflecting CA’s greater population
- Leadership Academy would be hosted in CA, likely in Bay Area.
- Enhanced Stipends for CA State Coordinators
- Greater Staff Time allocated to providing local support to CA groups

Additional Details

- AIDD has made a \$100,000/yr investment for 3 years;
- Oregon, Montana DDCouncils have each committed additional funds for expanding work in their states;
- Project is supported by two ASAN staff in California and ASAN’s National Office in DC
- Best Practices Shared w/ Two Additional Regional Technical Assistance Collaboratives: Southern Collaborative (SABE) and Northeast Advocates Working Together (Green Mountain Self Advocates)

Questions?



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Self-Advocacy

Cost Breakdown for Self-Advocacy

SSAN		Estimated	Actual
Member Costs			\$27,215.00
Facilitator Costs			\$26,914.00
Staff Costs			\$7,536.00
Facility Costs			\$21,635.00
Total		\$0.00	\$83,300.00

Full-Time CPS II		Estimated	Actual
100% Time base			\$90,916.00
Travel Cost			\$390.00
Total		\$0.00	\$91,306.00

Local AB Efforts		Estimated	Actual
AB Self-Advocacy Costs			\$260,000.00
Total		\$0.00	\$260,000.00

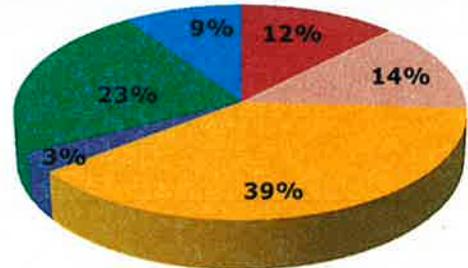
SAAC		Estimated	Actual
Travel Costs			\$17,280.00
Facilitator Costs			\$3,900.00
Total		\$0.00	\$21,180.00

Support Contract		Estimated	Actual
Contract amount			\$155,000.00
Total		\$0.00	\$155,000.00

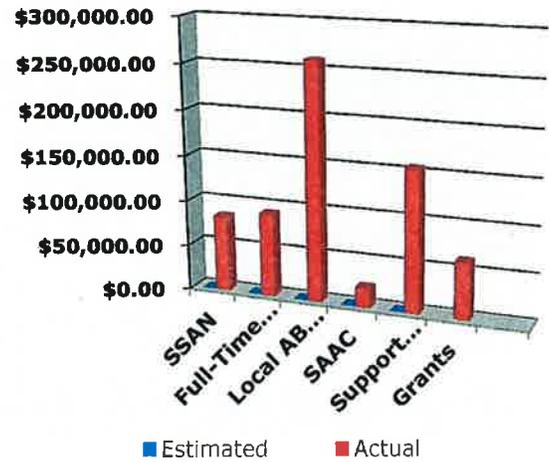
Grants		Estimated	Actual
YLF			\$10,000.00
AB 11			\$20,000.00
AB 12			\$20,000.00
Regional Grants			\$12,000.00
Total			\$62,000.00

		Estimated	Actual

Actual Cost Breakdown



- SSAN
- Full-Time CPS II
- Local AB Efforts
- SAAC
- Support Contract
- Grants





MEMORANDUM

DATE: November 21, 2013

TO: Roberta Newton, Interim Executive Director

FROM: Stephanie L. Schiele, Labor Relations Counsel 

SUBJECT: *Compensation for Facilitators for Council Members*

ISSUES

- I. What options are available to the State Council on Developmental Disabilities to ensure qualifying council members' receive the services of a facilitator?
- II. Does the State Council on Developmental Disabilities create a joint employment relationship by exercising any of these options?

BRIEF ANSWERS

- I. The State Council on Developmental Disabilities can reimburse council members' expense claims for services rendered by privately hired facilitators. The Council could also hire state civil service employees to serve as facilitators for the council members. Due to the availability of state civil service employees capable of performing the duties of a facilitator, it is highly unlikely that the State Council on Developmental Disabilities can contract the facilitator services to an outside employment agency.
- II. A joint relationship is not created by reimbursing the members of the State Council on Developmental Disabilities for the actual expense of a facilitator. If the Council hires state civil service employees to serve as facilitators for the council members, a direct employment relationship will exist.

BACKGROUND

The State Council on Developmental Disabilities (Council) is established by state (Lanterman Act at Welfare and Institutions Code, section 4520 et. seq.) and federal law (Developmental Disabilities and Bill of Rights Act) to ensure that individuals with developmental disabilities and their families

*Governor Edmund G. Brown, Jr. // Secretary, Government Operations Agency Marybel Batjer
Director Julie Chapman // Chief Deputy Director Howard Schwartz
1515 S Street, North Building, Suite 400, Sacramento CA 95811 // www.calhr.ca.gov*

participate in the planning, design, and receipt of the services and supports they need, which in turn promotes increased independence, productivity, inclusion, and self-determination. (What is the State Council on Developmental Disabilities [State Council on Developmental Disabilities Disabilities] at <<http://www.scdd.ca.gov/aboutus.htm>> [as of Nov. 18, 2013].) The Council is comprised of 31 members appointed by the Governor, including individuals with disabilities, their families, federally funded partners, and state agencies. (*Ibid.*) Some of the council members may have certain limitations requiring the assistance of a facilitator to help complete their duties as a council member. A number of these facilitators may already be privately employed by the council member to assist in day-to-day living activities. While the council member attends Council meetings, and performs other duties as a council member, the facilitator continues with this assistance. These facilitators are not currently employees of the State of California. The Council requested this legal opinion to explore its available options to compensate facilitators for their work.

ANALYSIS

I. Compensation for Facilitators for Council Members

There are several options available to the Council to ensure qualifying council members receive the services of a facilitator. First, the Council can reimburse council members' expense claims for services rendered by the facilitators privately hired by the council members. Second, the Council could hire facilitators to assist the council members. Third, the Council could contract with an employment agency to provide facilitators to assist the council members. Prior to conducting an in-depth analysis of these options, it is necessary to determine if the Council must make these services available to its council members.

a. Council's Obligation to Make the Facilitator Services Available

The Council may be obligated to provide facilitators to assist council members perform their duties. If a council member has a disability that limits a major life activity that requires an accommodation to complete his or her job duties, the Council has a duty to accommodate the employee, if possible. (Gov. Code, § 12900 et seq.) One way to accommodate a disabled employee is to provide the employee with an interpreter or reader. (Gov. Code, § 12926, subd. (o); 2 Cal. Code. Regs., § 7293.9, subd. (a).) Thus, a reasonable accommodation can include providing work-related personal assistance to help an employee with a disability perform the job functions. Therefore, the Council has an obligation to provide assistance for council members who need assistance for work related job functions. The types of assistance can include but are not limited to: readers, scribes, interpreters, job assistants, job coaches, and drivers depending on the job duties and needs of the employee. (Gov. Code, § 12926; Accommodation and Compliance Series: Personal Assistance Services (WPAS) in the Workplace (2013) at <<http://askjan.org/media/PAS.html>>.) Therefore, it may be necessary for the Council to provide council members with facilitators to assist them in completing their job duties.

Although the Council may have an obligation to provide facilitators to assist council members in completing their job duties, this obligation does not extend to providing assistance for council

members' personal care. Generally, employers are not required to pay for nor arrange personal care-related assistance in the workplace. (Gov. Code, § 12900 et seq; Accommodation and Compliance Series: Personal Assistance Services (WPAS) in the Workplace (2013) at <<http://askjan.org/media/PAS.html>>.) However, employers are required to consider allowing employees with disabilities to bring their personal assistants into the workplace to assist the employee with their personal needs (i.e. eating, drinking, toileting, etc.). (Gov. Code, § 12900 et seq; Accommodation and Compliance Series: Personal Assistance Services (WPAS) in the Workplace (2013) at <<http://askjan.org/media/PAS.html>>.) Thus, the Council may be required to allow the council members to bring in a personal care assistant to help them with their personal (non-work related) needs.

It is likely the Council is required to provide facilitators for council members who need the facilitators to complete job related duties. As more fully discussed below, paying for the facilitators is a necessary expense for the Council. The Council may reimburse council members for the costs incurred for the services of a facilitator or directly hire state civil servants to perform these services.

b. Facilitator Services are a Necessary Expense of the Council

The costs associated with the services provided by facilitators to certain council members are an authorized expense of the Council. Welfare and Institutions Code section 4550 provides that:

The state council's operating costs shall include honoraria and actual and necessary expenses for council members; costs associated with the area boards, as described in this article, and other administrative, professional, and secretarial support services necessary to the operation of the state council.

Thus, the Council's operating costs include actual and necessary expenses for council members, which can include administrative, professional, and secretarial support service necessary to operate the council. There are no cases analyzing Welfare and Institutions Code section 4550 to determine whether payment for a facilitator is a necessary expense. However, if the council member cannot perform his or her duties without a facilitator, and the Council cannot operate without the council members, then it is likely a court would determine the services of a facilitator are a necessary expense.

c. Reimbursing Council Members' Expense Claims

One option available to the Council is to reimburse council members' expense claims for services provided during Council meetings by their privately hired facilitator. Welfare and Institutions Code section 4550 also provides that:

Each member of the state council shall receive one hundred dollars (\$100) per day for each full day of work performed directly related to council business, not to exceed 50 days in any fiscal year, and shall be reimbursed for any actual and

necessary expenses incurred in connection with the performance of their duties under this division.

If the council members are paying for the cost of these facilitators, then as discussed above, it is a necessary expense for the council members. Since the council members must be reimbursed for their actual and necessary expenses, the council members should be reimbursed for the actual cost of services provided by the facilitators. Thus, one option to compensate facilitators is to reimburse council members' expense claims for services provided during Council meetings by their privately hired facilitator.

d. The Council Can Hire State Civil Service Employees

As another option, the Council could hire civil service employees to work as facilitators for the council members. The Department of Human Resources is charged with maintaining employee classifications for the state. (Gov. Code, § 18502.) According to the Personnel Management Division of the Department of Human Resources, there are two Support Service Analyst classifications that could serve as facilitators for the council members. The majority of positions in both Support Service Analyst classifications are Permanent Intermittent positions. This means that individuals hired will work on an "on-call" basis for up to a maximum of 1,500 hours per year.

First, the Support Services Assistant (General) classification provides reasonable accommodation to the known physical limitations of state employees for completion of their work tasks. (Attachment A, Classification Specifications.) The typical tasks of a Support Services Assistant (General) include performing support services for the disabled, such as reading, filing, driving, setting up special equipment, and transportation of employees in their work setting. (*Ibid.*) The duties of a Support Services Assistant can include: performing reading services; serving as a messenger; transporting and accompanying staff members to places of business where services are otherwise unavailable; performing simple clerical services; and performing other job related support work. (Attachment A.)

The second classification that could serve as facilitators for the council members is the Support Services Assistant (Interpreter) classification. A Support Services Assistant (Interpreter) provides a wide range of interpreting services for Rehabilitation Counselors for the Deaf or other deaf or hard of hearing staff members. (Attachment B, Classification Specifications.) The interpreter facilitates communication between individuals with hearing impairments and hearing persons, by serving as an interpreter using American Sign Language and spoke language. The Support Services Assistant (Interpreter) classification performs interpreting services individually or in group settings, including hearings for an audience at an assembly or meeting for consumers who are not State Employees. (*Ibid.*)

The Council could hire either Support Services Assistants (General) or Support Services Assistants (Interpreter) as facilitators for the council members. Both of these positions could be permanent intermittent positions, which mean the employee can work up to 1,500 hours per year. There is no statute, regulation, or case law that requires an employer to allow an employee the choice of a

particular individual to assist them in the performance of their job duties. Thus, there is no authority to support the assertion council members must be permitted to use the services of a private facilitator hired to assist in day-to-day activities outside of the council members' duties.

e. Contract with an Employment Agency

The Council could also contract with an employment agency for facilitators to assist the council members. In exercising this option, the contract would have to comply with the contract requirements set forth by the Government Code. First, the contract must result in a cost savings for the state. (Gov. Code, § 19130.) Thus, in order to contract for facilitators, it must cost less than reimbursing the council members for the cost of the facilitators. If it is more cost effective to contract with an employment agency to provide facilitators for council members, then this contracting requirement is met.

Second, the contract must not cause a displacement of civil service employees. (*Ibid.*) Since the facilitators are not currently state employees, contracting for facilitators will not cause the displacement of any state employees. Thus, this contracting requirement is met.

Third, the contract must not adversely affect the State's affirmative action efforts. (*Ibid.*) Thus, the contract for facilitators must not harm the State's affirmative action efforts. As long as the contract does not harm the State's affirmative action efforts, this contracting requirement is met.

Fourth, the contract must be awarded through a publicized competitive bidding process. (*Ibid.*) The Department of General Services has set forth requirements for the bidding process for contracts, depending on the type of contract and the dollar amount of the contract. Provided the Council complies with the competitive bidding requirements for the contract with the employment agency, this contracting requirement is met.

Finally, the contract must be for services that cannot be completed by civil service employees. (*Ibid.*) As previously discussed, the Support Services Assistants (General) and the Support Services Assistants (Interpreter) are civil service classifications available to assist the council members. Because there are state employee classifications that could do the work of the facilitators, the requirements of Government Code section 19130 are not met. Therefore, it is highly likely the Council cannot contract with an employment agency to provide facilitator services for the council members.

Thus, in order to provide facilitators for council members, the Council can either reimburse the council members for the actual expense of their privately hired facilitators or hire state civil service employees to assist the council members with their job duties. The Council cannot contract with an employment agency to provide facilitators for the council members. The Council should be aware of any potential employment relationship created by exercising these options.

II. Employment Relationship for Facilitators for Council Members

The Council is also concerned with whether the facilitators could be considered employees of the Council pursuant to the Fair Labor and Standards Act¹. (29 U.S.C., §201 et seq.) Courts consider a number of factors in order to determine whether an employment relationship exists. Specifically, courts will consider whether the alleged employer: (1) has the power to hire and fire the employees; (2) supervises and controls the employees work schedule or employment conditions; (3) determines the rate and method of payment; and (4) maintains employment records. (*Guerrero v. Superior Court* (2013) 213 Cal.App.4th 912; *Bonnette v. California Health & Welfare Agency* (1983) 704 F2d 1465, 1470.) Whether the Council could be held liable by the facilitators depends on how the facilitator's services are obtained.

a. **Reimbursement of Council Members' Expense Claims Should Not Create an Employment Relationship**

In order to determine if the Council would be an employer of the facilitators, courts would examine if the Council has the right to hire and fire the facilitators. (*Ibid.*) If the council members are employing the facilitators and then seeking reimbursement from the Council for the cost of the facilitators, then the council members have the power to hire and fire the facilitators. As long as the Council did not tell the council members who they could or could not hire, then the Council would not have the power to hire and fire the facilitators. Thus, it is unlikely the Council would be considered a joint employer of the facilitators under this element of the analysis.

Whether the Council determines the facilitators' working conditions will also determine whether the Council is a joint employer of the facilitators. (*Ibid.*) The council members determine their own schedules, and therefore, would determine when they need assistance from the facilitators. The council members would also supervise the facilitators and determine their job duties. The Council would not determine the facilitator's work schedules or employment conditions. Thus, it is unlikely the Council would be considered a joint employer of the facilitators under this element of the analysis.

Whether the Council determines the rate and method of payment for the facilitators will also determine if the Council is a joint employer of the facilitators. (*Ibid.*) If the council members are the ones employing the facilitators, the council members would determine the rate and method of payment for the facilitators. The Council's only involvement is to reimburse the council members for the actual cost of the facilitators. The Council has no role in determining how, or how much, the council members pay the facilitators. Since the Council would not have a role in determining the rate or method of payment, it is unlikely the Council would be considered a joint employer of the facilitators under this element of the analysis.

¹ This legal opinion does not examine whether the Council would be liable for the facilitators under any other law or regulation than the Fair Labor and Standards Act. (29 U.S.C., §201 et seq.)

Finally, whether the Council maintains employment records for the facilitators will determine if the Council is a joint employer of the facilitators. (*Guerrero v. Superior Court, supra*, 213 Cal.App.4th 912; *Bonnette v. California Health & Welfare Agency, supra*, 704 F2d 1465, 1470.) If the council members are the ones employing the facilitators, the Council would not be required to maintain employment records for the facilitators. The Council would retain records of the amount it reimburses the council members for the facilitators. However, the records of the reimbursements are not employment records; they would only be records of the council members' expenses. Thus, since the Council would not maintain employment records for the facilitators, it is unlikely the Council would be considered a joint employer of the facilitators under this element of the analysis.

If the council members hire the facilitators themselves and then seek reimbursement from the Council, the Council should not be considered a joint employer of the facilitators under the Fair Labor and Standards Act.

b. A Contract with an Employment Agency May Create an Employment Relationship

If the Council is permitted to procure a contract with an employment agency to provide facilitators for the council members, depending on the terms of the contract, the Council could be considered a joint employer under the Fair Labor and Standards Act. (29 U.S.C., §201 et seq.) In order to determine if the Council would be a joint employer of the facilitators, courts would examine if the Council has the right to hire and fire the facilitators. (*Guerrero v. Superior Court, supra*, 213 Cal.App.4th 912; *Bonnette v. California Health & Welfare Agency, supra*, 704 F2d 1465, 1470.) If the employment agency maintains the right to hire and fire the facilitators, it is less likely the Council will be considered a joint employer of the facilitators under this element of the analysis. Any contract for these services should maintain the right to hire and fire the facilitators with the employment agency if the Council does not want to be considered a joint employer.

The extent of control the Council exercises over the facilitators' working conditions will also determine whether the Council is the facilitators' joint employer. (*Ibid.*) The more the Council supervises the facilitators, dictates the facilitators' schedule, or controls the employment conditions for the facilitators, the more likely the Council will be considered a joint employer. If the Council does not want to be a joint employer, it should give as much control over the facilitators' schedule and terms of employment to the employment agency as possible. This may not be possible, however, since the council members must exert some control over the facilitators schedule and duties. It is the council members who determine the days and hours when assistance is needed from the facilitators. Additionally, the council members will determine what duties the facilitators need to do each day. The less control the Council retains over the facilitators' terms of employment, the less likely the Council will be considered a joint employer of the facilitators under this element of the analysis. Thus, to decrease the likelihood of creating a joint employment relationship with the facilitators, the Council should relinquish as much control over the facilitators' schedules, duties, and conditions of employment to the employment agency.

Whether the Council determines the rate and method of payment for the facilitators will also determine whether the Council is a joint employer of the facilitators. (*Guerrero v. Superior Court*, *supra*, 213 Cal.App.4th 912; *Bonnette v. California Health & Welfare Agency*, *supra*, 704 F2d 1465, 1470.) If the Council gives the employment agency the right to determine the rate and method of payment for the facilitators, it is less likely the Council will be considered a joint employer. In this regard, the contract with the employment agency should contain the rate the Council would pay the employment agency for the services of the facilitators. However, the contract should also leave it to the employment agency's discretion to determine how much the employment agency is going to pay the facilitators. The contract with the employment agency would likely dictate how often the Council has to pay the employment agency. However, the contract should leave it to the employment agency's discretion to determine how often the employment agency pays the facilitators. The contract should also leave it to the employment agency's discretion to determine the method it will use to pay the facilitators. If the contract requires the Council to pay the facilitators directly, it is more likely the Council will be considered a joint employer of the facilitators. As long as the Council does not determine the rate of pay or the method of payment for the facilitators, it is likely the Council will not be considered a joint employer under this element of the analysis.

Finally, whether the Council maintains employment records for the facilitators will determine if the Council is a joint employer of the facilitators. (*ibid.*) If the Council does not want to be considered a joint employer, it should not maintain employment records for the facilitators. The Council will probably need to track the hours each facilitator works. These records could be considered employment records. However, maintaining one type of record does not necessarily mean the Council would be considered a joint employer of the facilitators. On balance, the employment agency will be the one hiring and paying the facilitators and should be responsible for maintaining the facilitators' official employment records. If the Council wants to decrease the likelihood of creating a joint employment relationship, the contract with the employment agency should require the employment agency to maintain all of the employment records for the facilitators.

The terms of the contract will be given considerable weight in determining whether the Council is a joint employer of the facilitators. If the Council does not want to be considered a joint employer of the facilitators, the Council should give the employment agency the right to hire and fire facilitators, the right to determine the employee's schedule and employment conditions, the right to determine the amount and method of pay for the facilitators, and require the employment agency to maintain the employment records for the facilitators.

c. An Employment Relationship Exists with State Civil Service Employees

If the Council hires employees to serve as facilitators for the council members, the Council will be the employer of the facilitators under the Fair Labor and Standards Act. Here, a direct employment relationship exists with the civil service employees and the Council. The Council exercises extensive control over the employees' terms of and conditions of employment. Thus, the Council will be liable as an employer in any potential claim by the facilitators under the Fair Labor and Standards Act.

First, joint employment relationship is likely not created by reimbursing the council members for the actual expenses of the facilitators. Second, depending on the terms of the contract and the amount of control exercised by the Council, an employment relationship may exist with facilitators providing services through a contracted employment agency. Last, an employment relationship exists if the Council hires civil service employees to serve as facilitators for the council members.

CONCLUSION

In order to provide facilitators for the council members, the Council can allow the council members to use the services of their privately employed facilitators. The council members can then seek reimbursement from the Council for the actual work-related expenses of the facilitators. If the council members directly employ the facilitators, the Council is likely not a joint employer of the facilitators. The Council can also hire Support Service Assistants to serve as facilitators for council members. If the Council hires the Support Service Assistants, they will be in a direct employment relationship and may be held liable for potential claims by the facilitators.

Attachment A

Support Services Assistant (General)

California State Personnel Board Specification

- **Schematic Code:** CM70
- **Class Code:** 1432
- **Established:** 12/13/1978
- **Revised:** 11/18/1981
- **Title Changed:** 11/18/1981

Definition

Under direct supervision, to provide reasonable accommodation to the known physical or mental limitations of an otherwise qualified disabled applicant or State employee; perform reading services; serve as a messenger; transport and accompany staff members to places of business where services are otherwise unavailable; perform simple clerical services; and to do other related related work.

Typical Tasks

Performs support services for the disabled, such as reading, filing, driving, setting up special equipment, transportation of employees in their work setting, serving in a resource and research capacity, provide for a "comfortable" work setting (attendant care) and other job related support services as required.

Distinguishing Characteristics

This class is distinguished from other clerical support classifications by the services to be performed. Incumbents in the class of Support Services Assistant (General) are regularly and routinely required to perform reading, driving and/or work related attendant care services for the disabled. This class is not to be used in lieu of other clerical classes which provide assistance to an applicant/employee in an office or unit. Positions in this class will typically be used on a part-time or intermittent basis.

Knowledge and Abilities

Knowledge of: Concerns and special needs of persons with disabilities as related to the community and working environment.

Ability to: Relate well to individuals, representatives or other State agencies and communities; read and write English at a level required for successful job performance.

Special Personal Characteristics

Neatness; willingness to follow directions; ability to read aloud and speak intelligibly. For those positions requiring driving, possession of a valid driver license will be required. Applicants who do not possess this license will be admitted to the examination but must secure the license prior to appointment.

Updated 6/3/2012

Attachment B

Support Services Assistant (Interpreter)

California State Personnel Board Specification

- **Schematic Code:** XH80
- **Class Code:** 9820
- **Established:** 12/13/1978
- **Revised:** 11/18/1981
- **Title Changed:** --

Definition

Under direct supervision to facilitate communication between individuals with hearing impairments and hearing persons, serve as interpreter; accompany staff members to places of business where services are otherwise unavailable; and to do other duties related to assisting the communication process.

Typical Tasks

Performs interpreting services individually or in group settings, including hearings, for an audience, at an assembly or meeting or for consumers who are not State employees; may perform other services unique to hearing impaired persons and other job related services as required.

Distinguishing Characteristics

This class is distinguished from the class of Support Services Assistant (General) by the services to be performed. Incumbents in the class of Support Services Assistant (Interpreter) are regularly and routinely required to perform interpreting services for hearing impaired individuals using sign language and spoken language for hearing persons. Positions in this class will typically be used on a part-time or intermittent basis.

Minimum Qualifications

Special Requirement: Proficiency in facilitating communication between hearing impaired and hearing persons individually and/or in large groups using American sign language and spoken language. and Experience: Equivalent to six months' experience providing interpreting services to hearing impaired persons. or Certificate: Possession of at least one valid certificate issued by the Registry of Interpreters for the Deaf.

Knowledge and Abilities

Knowledge of: Methods of and proficiency in facilitating communication between hearing impaired and hearing persons by sign language and spoken language.

Ability to: Relate well to individuals, representatives or other State agencies and communities; read and write English at a level required for successful job performance.

Special Personal Characteristics

Neatness, willingness to follow directions; sensitivity to the communication process between hearing impaired and hearing persons and the needs of the persons involved in that process; and ability to maintain confidentiality. Some positions may require driving. For those positions, possession of a valid California driver license will be required. Applicants who do not possess this license will be admitted to the examination but must secure the license prior to appointment.

Updated 6/3/2012

DATE: SEPTEMBER 2011
TO: ALL AREA BOARDS
FROM: STATE COUNCIL ON DEVELOPMENTAL DISABILITIES
RE: REGIONAL CENTER REQUESTS FOR WAIVER OF CONFLICT OF INTEREST CRITERIA PROCESS

BACKGROUND

The purpose of these procedures is to establish consistent evaluation criteria and process of requests for waivers in accordance with Welfare and Institutions Code Sections 4622 *et seq.* and Title 17 Section 54520. These procedures shall be used by the California State Council on Developmental Disabilities (Council) and local area boards.

*These procedures may be revised in accordance with imminent regulatory changes.

A. Regional Center Conflict of Interest Policy

The establishment and implementation of a conflict of interest policy and reporting process for regional centers (RC) is intended to minimize, if not eliminate, the occurrence of conflicts of interest in certain settings. This seeks to ensure that the RC board members act in the course of their duties solely in the best interest of the consumers and their families without regard to the interest of any other organization with which they are associated.

Each RC shall submit a conflict-of-interest policy to the Department of Developmental Services (DDS) by July 1, 2011, and shall post the policy on its Internet Web site by August 1, 2011. The policy shall do, or comply with, all of the following:

1. Be consistent with applicable law.
2. Define conflicts of interest.
3. Identify positions within the regional center required to complete and file a conflict-of-interest statement.
4. Facilitate disclosure of information to identify conflicts of interest.

5. Require candidates for nomination, election, or appointment to a RC board, and applicants for RC director to disclose any potential or present conflicts of interest prior to being appointed, elected, or confirmed for hire by the RC or RC governing board.
6. Require the RC and its governing board to regularly and consistently monitor and enforce compliance with its conflict-of-interest policy.

B. Conflict of Interest Reporting

Welfare and Institutions Code Section 4626(e-l) sets the process for reporting conflicts of interest. The reporting process is:

1. DDS is responsible for developing a Conflict of Interest Reporting Statement (Statement.)
2. The Statement shall be completed by each RC governing board member and executive director within 30 days of selection, appointment or election and annually thereafter. A Statement must also be completed upon any change in the status of the board member or executive director that creates a potential or present conflict of interest.
3. DDS and the appropriate RC governing board shall review the Statements of each board member and the executive director to ensure that no conflicts of interest exist; however, if a present or potential conflict of interest is identified for a board member or executive director that cannot be eliminated, the RC governing board shall submit to DDS and the Council, a copy of the Statement and a plan that proposes mitigation measures within 30 days (including timeframes and actions that the governing board or individual will take to mitigate the conflict of interest.)

The submission of this Statement and mitigation plan is not considered a request for waiver.

C. Conflict of Interest Criteria

California law outlines the criteria by which DDS evaluates conflicts arising among RC board members.

Additionally, it is expected that board members will be free from conflicts of interest that could adversely influence their judgment, objectivity or loyalty to the RC, its consumers or its mission.

Pursuant to Welfare and Institutions Code section 4626(b), no member of the governing board or member of the program policy committee of a RC shall be any of the following:

1. An employee of DDS or any State or local agency that provides service to a RC consumer, if employed in a capacity which includes administrative or policymaking responsibility, or responsibility for the regulation of the RC.
2. An employee or member of the Council or area board,
3. With the exception of a consumer advisory committee member, an employee or member of the governing board of any entity from which the RC purchases consumer services.
4. Any person who has a financial interest in RC operations, except as a consumer of RC services.

Title 17 provides additional conflict of interest criteria which may or may not encompass the criteria set forth in statute. In accordance with 17 CCR 54520, the following constitute conflicts of interest for RC board members:

5. When a member of the board or their family member is: a) a director, officer, owner, partner, shareholder, trustee or employee of any business entity or provider, b) holds any position of management in any business entity or provider or, 3) has decision or policymaking authority in such an entity or provider.
6. When the advisory committee board member is an employee or member of the governing board of a provider from which the RC purchases client services and engages in the fiscal matters. If so, this member is prohibited from serving as an officer of the RC governing board and from voting on fiscal matters or issues.
7. When a governing board member is any individual described in WIC 4626.

WAIVER OF CONFLICT OF INTEREST EVALUATION PROCESS

If there is good reason that a RC is unable to meet all of the criteria for their board, the director of DDS may waive the criteria for a period of time, not to exceed one year, with the approval of the appropriate area board and the Council in accordance with WIC 4628.

The Council/area board procedure for evaluating requests for waiver shall be:

1. When area board receives a request for a waiver, it shall be scheduled for discussion and action during the next available area board meeting.
2. When evaluating a request for waiver, the area board shall discuss and analyze the following:
 - a. Does the RC have and utilize a public board member recruitment process? If not, what recruitment efforts were implemented with respect to the board member in question?
 - b. What specific criteria are involved in the request? Is the individual prohibited from serving based on the statute (C. 1-4 above) or regulation (C. 5-7 above) or both?
 - c. Does the proposed mitigation plan effectively address avoidance of the identified conflict of interest?
 - d. What impact will the approval/denial of the waiver have on the RC board?
 - e. Has the RC requested a wavier on behalf of the same individual before? If so, how long ago?
3. Upon evaluating the request, the area board shall take action to approve/deny the waiver request unless additional information is requested from RC.
4. Within 5 business days of taking action, the area board shall forward their analyses and action to the Council.
5. The Council shall schedule a discussion and action for the next available regular Council meeting. During the discussion, the Council shall review the area board analyses. The Council shall take action to approve/deny the waiver unless further information is requested from the area board.
6. The Council shall submit their action to DDS within 5 business days.



Jorge A. Aguilar, Chair
California State Council on Developmental Disabilities
1507 21st Street, Suite 210
Sacramento, CA 95814

Roberta Newton
Interim Executive Director
California State Council on Developmental Disabilities
1507 21st Street, Suite 210
Sacramento, CA 95814

Reference: Fiscal Year 2014 Award No. 1401CABSDD – High Risk Designation

Dear Mr. Aguilar and Ms. Newton,

The purpose of this letter is to inform you that the Administration on Intellectual and Developmental Disabilities (AIDD) and the Administration for Community Living Office of Grants Management (OGM) is classifying as high risk the California State Council on Developmental Disabilities (SCDD) Fiscal Year (FY) 2014 grant award authorized under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act). We are placing restrictions on the referenced SCDD FY 2014 grant award as described in this letter. Our decision is based on the compliance issues cited in the enclosed Monitoring and Technical Assistance Review System (MTARS) report. Many of the findings in this report include compliance issues for which the Council was cited during monitoring visits conducted in 1994 and 2006 in the areas below:

- Budget
 - Council Funding of Area Boards
 - Clarity with the use of Federal vs. State Funds
 - Budget Development Process
 - Budget Execution Process
- Hiring Authority
 - Deputy Director Staff positions
 - Governor's Office role in Council Hiring Process
- Membership
 - Long-Term Unfilled Vacancies
 - Nomination Process
- State Council Leadership and Activities
 - State Council Control of Area Board Activities
 - Overlap of P&A and Area Board Duties
 - Council versus Area Board Roles & Responsibilities

- Council Accountability over Area Board Activities

As provided in 45 C.F.R. 92.12, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Tribal Governments*, the awarding agencies of the Department of Health and Human Services (HHS) are permitted to impose additional requirements on recipients who have a history of poor performance or are not otherwise responsible. When it imposes any additional requirements, the HHS awarding agency must notify the recipient in writing with the information below.

THE NATURE OF THE ADDITIONAL REQUIREMENTS

The special conditions and restrictions are the following:

1. **Payment on a reimbursement basis:** the SCDD is hereby placed on cost reimbursement. To obtain payment for costs incurred under the DDC grant, SCDD must submit monthly written reimbursement requests using the Standard Form (SF) 270 Request for Advance or Reimbursement; summary schedules of costs claimed that includes the totals by each grant budget category; accounting system reports that list the individual cost items included in each budget grant category total; and source documentation (e.g., cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.) for each individual cost item greater than \$500. Further, expenditures claimed that are not included in the most recently approved grant budget must be accompanied by detailed justifications/explanations or the related costs will not be accepted as allowable costs. The SF-270 will serve as your interim expenditure report, however a final SF-425 will be required at the end of the award period. Should the high risk designation be lifted a revised term will be added to your award reflecting the new financial reporting requirements.
2. **Additional project monitoring:** SCDD must:
 - a. Submit a corrective action plan by Friday **February 14, 2014** that details how SCDD will address the items in Attachment A of the MTARS report; and
 - b. Provide monthly program progress reports on the corrective action plan starting March 17, 2014.
3. **Obtaining technical or management assistance:** SCDD is required to obtain technical assistance to address the compliance issues through:
 - a. Regular, on-going assistance from experts with extensive knowledge of the DDC program, particularly with regard to issues of program administration, organizational administration and fiscal management; and
 - b. Quarterly calls with the AIDD staff to review progress in the implementation of the Corrective Action Plan.

AIDD can provide you with entities that may be particularly useful in providing technical assistance because of their extensive knowledge of and experience with the DDC program.

THE METHOD FOR REQUESTING RECONSIDERATION OF THE ADDITIONAL REQUIREMENTS IMPOSED

SCDD may request we reconsider our decision to classify its DDC grant award as high risk within 45 days of receipt of this letter. The request should be made to your AIDD project officer by letter and include a detailed explanation, along with any necessary supporting documentation, as to why it believes AIDD's grant award should not be classified as high risk.

SCDD must submit the requested program information to:

Sara Newell
Project Officer
Administration on Intellectual and Developmental Disabilities
Administration for Community Living
Washington, DC 20201
Phone: 202-690-5983
Email: sara.newell@acl.hhs.gov

SCDD must submit the requested fiscal information to:

Yi-Hsin Yan
Management Analyst
Administration for Community Living
Washington, DC 20201
Phone: (202) 357-3436
Email: Yi-Hsin.Yan@acl.hhs.gov

AIDD will promptly remove the additional requirements once the conditions have been corrected and remove the grant from high risk status.

We continue to extend our support to you in addressing the compliance issues. Please contact AIDD's lead project officer for the DDC grants, Sara Newell, with any questions or concerns. Thank you for your continued cooperation.

Sincerely,



Aaron Bishop
Acting Commissioner
Administration on Intellectual
and Developmental Disabilities



Rimas Liogys
Director
Office of Grants Management

cc: Sarah Greenseid, Deputy Appointments Secretary, Governor's Office
Mike Wilkening, Deputy Secretary, Designated State Agency, California Health and Human Services Agency



Notice of Award – High Risk

**Developmental Disabilities Act Subtitle B –
Federal Assistance to State Developmental Disabilities Councils**

Grantee:
California
Director
Department of Social Services
744 P Street, MS 19-93
Sacramento, CA 95814

Date:
November 22, 2013

Grant No.: 1401CABSDD **Seq. No.:** 2014 / 1
Award Instrument: Grant (Formula)
Project Period: 10/01/2013 - 09/30/2015

Award Authority: P.L. 106-402

EIN: 1-946001347-A7

CFDA Program Title	Award This Action	Cumulative Grant Award to Date	Appropriation	Object Class Code
93.630 State DD Councils	\$1,913,801	\$1,913,801	75-4-1536	41.15
Total	\$1,913,801	\$1,913,801		

Terms and Conditions:

1. The terms and conditions of this Notice of Award and other requirements have the following order of precedence if there is any conflict in what they require: (1) the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act); (2) other applicable Federal statutes and their implementing regulations; (3) program regulations; and (4) terms and conditions of award.
2. This formula grant award is issued under the authority of The Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act), P.L. 106-402. By requesting or receiving funds under this award, the recipient assures that it will carry out the project/program and will comply with the terms and conditions and other requirements of this award. Further, the recipient agrees to be responsible for limiting the draw of funds to the actual time of disbursement and submitting timely reports as required; and to be responsible for effectively controlling the use of cash in compliance with Federal requirements when these funds are advanced to secondary recipients. HHS terms and conditions can be found in Part II of the HHS Grants Policy Statement (<http://dhhs.gov/asfr/ogapa/grantinformation/hhsgps107.pdf>).
3. Withdrawals of funds are not to exceed the total grant award shown above under provisions of Treasury Circular No. 1075. Failure to adhere to these requirements may cause the suspension of grant funds.
4. For this award the SF-270 will serve as the interim expenditure report in lieu of the SF425 Federal Financial Report (SF-425). SF-270 forms and instructions can be downloaded from <http://www.whitehouse.gov/sites/default/files/omb/grants/sf270.pdf> and submit the completed forms to the fiscal award administrator identified in the award. Complete all lines, as appropriate. In addition, the following information must be provided: To obtain payment for costs incurred under the DDC grant, PRDDC must submit written reimbursement requests using the Standard Form (SF) 270 Request for Advance or Reimbursement; summary schedules of costs claimed that includes the totals by each grant budget category; accounting system reports that list the individual cost items included in each budget grant category total; and source documentation (e.g., cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.) for each individual cost item greater than \$500. Further, expenditures claimed that are not included in the most recently approved grant budget

must be accompanied by detailed justifications/explanations or the related costs will not be accepted as allowable costs.

5. The DDC program performance report (PPR) is due on an annual basis. The first report is due December 31, 2014. The reports can be submitted using DD Suite located at: <http://ddsuite.org/>.
6. SCDD must:
 - a. Submit a corrective action plan to the AIDD/ACL programmatic by Friday **February 14, 2014** that details how SCDD will address the items in Attachment A of the monitoring report that accompanies this notice and includes a plan for technical assistance to address the compliance issues;
 - b. Provide monthly program progress reports on the corrective action plan starting March 17, 2014; and
 - c. Obtain regular, on-going technical assistance from experts with extensive knowledge of the DDC program, particularly with regard to issues of program administration, organizational administration and fiscal management; and quarterly calls with the AIDD staff to review progress in the implementation of the Corrective Action Plan.
7. The Federal share of the cost of all projects in a State supported by an allotment to the State under Subtitle B may not be more than 75 percent of the aggregate necessary cost of such projects, as determined by the Secretary. The remaining 25% of the aggregate necessary cost of such projects represents the non-Federal share. In the case of projects whose activities or products target individuals with developmental disabilities who live in urban or rural poverty areas, as determined by the Secretary, the Federal share of the cost of all such projects may not be more than 90 percent of the aggregate necessary cost of such projects, as determined by the Secretary. In the case of projects undertaken by the Council or Council staff to implement State plan activities, the Federal share of the cost of all such projects may be not more than 100 percent of the aggregate necessary cost of such activities.
8. The award term for Federal Financial Accountability and Transparency Act (FFATA) sub-award and executive compensation reporting requirement is located at <http://www.acf.hhs.gov/programs/aid/resource/federal-funding-accountability-and-transparency-act-ffata>.
9. All recipients must update and maintain their annual registration with the System for Award Management (SAM), and ensure that SAM registration information and DUNS information are both current. Failure to do so may negatively affect the issuance of future awards. Recipients are encouraged to require sub-awards/subcontractors to update and maintain their registrations as well. Detailed Information is located at: <http://www.sam.gov>.
10. The general provisions from The Consolidated Appropriation Act, 2012 (P.L. 112-74) enacted on December 23, 2011 remain in effect for all awards funded with FY12 or FY13 appropriations issued on or after December 23, 2011 and can be found on the HHS website: <http://www.hhs.gov/asfr/ogapa/acquisition/apm-2012-03-attachmentb.html>.

Remarks:

1. **This award is designated as high risk and must conform with the requirements as outlined in the accompanying letter.** Removal from the high risk designation can be requested within 45 days of the receipt of this award and at any time after the 45 days through the Programmatic and Fiscal contacts noted below. A decision regarding removal from the high risk designation will then be made by the Commissioner of AIDD and Chief Grants Management Officer.
2. The DDC grant award to your state has been approved for the current period of the fiscal year in the amount shown above. Award levels represent FY 2014 funding under the current Continuing Resolution (PL 113-46). The period for liquidation of the obligations is through September 30, 2016.

3. Payment under this award will be made available through the HHS Departmental Payment Management System (PMS). PMS provides instructions for making withdrawals of Federal funds. **When requesting payment from PMS, please use your P account login and reference the sub-account code "ADDDDC14" for payment.** Inquiries regarding payments should be directed to Program Support Center/Division of Payment Management (PSC/DPM), DHHS; Post Office Box 6021; Rockville, MD 20852; 1-877-614-5533; PMSSupport@psc.gov.

ACL Contact Information:

ACL Programmatic Contact

Name: Sara Newell
Telephone: (202) 690-5963
E-mail: sara.newell@acl.hhs.gov

ACL Fiscal Contact

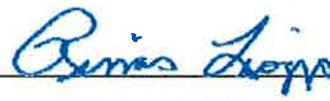
Name: Yi-Hsin Yan
Telephone: (202) 357-3436
E-mail: yi-hsin.yan@acl.hhs.gov



ACL Authorizing Official



Funds Certifying Official



ACL Grants Officer

ADMINISTRATION ON INTELLECTUAL AND DEVELOPMENTAL DISABILITIES

MONITORING AND TECHNICAL ASSISTANCE REVIEW SYSTEM REPORT

CALIFORNIA STATE COUNCIL ON DEVELOPMENTAL DISABILITIES

JANUARY 14 - 17, 2013 SITE VISIT

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EXECUTIVE SUMMARY

The Administration on Intellectual and Developmental Disabilities (AIDD) conducted a Monitoring and Technical Assistance Review System (MTARS) site visit of the California State Developmental Disabilities Council January 14 - 17, 2013. The MTARS site visit was conducted by a team of 7 comprised of AIDD staff, Administration for Community Living (ACL) Region 9 Office staff, and three peer reviewers. The MTARS site visit was conducted only on the California Developmental Disabilities Council (the Council) as a follow up to on-site monitoring visits conducted in 1994 and 2006. The purpose was to assess the extent to which the Council had corrected historic compliance issues and concerns.

This report provides a summary of current and past findings from reviews of the Council. In doing so, the report demonstrates that this Council has on-going compliance issues that have yet to be adequately addressed. The historic compliance issues primarily revolve around conflicting provisions of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (the DD Act) and the California State Lanterman Developmental Disabilities Services Act (Lanterman Act). The Lanterman Act is a California law that describes the rights and responsibilities of persons with developmental disabilities, and creates the agencies, including regional centers, responsible for planning and coordinating services and supports for persons with developmental disabilities. The Lanterman Act includes provisions and requirements for the Council, many of which are inconsistent with the requirements in the DD Act.

The 2013 MTARS identified compliance issues and concerns in the following areas:

- **Budget**
 - Council Funding of Area Boards
 - Clarity with the use of Federal vs. State Funds
 - Budget Development Process
 - Budget Execution Process
- **Hiring Authority**
 - Deputy Director Staff positions
 - Governor's Office role in Council Hiring Process
- **Membership**
 - Long-Term Unfilled Vacancies
 - Nomination Process
- **State Council Leadership and Activities**
 - State Council Control of Area Board Activities

- Overlap of P&A and Area Board Duties
- Council versus Area Board Roles & Responsibilities
- Council Accountability over Area Board Activities

These are many of the same areas and issues cited in the past by AIDD.

MTARS SITE VISIT OVERVIEW

The Administration on Intellectual and Developmental Disabilities (AIDD), Administration for Community Living (ACL) conducted an on-site monitoring visit of the California State Developmental Disabilities Council (the Council) January 14th to January 17th, 2013 as a follow-up to a 1994 Program Administrative Review (PAR) and a 2006 Monitoring and Technical Assistance Review System (MTARS) site visit. The purpose of this on-site MTARS was to assess the extent to which the Council had addressed historic compliance issues identified in the 1994 and 2006 reviews. The team members were:

- Jennifer Johnson, Director, Office of Program Support, AIDD
- Rita Stevens, Program Specialist, Office of Program Support, AIDD
- Darrick Lam, Program Specialist, Region 9 Office, ACL
- Fong Yee, Program Specialist, Region 9 Office, ACL
- Ed Holen, Peer Reviewer, Washington DD Council
- Matthew Wangeman, Peer Reviewer, Flagstaff, AZ
- Tanya Anderson, Peer Reviewer, Flagstaff, AZ

The review team conducted a series of interviews while on-site with Council members and staff. The review team also conducted a Public Forum while on-site (see Attachment C for more information about the site visit). AIDD staff conducted post-site visit interviews with Area Board Executive Directors and representatives from the California Protection and Advocacy Agency (P&A) and the State's three University Centers for Excellence in Developmental Disabilities (UCEDD) from February - April, 2013. As a result of the extensive interview process, the review team identified compliance issues which are summarized in Attachment A. These findings are consistent with past findings and identify additional compliance areas. The review team found other areas of concerns which are summarized in Attachment B: Additional Findings.

DEVELOPMENTAL DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT OVERVIEW

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402 (the DD Act) defines "developmental disabilities as a severe, chronic disability of an individual that

- (i) is attributed to a mental or physical impairment or combination of mental and physical impairments;
- (ii) is manifested before the individual attains age 22;

- (iii) is likely to continue indefinitely;
- (iv) results in substantial functional limitations in 3 or more of the following areas of major life activity:
 - (I) Self-care,
 - (II) Receptive and expressive language,
 - (III) Learning,
 - (IV) Mobility,
 - (V) Self-direction,
 - (VI) Capacity for independent living,
 - (VII) Economic self-sufficiency, and

(v) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated".

The DD Act authorizes grants for State Councils on Developmental Disabilities (DD Councils), State Protection and Advocacy Systems (P&As), and University Centers for Excellence in Developmental Disabilities Education, Research and Services (UCEDDs). These three grant programs are often known as the State Developmental Disabilities Network (The DD Network). Their purpose is to increase the independence, productivity, self-determination, and inclusion and integration of individuals with developmental disabilities into their communities.

To ensure that the missions and functions of the funded grant programs are carried out in accordance with the DD Act, AIDD uses the MTARS to monitor the activities of the Network grantees in each state and territory and provide stewardship and technical assistance. The MTARS promotes and monitors the effectiveness of the funded grantees, in addition to assessing and promoting collaborative relationships among the grantees.

LANTERMAN DEVELOPMENTAL DISABILITIES SERVICES ACT

The Lanterman Developmental Disabilities Services Act (Lanterman Act) is a California law that describes the rights and responsibilities of persons with developmental disabilities, and creates the agencies, including regional centers, responsible for planning and coordinating services and

supports for persons with developmental disabilities. The Lanterman Act outlines how the regional centers and service providers can help individuals with developmental disabilities, what services and supports they can obtain, how to use the individualized program plan to get needed services, what to do when someone violates the Lanterman Act, and how to improve the system.

The Lanterman Act states:

Because of its size and diversity, California faces unique challenges. Neighborhoods and communities lack the support necessary to monitor system functions. Thus, the Lanterman Act established local Area Boards on developmental disabilities to conduct the local advocacy, capacity building and systems change activities of the Developmental Disabilities Assistance and Bill of Rights Act of 2000. CALIF. WELF. & INST. CODE § 4543(a).

The Lanterman Act is unique in that it is a state law that both mandates certain services to individuals with developmental disabilities and governs the activities and structure of the State Council.

CALIFORNIA DEVELOPMENTAL DISABILITIES COUNCIL OVERVIEW

According to the California State Council on Developmental Disabilities (SCDD) website:

The State Council on Developmental Disabilities (SCDD) is established by state and federal law as an independent state agency to ensure that people with developmental disabilities and their families receive the services and supports they need. Consumers know best what supports and services they need to live independently and to actively participate in their communities. Through advocacy, capacity building and systemic change, SCDD works to achieve a consumer and family-based system of individualized services, supports, and other assistance. The Council's state-mandated functions are defined in California Welfare & Institutions Code (WIC) Sections 4540. The majority of the state statutes that govern services for individuals with developmental disabilities are found in WIC Sections known collectively as the Lanterman Act.

SCDD's organizational structure is comprised of a central headquarters in Sacramento with 13 regional offices (still widely referred to as Area Boards) which operate "to assist with advocacy, training, coordination, and implementation of Council goals and objectives. Outcomes are reported for inclusion in reports to the federal government and the California Legislature" (taken from <http://www.scdd.ca.gov/Default.htm>).

OVERVIEW OF CALIFORNIA DD COUNCIL COMPLIANCE ISSUES

Throughout the years AIDD has noted to the Council various inconsistencies between the Lanterman Act and the DD Act, providing recommendations to the Council to ensure compliance with the DD Act. The chart below provides an overview of the main areas of AIDD's concerns throughout the years around conflicting provisions between the Lanterman and the DD Act:

1994 Program Administrative Review	2006 MTARS	2013 MTARS
Budget		
Council Funding of Area Boards	Council Funding of Area Boards	Council Funding of Area Boards Clarity with the use of Federal vs. State Funds Budget Development Process Budget Execution Process
Hiring Authority		
Lanterman Act requires staff positions at the deputy director level Governor's Office role in Council hiring process	Lanterman Act requires staff positions at the deputy director level Governor's Office role in Council hiring process	Lanterman Act requires staff positions at the deputy director level Governor's Office role in Council hiring process
Membership		
Long-Term Unfilled Vacancies on State Council Nominations	Long-Term Unfilled Vacancies on State Council Nominations	Long-Term Unfilled Vacancies on State Council Nominations
State Council Leadership and Activities		
	State Council Control of Area Board Activities Overlap of P&A and Area Board Duties	State Council Control of Area Board Activities Overlap of P&A and Area Board Duties Council versus Area Board Roles & Responsibilities Council Accountability over Area Board Activities

The following sections summarize AIDD's historic findings¹. For a full discussion of the issues raised in the 1994 and 2006 reviews, we refer you to the specific reports that accompanied those reviews. If California does not have access to such reports, AIDD will provide them upon request.

1994

ADD PROGRAM ADMINISTRATIVE REVIEW

In January 1994, the Administration on Developmental Disabilities (ADD) issued a Program Administrative Review (PAR) report that cited review findings and provided recommendations for improvement. ADD cited three compliance areas:

Membership

- Only one of the California University Affiliated Programs (UAP) was represented on the Council;
- There were six vacancies on the Council for over a year and there had not been UAP representation since 1987 thus affecting the required membership balance;
- Persons with developmental disabilities and representatives of ethnic groups were not represented in Council membership;
- The Council was not fulfilling its advocacy role and membership at meetings was poor;
- Council by-laws needed updating; and
- The Vice-Chair chaired the Executive Committee thus diluting the authority of the Chair.

Hiring Authority

The Lanterman Act mandates the Governor appoint two staff upon the recommendation of the Executive Director; all other staff shall be appointed by the executive director with the approval of the Council. This was in direct conflict with the DD Act, which mandates that the executive director shall hire and supervise the staff of the Council. The State requirement was found to intrude into the operation of the Council and undermine the supervisory authority of the Executive Director.

Budget

The Lanterman Act directly involves itself in program direction and the allocation of Federal DD Act funds by mandating that all thirteen Area Boards and the Program Development Fund (PDF) receive Federal DD Act funds. This was found to violate Section 124(c)(1) of the DD Act by

¹ The report uses program names used during the time of the review.

removing the authority from the Council to budget and control Federal funds; in effect the Council did not prepare and approve the allocation to the Areas Boards mandated by state law.

STATE COUNCIL CORRECTIVE ACTION PLAN

The California Council responded to the PAR with a Corrective Action Plan (CAP):

Membership

- The Council appointed the Children's Hospital UAP as the only UAP voting representative. The University of California Los Angeles UAP was represented on the Council but did not have a vote.
- The Council responded that it currently had 18 members with one vacancy and assured the appointment would be made within a "short period of time."
- The Council reported new minority members including its first ever female African-American member since the PAR.
- The Council responded that it was not certain what the PAR meant by "not fulfilling its advocacy role," and assumed the finding reflected the "emerging" state of the Council at the time of the PAR. The actions the Council took to address this included conducting a planning retreat (to discuss SCDD's role, mission and vision) and developing a draft State Plan.
- The Council stated the bylaws will be "reviewed and revised as appropriate for consideration by the Council at its May 1994 meeting." The CAP did not address the Vice-chair as Chair of the Executive Committee issue.

Hiring Authority

The Council acknowledged the apparent conflict and stated the Council's hiring process minimizes conflict and conforms to the intent of the federal law. They explained their process as follows:

- Executive Director and the Governor's office discuss candidate profiles needed to accomplish the mission of the Council.
- Governor's Office and Executive Director solicit applications for candidates who met the position qualifications.
- Executive Director interviews all candidates that applied, whether they applied directly or were recommended by the Governor's Office.
- Executive Director recommends candidates to Governor's Office.
- Governor's Office interviews final candidates and select them for appointment.

The CAP further explained how the collaborative hiring process between the Executive Director and governor's Office resulted in the Council's obtainment of four highly qualified competent staff. The Council submitted an updated organizational chart and stated:

There is no question about the reporting relationships among the staff. The two Deputy Directors, both “exempt” appointees, report to the Executive Director. The other two exempt appointees report to their respective Deputies, as does the staff who is in civil service classifications. Everyone of the staff and in the Council understands these relationships. It is clear that the Executive Director is in charge, and that she supervises the Deputies and oversees the entire operation of the staff.

Budget Issues

The Council highlighted four points in their response to this area:

- While the Lanterman Act implies the Council will fund the Area Boards, it does not constrain the Council regarding the amount of funds that are to be allocated to the Area Boards.
- The Council does not feel restricted by having to fund Area Boards, and has chosen to fully fund these agencies. In a state the size of California, it would be very difficult for the Council to carry out its functions without the assistance of the Area Boards.
- The Lanterman Act states the Council may request the Area Boards to assist the Council in carrying out any of its functions. The Council does, indeed, ask the Area Boards to assist with the State Plan, information dissemination, identifying needs, and selecting appropriate innovative programs to fund under PDF.
- Because Area Board funding comes from the Council’s Basic State Grant, the Council is responsible for reviewing and approving annual requests for funding from Area Boards. Section 4605 of the Lanterman Act authorizes the Council to review the Area Boards’ annual reports. The Council reviews the Area Boards’ annual performance reports and approves any changes to the Area Boards’ objectives.

2001

ADD GUIDANCE

In 2001, as a result of continued concern, ADD advised California that the Council was out of compliance with the DD Act because its state statute required that Federal funding be directed to the Area Boards. In a November 21, 2001 letter from Grantland Johnson, State Secretary of Health and Human Services, to ADD Commissioner Morrissey, California provided ADD an assurance that “by August 1, 2002, California will comply with Section 124(c)(L)(5) of the [DD] Act, known as the non-interference clause.”

In January 2003, the California legislature passed SB 1630 to address budget compliance issues citing from the 1994 PAR. This resulted in the merging of the Council and Area Boards to be legally

defined as one federal program. Area Board staff were re-classified as regional office staff to be managed by the State Council Executive Director.

The State of California Attorney General submitted an opinion as a result of the reorganization and concluded:

As a result of the enactment of SB 1630, the legal status of the Area Boards has changed to that of program under the purview of the State Council. Further, all support staff, including those who are designated to assist the various local Area Boards, are now employees of the State Council, and as such, are ultimately answerable to State Council management. As the State Council organizational chart illustrates, support staff assigned to assist the Area Boards are now located at 13 regional offices, each of which corresponds to the 13 Area Boards; each regional office is managed by a regional office manager, who reports directly to the State Council's Deputy Director for Area Board Operations, who in turn reports to the Chief Deputy Director and the Executive Director of the State Council. Although each regional manager also serves as the executive director of the corresponding Area Board, each regional manager is under the managerial and supervisory control of the State Council" (taken from *Opinion California Attorney General May 8*).

2006 - 2007

ADD 2006 MONITORING AND TECHNICAL ASSISTANCE REVIEW SYSTEM (MTARS) SITE VISIT

In May 2006 ADD conducted an MTARS site visit to follow up on compliance issues from the 1994 PAR and to assess the changes made in 2001. The compliance issues cited were:

Membership

- The Governor Office's complicated the appointment process by contributing to long periods of unfilled vacancies and persons serving expired terms for indefinite periods. ADD was concerned the extended vacancies and delay in reappointing members or appointing successors may have been impeding the State Council's ability to implement the State Plan or to carry out its statutory functions, in possible contravention of sections 124(c)(5)(L) and 125(a), requiring the state to have a functioning State Council in order to receive federal funding. ADD was also concerned because it was revealed during interview that the only person with access to the Governor's appointments office was an SCDD staff person, who had been appointed by the Governor. This would violate assurances provided to ADD under 125(b)(1)(B) that the Governor solicit recommendations from a broad range of organizations representing those with developmental disabilities, including the non-state

members on the Council. Such restrictions on access to the governor's appointments office were found to raise issues of interference by the Governor's office in the State Council's function, in contravention of Section 124(c)(5)(L) of the DD Act.

- Per section 125(b)(1)(B) of the DD Act, SCDD membership appointment responsibility lies with the Governor after soliciting "recommendations from organizations representing a broad range of individuals with developmental disabilities." During the 2006 review, it was found that two provisions of the Lanterman Act appeared to conflict with this section of the DD Act:
 - The Lanterman Act directs the Governor to appoint six "at-large" members to the Council, one of whom is to be "a parent, sibling, guardian, or conservator of a person with a developmental disability living in the community, nominated by the Speaker of the Assembly."
 - Another of the at-large members is to be "a person with developmental disabilities nominated by the Senate Committee on Rules."

ADD asked that it be provided with more information about how the Governor was implementing these provisions.

Budget

ADD remained concerned the Lanterman Act, as well as the 2005-2006 budget, appeared to require SCDD to provide annual funding to Area Boards, which would violate sections 125(c)(8) and 124(c)(5)(L) of the DD Act. The 2006 MTARS cited this as follows:

Section 125 of the DD Act requires State Councils to "prepare, approve, and implement a budget [...] to fund and implement all programs, projects, and activities carried out under this subtitle[.]" In addition, Section 124(c)(5)(L) requires that the State Plan include assurances that the designated state agency (DSA) and other agencies, offices, or entities within the state will not interfere with the activities of the State Council, including its budget responsibilities.

The fact that the Lanterman Act had not been amended to remove the conflicting provision substantiated that California's 2001 strategy was not fully implemented or effective.

ADD required SCDD submit a corrective action plan describing how it would come into compliance. This was an issue also cited in 1994.

Hiring Authority

The 2006 MTARS report referenced Section 4551 of Lanterman Act which states:

The Governor, upon recommendation of the State Council following consultation with the Area Boards, shall appoint a deputy director for Area Board operations. The

Governor, upon recommendation of the executive director of the State Council, shall appoint not more than two deputy directors." In addition it states; "all other State Council employees that the State Council may require shall be appointed by the executive director, with the approval of the State Council.

These provisions posed four areas of conflict with Section 125(c)(9) of the DD Act which states 1): "The Council recruits and hires Director of Council and supervises and annually evaluates Director and 2): the Director hires, supervises and annually evaluates staff." These four areas were:

- The Governor's final authority to hire two deputy level staff when it should be the Council Director
- Council Director submits hiring recommendations to the Governor when the Director should have full autonomy to hire of Council staff
- Council approval of other staff hiring when it should be the Council Director
- Council Director (not the Governor) should hire staff, supervise and annually evaluate them

These issues were cited in 1994.

Possible Overlap of P&A and Area Board Activities

Under the Lanterman Act, Area Boards are authorized to: 1) "pursue legal, administrative, and other appropriate remedies to ensure the protection of legal, civil, and service rights of persons who require services who are receiving services in this area." 2) "review policies and practices of publicly funded agencies that serve persons with developmental disabilities and issue findings if they determine that agencies are not meeting their legal obligations to persons with developmental disabilities."; and 3) "help other agencies, organizations, or persons to pursue litigation...". Such language essentially mirrors language in the DD Act authorizing such activities for Protection & Advocacy Agencies.

The 2006 MTARS report stated:

After the MTARS visit, the Council team sought further clarification from the Executive Director of the State Council. The Executive Director, after consulting with the California Protection & Advocacy Agency Director, informed ADD that the Area Boards are not currently engaging in the same types of litigation activities as the P&A. Based on this information, there does not appear to be any current operational conflict between the Area Boards and the P&A activities. However, in order to ensure that the grantees remain in compliance, ADD would like the Council to provide, on an ongoing basis, information in its State Plan amendments assuring that there continues to be no conflict in this area.

State Council Control of Area Board Activities

The 2006 MTARS report noted apparent inconsistencies between the Lanterman Act and DD Act that raised the question whether or not the State Council had control over how the Area Boards carried out their responsibilities under the State Plan:

Section 4562(a) requires the State Council to include the Area Boards in the development and implementation of the State Plan. However, Section 4548 states: "it is the intent of the Legislature that Area Boards shall maintain local discretion in conducting their advocacy activities. The State Council shall not direct the advocacy activities of the Area Boards, except when specifically authorized by law, or when necessary to ensure compliance with federal requirements." The Lanterman Act charges the Area Boards with conducting "life quality assessments." While the Council is expected to enter into an agreement on behalf of the Area Boards to conduct the life quality assessments, "the State Council shall not direct the Area Boards in their conduct of these assessments or in the content or format of the annual reports submitted to the Council by the Area Boards." See id. § 4570(b). These provisions appear to conflict with Sections 124(c)(5)(L) (pertaining to noninterference by entities within the state) and 125(c)(5) (authorizing activities that Councils may engage in) of the DD Act.

ADD requested further evidence of how Section 4548 was implemented and cited it as a potential compliance area.

STATE COUNCIL 2007 RESPONSE

In 2007, the Council submitted its response to the 2006 MTARS report. The Council's response acknowledged conflicting provisions between the Lanterman and DD Act. It stated an Ad Hoc committee comprised of Council members and staff, the governor's office and state legislature would be established to conduct a comprehensive review of historic issues and develop strategies to resolve them.

Membership

The Council stated that it would establish a membership committee. They would amend the bylaws so that membership reflects diversity across the state. This will address long-term unfilled vacancies by developing a plan to fill remaining appointments. The Council did not speak to providing citizen members access to the governor's office to submit membership recommendations.

Budget

The Council responded it was aware the Lanterman Act may appear unclear regarding the funding structure. The Council stated it does not provide funding to the Area Boards but rather the local offices. The local offices operate to implement the State Council's five year plan. It reiterated the reorganization from the 2003 merger and conveyed the separate role of the Area Boards which is to provide assistance to the appropriate local office in the form of input regarding local, unmet needs.

Hiring Authority

The Council reported "no staffing issues with the conflict" but agreed to address the compliance issues through the Ad Hoc committee

State Council Control of Area Board Activities

The Council reiterated the Area Boards function under the 2001 merger as its regional offices. It referenced the Area Boards as vital to State Plan development and execution at the local level given the state's unique size, diverse population, and service system complexity.

Regarding the life quality assessment (LQA) program, the Council responded it's pursuant to an interagency agreement (IAA) with Developmental Disability Services. Administration, performance, and reporting on the LQA program are dependent on the IAA and the unique characteristics and needs of the local areas.

During the 2013 MTARS, the Council did not provide any evidence that the actions described above by the Council in its 2007 response were fully executed or acted upon to address the historical compliance issues.

2013

AIDD conducted a third on-site monitoring visit in January, 2013. The purpose of this MTARS was to follow-up on the site visits conducted in 1994 and 2006 and to assess the extent to which the Council had addressed the historic compliance issues.

The review team found that the Lanterman Act continues to pose challenges for the Council in meeting the requirements of the DD Act. Therefore, the Council is out of compliance with several requirements in the DD Act. AIDD continues to have significant concerns and questions about the Council's autonomy from state interference and it's federally mandated role as the leader in the state and primary driver of state wide systems change, advocacy, and capacity building.

The areas cited in 2013 remain consistent with areas cited in 1994 and 2006. Attachment A summarizes the compliance issues found during the 2013 on-site visit. The information is

organized by the MTARS checklist and provides details on current findings. Attachment B lists other findings that are not compliance issues, but are key areas of concern that appear to negatively impact or inhibit the Council’s ability to operate effectively.

The table below identifies where historic issues can be cross referenced with the findings summarized in Attachment A.

Issues Cited 1994 and 2006	Issues Cited 2013 (Found in Attachment A)
Budget	
<ul style="list-style-type: none"> • Council Funding of Area Boards • Clarity with the use of Federal vs. State Funds • Budget Development & Implementation Process 	Section IV: Program Administration Section V: Evaluation and Reports Section VI: Fiscal Section VII: Designated State Agency
Hiring Authority	
<ul style="list-style-type: none"> • Deputy Director Staff positions • Governor’s Office role in Council Hiring Process 	Section II: Organizational Administration
Membership	
<ul style="list-style-type: none"> • Long-Term Unfilled Vacancies • Nomination Process 	Section III: Membership
State Council Leadership and Activities	
<ul style="list-style-type: none"> • State Council Control of Area Board Activities • Possible Overlap of P&A and Area Board Duties • Council versus Area Board Roles & Responsibilities • Council Accountability over Area Board Activities 	Section IV: Program Administration Section V: Evaluation and Reports

ATTACHMENT A – 2013 MTARS COMPLIANCE FINDINGS

II. ORGANIZATIONAL ADMINISTRATION	
II.1 Staff	2013 MTARS Finding
The Director shall hire, supervise, and annually evaluate the staff of the Council. Sec. 125(c)(9)	The Council Director (not the Governor) should hire Council staff and supervise and annually evaluate them. Instead the: <ul style="list-style-type: none"> • Council Director submits hiring recommendations to the Governor and the Governor has the final authority to hire two deputy level staff. • The Council has the final approval for the hiring of other staff.
III. MEMBERSHIP	
III.1 Membership policies	2013 MTARS Finding
Membership recommendations solicited by Governor from a broad range of organizational sources including non-state agency members of the Council. Sec125(b)(1)(B)	The Council's membership nomination and appointment process has been historically inhibited by state bureaucracy. It is unclear if and how membership recommendations are solicited from a broad range of DD/ID organizational sources and non-state agency members of the Council.
Members reflect the state's diverse geographic locations, race, and ethnicity. Sec.125(b)(1)(C)	The appointment process for obtaining new Council members has hindered compliance with the DD Act. Currently, SCDD's membership composition does not meet the requirements for geographic, racial, and ethnic diversity.
The Council has provisions to rotate membership. Sec.125(b)(2)	Each regional office (i.e. Area Board) representative has to be nominated by the governor. Membership rotation has been historically inhibited by the state's bureaucratic appointment process. For example, one regional office has not had representation on the Council for two years.
The Council has provisions that allow continuation of membership until a new member is appointed. Sec.125(b)(2)	The Council did not provide evidence of a policy for allowing the continuation of Council membership until a replacement member could be appointed.
The Council has a process to notify Governor	The Council did not provide evidence of a transparent and

re: membership and vacancies. Sec. 125(b)(2)	effective process to notify Governor regarding membership vacancies.
III.2 Membership requirements	2013 MTARS Finding
<p>60% of membership represent individuals with DD in the following categories: Sec.125(b)(3); Sec.125(b)(5)</p> <ul style="list-style-type: none"> • 1/3 individuals with DD • 1/3 parents and guardians of children with developmental disabilities or immediate relatives of guardians of adults with developmental disabilities • 1/3 combination <ul style="list-style-type: none"> ➤ at least one is immediate relative or guardian of an individual with developmental disabilities who resides or previously resided in an institution or an individual with developmental disabilities who currently/previously resided in an institution in the State. Sec.125(b)(6) 	<p>Historically the Council has had long term vacancies. Several membership rosters have been submitted since last year and four membership vacancies were filled just prior to the on-site monitoring visit. An updated membership roster is requested as part of the FY14 State Plan Amendment to AIDD to ensure compliance.</p>
IV. PROGRAM ADMINISTRATION	
IV.1. Five Year State Plan	2013 MTARS Finding
<p>The plan shall focus on Council efforts to bring about the purpose of this subtitle, by specifying 5-year goals, as developed through data driven strategic planning, for advocacy, capacity building, and systemic change related to the areas of emphasis, to be undertaken by the Council. Sec.124(c)(4)(A)</p>	<p>There was inadequate evidence that the:</p> <ul style="list-style-type: none"> • Council engages in data-driven strategic planning to develop the State Plan and takes the primary role in the planning process. • State Plan is the Council's Plan and that activities are undertaken by the Council versus the State Plan being one that is configured by and for the Area Boards. • Council is free from state interference in the development of the State Plan. The state's DD agency awarded the Council two contracts: (1) Client Rights Advocacy and (2) Volunteer Advocacy Services. This state supported work is documented in the Goal 2 in the Council's State Plan which states: "local offices provide

	<p>assistance that include systems navigation, technical assistance, attendance to Individualized Education Plan meetings and assistance with due process". The review team heard more about these two projects during interviews and public forum testimony than any other Council supported activity. While AIDD does not question the merit of the projects and the quality of the work being done by Council staff, it raises serious questions about whether the state is directing the Council's State Plan or whether the Council is developing the State Plan.</p>
<p>Plan must include assurances related to:</p> <ul style="list-style-type: none"> ➤ (B) USE OF FUNDS - <i>At the request of any State, a portion of such funds provided to such State under this subtitle for any fiscal year shall be available to pay up to 1 /2 (or the entire amount if the Council is the designated State agency) of the expenditures found to be necessary by the Secretary for the proper and efficient exercise of the functions of the designated State agency, except that not more than 5 percent of such funds provided to such State for any fiscal year, or \$50,000, whichever is less, shall be made available for total expenditures for such purpose by the designated State agency</i> ➤ (C) STATE FINANCIAL PARTICIPATION.—<i>The plan shall provide assurances that there will be reasonable State financial participation in the cost of carrying out the plan.</i> ➤ (D) CONFLICT OF INTEREST.—<i>The plan shall provide an assurance that no member of such Council will cast a vote on any matter that would provide direct financial benefit to the member or otherwise give the appearance of a conflict of interest.</i> ➤ (K) STAFF ASSIGNMENTS.—<i>The plan shall provide assurances that the staff and other personnel of the Council, while working for the Council, will be</i> 	<p>The Council did not provide adequate evidence that the plan is supported by the assurances in Section 125(c)(5)(B - D) and (K - L).</p> <p>Regarding (B) <i>Use of Funds</i>, the review team could not draw any conclusions about the Council based on the information provided about the expenditures for the DSA. It was stated during interviews that:</p> <ul style="list-style-type: none"> • The DSA charges the Council an indirect rate for the services it provides. • The rate stated by Council staff was in excess of the 5% or \$50,000 limit. • Staff did not know the DSA's indirect policy and no written policy was provided. • The Council is required to pay the indirect rate. The Council staff stated it does so from two contracts the state awards to the Council. <p>In regards to (C) <i>State Financial Participation</i>, when the review team inquired about how the state provides match, there were comments about state contract funds being factored in but there was a tremendous lack of clarity on this matter.</p> <p>In regards to (D) <i>Conflict of Interest</i>, the majority of the Council is comprised of non-agency representatives who are Area Board representatives. There are 13 Areas Board representatives on the Council and 7 "at large" members.</p>

<p><i>responsible solely for assisting the Council in carrying out the duties of the Council under this subtitle and will not be assigned duties by the designated State agency, or any other agency, office, or entity of the State.</i></p> <p>➤ (L) NONINTERFERENCE.—<i>The plan shall provide assurances that the designated State agency, and any other agency, office, or entity of the State, will not interfere with the advocacy, capacity building, and systemic change activities, budget, personnel, State Plan development, or plan implementation of the Council, except that the designated State agency shall have the authority necessary to carry out the responsibilities described in section 125(d)(3).</i></p> <p>Sec.124(c)(5)</p>	<p>The Area Board representatives sit on the State Council and on the Advisory Committee to the Area Boards. This dual role presents a conflict of interest and gives the appearance of a conflict of interest. The Council does not have a policy or procedure to address this.</p> <p>In regards to (K) <i>Staff Assignments</i>, it appears that Council staff is carrying out work directed by the state and not necessarily the Council through the state funded Client Rights Advocacy and Volunteer Advocacy Services projects. Through these contracts, Council staff conducts assessments and monitoring in the State’s developmental centers. Providing direct services is outside the purview of the Council’s responsibilities. Furthermore, this work is in support of the two state contracts and therefore directs the work carried out by Council staff located in the regional office. Since it is work created by and for the state, it raises questions as to whether the Council staff is assisting the Council or the state.</p> <p>In regards to (L) <i>Noninterference</i>, it is very difficult to conclude whether the Council is free of interference:</p> <ul style="list-style-type: none"> • To avoid duplication, issues related to interference with the budget process are described under <i>VI.1 Fiscal Requirements</i> • To avoid duplication, issues related to interference with personnel are described under <i>II.1 Staff</i> • To avoid duplication, issues related to interference with State Plan development are described in the Section above <i>IV.1. Five Year State Plan</i>.
<p>IV.2 State Plan Implementation</p>	<p>2013 MTARS Finding</p>
<p>The Council shall implement the State Plan by conducting and supporting advocacy, capacity building, and systemic change activities Sec.125(c)(5)</p>	<p>The Council’s 5-year plan implementation does not promote advocacy, capacity building, and systemic change at the <u>state level</u>. As discussed above, the review team heard more about the two state funded projects implemented by the Area Boards. Since so much attention</p>

	<p>was paid to the two state funded projects, the review team did not hear about a coherent set of activities implemented by the Council at the <u>state level</u>.</p> <p>The Council is providing direct services through the two state contracts. This type of activity is outside the purview of the Council's responsibilities and appears to overlap with P&A functions.</p>
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V. EVALUATION AND REPORTS

Program Performance Report	2013 MTARS Finding
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<p>The Council annually prepares and transmits to the Secretary a report containing information about the progress made in achieving the goals. The report includes:</p> <ul style="list-style-type: none"> • Extent to which each goal of Council was achieved. Sec.125(c)(7)(A) • Description of strategies that contributed to achieving goals. Sec.125(c)(7)(B) • Extent to which each goal was not achieved, describes factors that impeded goal achievement. Sec.125(c)(7)(C) • Separate information on self-advocacy goal. Sec.125(c)(7)(D) 	<p>Overall the Council's Program Performance Report does not specifically describe how each Area Board is contributing to State Plan implementation. Because there are 13 regional offices implementing different parts of the Council State Plan, it is difficult to determine how State Plan achievement is being measured and evaluated.</p> <p>Some Area Boards referenced using "mini-plans" to document which parts of the Council State Plan they were implementing. Other Area Boards did not provide evidence of having "mini-plans". Without consistent use of Area Board "mini-plans" or some other tool it is unclear how the Council can assess progress made in achieving goals.</p>
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<p>An accounting of the manner in which funds paid to the State for a fiscal year were expended. Sec.125(c)(7)(G)</p>	<p>The Council presented several documents that detailed different aspects of how the federal allotment is being spent, but overall the review team could not determine how the budget is developed and executed and how expenditure data is calculated.</p>
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VI. FISCAL

VI.1 Fiscal Requirements	2013 MTARS Finding
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<p>Council has authority to prepare, approve, and implement a budget to fund programs, projects, and activities. Sec125(c)(8)</p>	<p>The Council did not provide adequate evidence on how it developed or implemented its budget to fund programs,</p>
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	<p>projects, and activities. Council members expressed a strong need for more fiscal transparency and training on state versus federal fiscal policy and the Council’s budget development/implementation process.</p> <p>In addition, the Lanterman continues to include language that is inconsistent with the DD Act, posing challenges for the Council to be in compliance with the federal law:</p> <ul style="list-style-type: none"> • The Lanterman Act requires the Council to provide funding to Area Boards. • The Lanterman Act provisions require the Council to hire staff at the deputy director level thereby interjecting a line item in the Council’s budget and limiting its authority to develop a budget.
<p>VI.2 Fiscal Policies</p>	<p>2013 MTARS Finding</p>
<p>Council has policies to carry out appropriate subcontracting activities. Sec.125(c)(8)(A)</p> <p>Council directs expenditures of funds for grants, contracts, interagency agreements that are binding contracts and other activities authorized by State Plan approval. Sec.125(c)(8)(C)</p> <p>Grantee shall keep records that disclose:</p> <ul style="list-style-type: none"> • Amount and disposition of assistance by recipient • Total cost of project or undertaking in connection with assistance given • Amount of project costs supplied by other sources • Such other records that will facilitate an effective audit <p>Sec.103</p>	<p>The Council did not provide adequate evidence of that is has accurate financial accounting and record keeping:</p> <ul style="list-style-type: none"> • At the time of the on-site visit, the Administrative Services Manager position was vacant and the Council did not have a staff person dedicated to managing the Council’s finances. • The Council could only provide limited information on the Council’s fiscal policies during the on-site visit pertinent to the requirements in the DD Act. • The Council experienced fiscal impropriety under the previous Executive Director (Board Resource contract) • The state auditor’s findings substantiate the immediate need for financial management systems. (Reference: <i>California Department of Finance Management Letter dated August 17, 2012</i>)

VII. DESIGNATED STATE AGENCY	
<i>VII.2 Responsibilities of DSA</i>	<i>2013 MTARS Finding</i>
<ul style="list-style-type: none"> • Receives, accounts for, and disburses funds under subtitle based on State Plan. Sec125(d)(3)(C)(i) • Provides the appropriate fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of, and accounting for, funds paid to the state. Sec125(d)(3)(C)(ii) • Keeps and provides access to records as Secretary and Council may determine necessary and timely financial reports regarding status of expenditures, obligations, and liquidation by agency or Council, and use of Federal and non-Federal shares. Sec125(d)(3)(D) • Provides required non-Federal share. Sec125(d)(3)(E) • Assists in obtaining appropriate State Plan assurances and consistency with state law. Sec125(d)(3)(F) • Enters into MOU at request of Council. Sec125(d)(3)(G) 	<p>As mentioned above the Council's recent experience with fiscal impropriety under the previous Executive Director (Board Resource contract) and the state auditor's findings substantiates the DSA's need to establish processes, policies, and procedures that promote:</p> <ul style="list-style-type: none"> • Accurate receipt, accounting, and disbursement of funds • Provision of appropriate fiscal control and fund accounting procedures necessary to assure proper disbursement of, and accounting for, funds paid • Access to records as the Secretary and Council may determine necessary • Timely development and dissemination of financial reports regarding status of expenditures, obligations, and liquidation by agency or Council, and use of Federal and non-Federal shares <p>The Council does not have a Memorandum of Understanding with the DSA.</p> <p>There was no evidence that the Council has conducted a formal evaluation of the DSA at any point and time.</p> <p>Several Council staff position and DSA functions appear duplicative. Several DSA functions are performed by Council staff at the central office, specifically in the areas of: contracting, budget, fiscal, and personnel.</p>

ATTACHMENT B – ADDITIONAL FINDINGS

I. Collaboration

- a. Partnership efforts are evident however there are no plans for collaboration between the Council, the three UCEDDs, and the P&A.

II. Organizational Administration

- a. The Council staffing has not been stable in recent years. The Council terminated its two most recent Executive Directors. The Interim Director was formerly Executive Director of Area Board 10. The Lanterman Act requires five staff positions to be appointed by the Governor. This includes three Deputy Directors and two other staff positions. All of these positions are vacant except one. The fiscal staff person was on leave during the time of the on-site visit (due to the Board Source incident). The Council hired a part-time person who was unavailable to interview on-site. The lack of management level staff is problematic given the Council's unique organizational structure that relies heavily on local implementation through the Area Boards.
- b. The Council staff is experiencing organizational challenges due to a perceived lack of communication and low morale as expressed by staff that has resulted from:
 - i. The last Executive Director's tenure
 - ii. The recent Board Resource contracting incident
 - iii. A sense of retaliation against those staff who raised questions when it appeared that state rules and regulations were not being followed.
- c. Staff expressed a great need for training to better understand that the DD Act and the DD Council's federal mandate to conduct and support advocacy, capacity building, and systemic change at the state wide level.

III. Membership

- a. Area Boards should not have representatives as members on the Council. Instead, representatives from the Area Boards should attend Council meetings, provide regular reports to the Council, and receive guidance and direction from the Council. This will help to reinforce the Council's role at the state level and put greater emphasis on the leadership role of the Council rather than having its authority broadly and variously distributed across the Area Boards.
- b. The Council does not have a standard orientation or mentoring process for the Chair or new members. Council members expressed the need for training on the DD Act, the Council program federal mandate, and organization governance.
- c. State agency representatives lack understanding of their role at Council meetings. While representatives attend full Council meetings, they do not actively engage with the committees.

- d. The review team observed lack of supports for some of the self-advocate members of the Council. We could not determine if the events were isolated or an overall issue. Nevertheless, the team recommends that this area be reviewed to ensure self-advocate members are appropriately supported during meetings.

IV. Program Administration

- a. The Council did not give the impression that it operates as a cohesive entity with a State Plan that drives systems change, capacity building, and advocacy at the state level. To this end, there was limited to no evidence demonstrating that the Council is a leader in the state on issues effecting people with developmental disabilities and their families.
- b. The Council is still experiencing organizational challenges from the 2003 merger. The Area Boards seemed fairly evenly divided into two factions – those who want to maintain local control as they had prior to the 2003 merger versus those who strive for more cohesion across the 13 Area Boards and seek guidance and leadership from the State Council. Nevertheless, the Council is operating as loosely associated local offices (i.e. Area Boards) rather than a cohesive entity. This is a significant contributing factor to the Council's lack of leadership at the State level. If the local Area Boards are maintained, the Council should operate as the governing body by establishing standardized policies and procedures for State Plan implementation across all 13 local offices.
- c. The Council needs to develop standardized tools to orient new members and staff. Currently there are no policy manuals, trainings, or orientations for staff and members to learn about and stay informed on Council program administrative requirements.
- d. A new statewide self-advocacy network was recently formed, but there was little discussion about it or its implications for Council partnership or engagement. The review team heard a lot of discussion and public comments from the parent/family member perspective. This draws into question whether the Council fully promotes Self Advocacy in practice and in State Plan implementation.

V. Evaluation & Reports

- a. Each local office reported different experiences with using and receiving training on DD suite.
- b. There was inconsistency with what types of data was being collected.

VII. Designated State Agency

- a. The DSA plays a vital role supporting the development and implementation of the Council's budget. We highly recommend the Council and DSA enter into a Memorandum of Understanding in support of the Council.

ATTACHMENT C- CA DDC MTARS VISIT OVERVIEW

<p>Purpose: To conduct a on-site monitoring visit as a follow up to the 1994 Program Administrative Review and 2006 MTARS to assess the extent to which the California State Developmental Disabilities Council addressed compliance issues and concerns.</p> <p>Key Question: Has the Council made progress toward addressing/resolving compliance issues cited in 1994 and 2006?</p>	<p>MTARS Team Members:</p> <ul style="list-style-type: none"> • AIDD Deputy Commissioner, Jamie Kendall • AIDD DDC Project Officer, Rita Stevens • AIDD Director, Jennifer Johnson • Peer Reviewer, ED Holen • Peer Reviewer, Matthew Wangeman • Peer Reviewer, Tanya Anderson • ACL Region 9 Fiscal Staff, Darrick Lam • ACL Region 9 Fiscal Staff, Fong Yee
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Historic Compliance Issues Overview		
1994 Program Administrative Review	2006 MTARS & OGC Review	2012 AIDD Concerns
<ul style="list-style-type: none"> • Budget: Council Funding of Area Boards • Hiring Authority • State Council Control of Area Board Activities • Long-Term Unfilled Vacancies on State Council • Members Nominated by the Legislature • Possible Overlap of P&A and Area Board Duties 	<ul style="list-style-type: none"> • Budget: Council Funding of Area Boards • Hiring Authority • State Council Control of Area Board Activities • Long-Term Unfilled Vacancies on State Council • Members Nominated by the Legislature • Possible Overlap of P&A and Area Board Duties 	<ul style="list-style-type: none"> • Budget: How does the Lanterman Act affect the Council's budget and execution process? How are allotment funds being spent? • Hiring Authority: Does the Lanterman Act still require staff positions at the deputy director level? What is the Governor's Office role in Council hiring process? • Membership Nominations/Appointments: What is the appointment process and is it consistent with the DD Act? What is the role of the area board members and is it consistent with the DD Act? • What is the organizational structure and decision making process as it relates to program administration, and state plan implementation (procurement/grant making)? • Roles & Responsibilities between the Council and Area Boards; State Council Control of Area Board Activities • Possible Overlap of P&A and Area Board Duties

Site Visit Schedule			
Monday	Tuesday	Wednesday	Thursday
Organization Review Day	Programmatic Review Day	Council Meeting Day	Fiscal Review Day
<p>Meetings with staff and DSA contacts to address:</p> <ul style="list-style-type: none"> • How the Council staff structured and what are their roles and responsibilities? • What is the role of the Area Board staff and is it consistent with the DD Act? • Hiring Authority: 4 Key areas of conflict between Lanterman and DD Act • Discuss current staff issues – (i.e. allegations, climate) 	<p>Meetings with Executive Committee and other members to address:</p> <ul style="list-style-type: none"> • What is the Council’s membership structure and decision making process as it relates to program administration (i.e. state plan development and implementation) • Is the Council currently in compliance with membership? • Membership Nominations/Appointments: What is the appointment process and is it consistent with the DD Act? • What are the roles of the Area Boards and their representatives on the Council? Is it consistent with the DD Act? 	<p>Full Council Meeting – All day</p>	<p>Meetings with Executive and RFP committees to address:</p> <ul style="list-style-type: none"> • Budget: How does the Lanterman Act effect how the Council develops, executes, and manages its budget? • What are current budget development, execution, and management processes? • How are allotment funds being spent? • What is the procurement & grant making process? • How are Council members involved?

State Council on Developmental Disabilities



BY-LAWS

REVISED ON: April 9, 2013
CERTIFIED BY SCDD ON: May 15, 2013

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CALIFORNIA STATE COUNCIL ON DEVELOPMENTAL DISABILITIES

BY-LAWS

ARTICLE I. NAME & DEFINITIONS

The name of this organization shall be the State Council on Developmental Disabilities.

ARTICLE II. RESPONSIBILITIES

The responsibilities of the State Council on Developmental Disabilities are set forth in 42 United States Code Section 51001 et. seq. and Sections 4433.5 and 4520 et. seq. of the California Welfare and Institutions Code.

ARTICLE III. PRINCIPAL OFFICE

The principal office of the Council shall be located in the County of Sacramento, California. The Council may change the principal office from one location to another within the county.

ARTICLE IV. AREA OF SERVICE

The area of service shall be the State of California.

ARTICLE V. MEMBERSHIP

Appointment to the Council requires each member to fully discharge his/her duties consistent with the responsibilities of representing persons with developmental disabilities. The membership of the Council shall consist of the categories of people in accordance with state and federal law.

SECTION 1. Appointments:

Pursuant to Division 4.5, Chapter 2, Article 1, Section 4521 (b)(1), (2), and (3) of the Welfare and Institutions Code, there shall be thirty-one (31) voting members on the Council appointed by the Governor, as follows:

- (a) Twenty (20) members of the Council shall be persons with a developmental disability (self-advocates) or parents, siblings, guardians or conservators (family-advocate) of these persons. In these By-laws these persons are referred to as self-advocates and family-advocates. Of the 20 members, thirteen (13) shall each be current members of the 13 Area Boards, one member from each board and representing consumers and families in their local catchment area; and, seven (7) shall be members at large that are comprised as follow: three (3) persons with developmental disabilities; one (1) person who is a parent, immediate relative, guardian, or conservator of a resident in a developmental center; one (1) person who is a parent, immediate relative, guardian, or conservator of a person with a developmental disability living in the community; one (1) person who is a parent, immediate relative, guardian, or conservator of a person with a developmental disability living in the community nominated by the Speaker of the Assembly; and, one (1) person with a developmental disabilities nominated by the Senate

Committee on Rules.

- (b) Eleven (11) members of the Council shall include: directors or members, as appropriate, of State departments or agencies or of local agencies as prescribed in state and federal laws. These persons are referred to as agency representatives in these By-laws and shall include three (3) members appointed to represent the University Centers for Excellence (UCE) programs funded by the Administration on Developmental Disabilities as the three California UCEs.
- (c) Prior to appointing the thirty-one (31) members, the Governor shall request and consider recommendations from organizations representing or providing services, or both, to persons with developmental disabilities and shall take into account socioeconomic, ethnic, and geographic considerations of the state. The Council may, at the request of the Governor, coordinate Council and public input to the extent feasible to the Governor regarding recommendations for membership.

SECTION 2. Term of Office:

The term of office on the State Council shall be in accordance with state law. The term of each self or family advocate member shall be for three years. In no event shall any self or family advocate member serve for more than a total of six years.

SECTION 3. Conflict of Interest:

Pursuant to California Welfare and Institution Code Section 4525 the Council's approved Conflict of Interest Policy, is incorporated by reference into these By-laws.

SECTION 4. Vacancies:

A vacancy on the Council exists if any of the following events occur before the expiration of the term:

- (a) The death of the member.
- (b) An adjudication pursuant to a legal proceeding declaring that the member is physically or mentally incapacitated due to disease, illness, accident, or other condition and there is reasonable cause to believe that the member will not be able to perform the duties of office for the remainder of his/her term.
- (c) The member's resignation.
- (d) The member's removal from office.
- (e) The member's ceasing to be a legal resident of the state or the area the member was appointed to represent.
- (f) The member's absence from the state without the permission required by law beyond the period allowed by law.
- (g) The member's ceasing to discharge the duties of his/her office for the period of three consecutive meetings, except when prevented by sickness, or when absent from the state with the permission required by law. After three (3) consecutive unexcused absences, a member shall be considered as having ceased to

discharge the duties of Council membership. An unexcused absence is an absence of a member when previous notice of absence has not been given to the Council Chair or Committee Chair and to the Executive Director by telephone, email, or mail.

- (h) The member's conviction of a felony or any offense involving a violation of his/her official duties. A member shall be deemed to have been convicted under this section when trial court judgment is entered.
- (i) The member's refusal or neglect to file his/her required oath, or declaration of conflict of interests within the time prescribed after being provided notice of non-compliance and a reasonable time to comply.
- (j) The decision of a competent tribunal declaring void the member's election or appointment.
- (k) The making of a vacating order or declaration of vacancy.
- (l) The member assumes a position or responsibility that violates the Council's conflict of interest policy.

The Governor shall be notified when a vacancy occurs and shall appoint a person to serve the unexpired term of the member being replaced.

SECTION 5. Resignations:

Members shall serve a designated term unless they resign, or are otherwise disqualified to serve, or until successors have been appointed, up to the maximum years allowed by State law. Any member may resign at any time by giving written notice to the Chairperson and to the Executive Director. Such resignation shall take effect on the date of receipt of such notice or any later time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 6. Compensation and Expenses:

Self-advocate and family advocate members of the State Council shall receive honoraria pursuant to Government Code 11564.5, and Welfare and Institution Code Section 4550 not to exceed fifty (50) days in any fiscal year. All members shall be reimbursed for authorized actual and necessary expenses incurred in connection with the performance of their duties as Council members, in accordance with state regulations in the State Administrative Manual.

ARTICLE VI. MEETINGS

SECTION 1. Parliamentary Authority:

- (a) All meetings of the Council and its committees are public meetings governed by the Bagley-Keene Open Meeting Act (Government Code Section 11120, et. seq.).
- (b) Robert's Rules of Order shall be utilized as the rules for all Council and committee meetings except in instances of conflict with these By-laws, or provisions of State or federal law or regulations. The Vice-Chairperson shall serve as

Parliamentarian.

- (c) The Council may adopt, from time-to-time, such policies and rules for the conduct of its meetings and affairs as may be required.

SECTION 2. Meetings:

- (a) There shall be no less than six (6) and no more than twelve (12) meetings of the Council per year.
- (b) Special meetings of the Council may be called by the Chairperson or, in case of absence or inability to act by the Chairperson, by the Vice-Chairperson. In case of a refusal to act by the Chairperson, a special meeting may be called by written request of nine (9) members of the Council. Only matters specified in the written notice of the meeting shall be considered at such a meeting.
- (c) Regular or special meetings of the Council shall be held at a place, date, and time designated by the Council or selected by the Chairperson.

SECTION 3. Quorum:

- (a) A quorum for the Council shall be a simple majority of the statutory required membership.
- (b) A quorum for each Council committee and sub-committee shall be a simple majority of the appointed members of that committee.

SECTION 4. Voting Rights of Members:

- (a) Each member shall be entitled to one vote, to be exercised in person. Proxy voting shall not be permitted.
- (b) Except as otherwise specifically provided in State law or these By-laws, all matters submitted for determination shall be decided by a majority vote.

SECTION 5. Chairperson Pro Tem:

If neither the Chairperson nor Vice-Chairperson is present to preside at a Council meeting, a chairperson pro tem shall be elected by the majority vote of the Council members present.

ARTICLE VII. OFFICERS

SECTION 1. Officers:

The officers of the Council shall be a Chairperson and a Vice - Chairperson elected from among the self and family advocate members. These officers shall perform the duties described in these By-laws.

SECTION 2. Election of Member Officers:

Election of officers shall occur once every two years. The election shall be held during the last meeting of the appropriate calendar year. Only self and family advocate members shall be eligible to hold office.

SECTION 3. Voting Procedure:

Council officers shall be elected by a majority vote. Recommendations for officers shall be in the form of nominations from the Nominating Committee. Nominations may also be received from the floor prior to the election, but subsequent to the report of the Nominating Committee.

SECTION 4. Term of Office:

The Chairperson and Vice-Chairperson shall be elected for a term of two years. Individuals may be elected to these positions for no more than two consecutive terms. Their term of office shall begin the first day of the new calendar year.

SECTION 5. Vacancies:

If the Chairperson resigns or is permanently unable to serve during the term of office pursuant to Article V Section 4, the Vice-Chairperson shall become the Chairperson for the remainder of such term. Upon the vacancy of the Vice-Chairperson's term of office or if the Vice-Chairperson resigns or is permanently unable to serve during the term of office, the Chairperson shall appoint an interim Vice-Chairperson to serve until an election is conducted. The Chairperson shall also appoint a nominating committee of at least three (3) but not more than five (5) Council members that will provide a slate of nominations for the election of Vice-Chairperson during the next appropriate Council meeting.

The voting procedure established in Article VII, Section 3 shall be used for the election process of the permanent Vice-Chairperson.

SECTION 6. Duties of the Officers:

- (a) Chairperson - The responsibilities of the Chairperson are: to preside at all meetings of the Council; to appoint chairpersons and members to all Council committees, except the Nominating Committees, to appoint Council representatives in relation to other agencies and consumer groups; and to represent the Council as needed. The Chairperson shall have full voting rights on all Council actions.
- (b) Vice-Chairperson - The responsibilities of the Vice-Chairperson are to perform all the duties of the Chairperson if the Chairperson is absent or if the Chairperson requests the Vice-Chairperson to do so. When acting in the capacity of the Chairperson, the Vice-Chairperson has the same authority as the Chairperson. The Vice-Chairperson also serves as Chair of the Executive Committee and as Parliamentarian.

SECTION 7. Removal from Office:

Action to remove an officer shall be in accordance with the following procedure:

- (a) Written notification must be submitted by registered mail to the Executive Director from Council member(s) describing the specific cause for which removal is sought.
- (b) The Executive Director shall notify the officer charged by registered mail within two (2) working days of receiving the charges. Any member so notified shall have ten (10) days to respond to the group or individual responsible for notification. Following this ten (10) day period, the responsible parties shall notify the Executive Director within ten (10) days as to whether or not they wish to request removal of the officer. If the responsible parties are satisfied by the officer's response that no sufficient cause exists, the matter will be closed with written notice to the Executive Director and to the officer.
- (c) If the group or individual requesting removal is not satisfied by the response of the officer or if the officer fails to respond in ten (10) days, the Executive Director shall put the issue on the agenda at the beginning of the next Council meeting and inform the Council members as to the purpose of the agenda item.
- (d) Written charges shall be distributed and reviewed at the specified meeting of the Council.
- (e) A majority vote shall be required to remove a chairperson or vice-chairperson from office. If removal of the Chairperson is under consideration, the vice-chairperson shall preside.

ARTICLE VIII. EXECUTIVE DIRECTOR

SECTION 1. Appointment:

- (a) The Executive Director of the Council shall be appointed by and serve at the will of the Council in a position exempt from all civil service requirements pursuant to the California Constitution, Article 7, section 4(b) and Welfare and Institutions Code Section 4551(a)(2). The appointment of the Executive Director shall occur during a regular or special meeting of the Council.
- (b) A performance review of the Council Executive Director shall be coordinated by the Executive Committee and conducted annually by the full Council.

SECTION 2. Responsibilities and Duties:

- (a) The Executive Director shall be the chief administrative officer of the Council and shall have all the authority and responsibility assigned to the director of a state agency including budget, personnel, and contractual transactions. These include authority for entering into and execution of agreements on behalf of the Council in order to implement the policies of the Council.
- (b) The Executive Director shall be under the direction and control of the Council and

shall do and perform such other duties as may be assigned by the Council.

- (c) The Executive Director shall serve as clerk to the Council.

SECTION 3. Removal:

- (a) Action to remove the Executive Director of the Council shall be conducted in accordance with Government Code Section 11120, et. seq.
- (b) The Executive Committee of the Council may recommend removal of the Executive Director during a regular or special meeting. This recommendation shall be taken to the Council during a regular or special meeting for discussion and action.
- (c) A majority vote, during a regular or special Council meeting, shall be required to remove the Executive Director from his or her exempt appointment.

ARTICLE IX. COMMITTEES

SECTION 1. Authority:

- (a) Subject to the provision of these By-laws, all committees, with the exception of the Executive Committee, shall be advisory and shall not have the power to bind the Council except when specifically authorized by the Council to do so. Recommendations made by advisory committees shall be presented to the Council for adoption in the form of a motion.
- (b) Subject to provision of these By-laws, a vacancy in the membership of a committee, except the Nominating Committee, may be filled by the Council Chairperson.
- (c) A committee may meet upon call of the chairperson of the committee or the Council Chairperson.
- (d) Unless otherwise specified in these By-laws, the Chairperson and the Executive Director of the Council shall serve ex officio, without vote, on all committees, except the Nominating Committee.
- (e) A committee member may be removed from the committee by the Council Chair after three (3) consecutive unexcused absences. An unexcused absence is an absence of a member when previous notice of absence has not been given to the Committee Chair or Executive Director or appropriate Deputy Director by telephone, e-mail or mail.

SECTION 2. Standing Committees:

- (a) There shall be six (6) standing committees of the State Council:
 - (1) Executive
 - (2) Administrative
 - (3) Legislative and Public Policy
 - (4) Program Development
 - (5) Self-Advocates Advisory
 - (6) Employment First

- (b) The Chairperson and members of each of the standing committees shall be appointed by the Council Chairperson. In the event of a vacancy for any reason in membership or the Chairperson, a successor may be appointed by the Council Chairperson. The Chairpersons and Vice-Chairpersons of the State Council and of its standing committees shall be individuals with a developmental disability, or the parent, sibling, guardian, or conservator of an individual with a developmental disability (WIC 4535(b)). The All committee chairperson appointments shall be announced to the Council at the next available Council meeting.

- (c) The membership of all standing committees, except the Executive Committee, shall be open to non-members of the Council. The expenses of non-Council members may be reimbursed on the same basis as a Council member with the exception of the honorarium.

- (d) All members of the Council shall be expected to serve on at least one standing committee of the Council.

- (e) The charge of each of these committees shall be as follows:
 - (1) Executive Committee
The Executive Committee shall serve as the coordinating body to the Council. The Committee shall:
 - [a] Consist of the Council Chairperson, Vice-Chairperson, chairperson of the Legislative and Public Policy Committee, chairperson of the Program Development Committee, chairperson of the Strategic Planning Subcommittee, chairperson of the Self-Advocates Advisory Committee, chairperson of the Employment First Committee and two (2) other Council members.
 - [b] Be chaired by the Council Vice-Chairperson.
 - [c] Act on behalf of the Council between meetings, but shall not modify any action taken by the Council unless authorized by the Council to do so. The full Council at the next regular or special meeting shall receive a report of all Executive Committee actions taken between Council meetings.

- [d] Administrative matters shall be a standing agenda item at every meeting and shall include but not be limited to, budget reports, expenditure reports and other major administrative issues.
- [e] Make recommendations to the Council regarding approval of Community Program Development Grants (CPDG) projects to be funded, and allocations.
- [f] Appoint members of CPDG Grant Review team as needed.
- [g] Provide direction to the Executive Director regarding all matters pertaining to Council responsibilities.
- [h] Make recommendations to the Council regarding amendments to the By-laws, changes in committee structure or responsibilities.
- [i] Make recommendations to the Council regarding Council member training.
- [j] Make recommendations to the Council regarding the presentation of awards on behalf of the Council.
- [k] Make recommendations to the Council regarding matters assigned by the Council or the Council Chairperson.
- [l] Make recommendations to the Council regarding the appointment, evaluation, or removal of the Executive Director.
- [m] Monitor and evaluate California State Strategic Plan on Developmental Disabilities implementation and submit findings to the Council.
- [n] Review and make recommendations to the Council regarding area boards' requests to initiate litigation per Welfare and Institution Code Section 4548(g)(4) and (6).
- [o] Coordinate the Council's litigation activities, as needed, and make recommendations to the full Council.
- [p] Make appointments to and receive recommendations from the Strategic Planning Sub-Committee.
- [q] Present a slate of nominees to be elected to the Nominating Committee. Election to the Nominating Committee shall occur at the September Council meeting during election years.

- [r] Form and provide oversight for a State Plan Sub-Committee. This Sub-Committee will be formed periodically to review the existing State Plan and make progress toward an update.

This Sub-Committee shall:

- (1) Advise the Executive Committee on the collection and reporting of information on needs, including unmet needs, priorities and emerging issues
- (2) Make recommendations to the Executive Committee regarding policy priorities, goals and objectives for the California State Plan on Developmental Disabilities
- (3) Advise the Executive Committee and full Council in the planning of the implementation and reporting of the goals and objectives of the Council's California State Plan on Developmental Disabilities.

(2) Administrative Committee

The Administrative Committee shall assist with monitoring the administrative and budgetary activities of the Council. The Committee shall:

- [a] Be composed of at least three (3) Council Members
- [b] Make recommendations to the Council regarding allocation of discretionary fiscal resources and other budgetary issues.
- [c] Make recommendations to the Council regarding budgeting for anticipated fiscal resources among Council operations and specific service priorities for inclusion in the California State Strategic Plan and the Governor's budget.
- [d] Make recommendations to the Council regarding monitoring and evaluating administrative contracts and agreements.
- [e] Make recommendations to Council regarding all contracts and agreements.
- [f] Monitor and evaluate administrative contracts and agreements; and take actions authorized in all Council contracts and agreements.

- [g] Make recommendations to the Council regarding administrative matters and policies including organizational charts and structure.

(3) Legislative and Public Policy Committee

The Legislative and Public Policy Committee shall implement the California State Strategic Plan on Developmental Disabilities objectives as assigned by the Council. The Committee shall:

- [a] Be composed of at least seven (7) members.
- [b] Review, comment and recommend positions on significant proposed legislation and/or proposed regulations.
- [c] Recommend legislation consistent with Council's responsibilities and objectives.
- [d] Recommend initiatives and policies consistent with Council responsibilities and objectives.
- [e] Provide testimony and recommendations to the Legislature with regard to matters pertaining to people with developmental disabilities.
- [f] Respond to other responsibilities as assigned by the Council or Council Chairperson.

(4) Program Development Committee

The Program Development Committee shall advise the Council in the development of services and projects designed to improve the quality of life for individuals with developmental disabilities and their families

The Committee shall:

- [a] Be composed of at least seven (7) members.
- [b] Make recommendations to the Council regarding the Community Program Development Grant (CPDG) application process and suggested priorities/criteria for proposals.
- [c] Develop methods to market and implement successful CPDG projects throughout the State.
- [d] Carry out other responsibilities as assigned by the Council or the Council Chairperson.

(5) Self-Advocates Advisory Committee

The Self-Advocates Advisory Committee shall advise the Council as a voice for all Californians with disabilities, by promoting State Council participation and peer advocacy that advances independence and inclusion. The Committee shall:

- [a] Be composed of self-advocate members of the Council.
- [b] Advise the Council regarding self-advocate needs related to serving the Council including manners in which to ensure participation and inclusion in all meetings.
- [c] Advise the Council regarding policies, programs and any other area affecting self advocates in California.
- [d] Review materials and other Council produced information to evaluate and make recommendations regarding plain language approaches.
- [e] To have a standing representative to the Statewide Self-Advocacy Network (SSAN.)

(6) Employment First Committee

The Employment First Committee is responsible for ensuring the development of an Employment First Policy which has the intended outcome of significantly increasing the number of individuals with developmental disabilities who engage in integrated, competitive employment. The Committee shall:

- [a] Be composed of a representative from each of the following:
 - (1) The Department of Developmental Services
 - (2) The Department of Rehabilitation
 - (3) The California Department of Education
 - (4) One from each of the three University Centers of Excellence in California
 - (5) Disability Rights California
 - (6) Employment Development Department
 - (7) Family Resource Center Network
 - (8) Association of Regional Center Agencies
 - (9) Service Employees International Union
 - (10) The ARC
 - (11) Four self-advocates
 - (12) Four family advocates
 - (13) Such others as deemed needed to implement the

responsibilities of the Council.

- [b] Identify the respective roles and responsibilities of state and local agencies in enhancing integrated, competitive employment for people with developmental disabilities.
- [c] Identify strategies, best practices, and incentives for increasing integrated, competitive employment opportunities for people with developmental disabilities, including, but not limited to, ways to improve the transitional planning process for students 14 years of age or older, and to develop partnerships with, and increase participation by, public and private employers and job developers.
- [d] Identify existing sources of employment data and recommend goals for, and approaches to measuring progress in, increasing integrated, competitive employment for persons with developmental disabilities.
- [e] Recommend legislative, regulatory, and policy changes for increasing the number of individuals with developmental disabilities in integrated, competitive employment, self-employment, and microenterprises and who earn wages at or above minimum wage.
- [f] Provide an annual report to the Governor and Legislature by July 1 of each year that describes the work and recommendations of the Committee.

SECTION 3. Nominating Committee:

The Nominating Committee shall provide advice to the Council relative to the bi-annual election of Council officers. The Committee shall:

- (a) Be composed of at least three (3) and not more than five (5) Council members.
- (b) Be elected by the Council at the September Council meeting from a slate of nominations presented by the Executive Committee.
- (c) Serve for one year. Be elected at least forty-five (45) days prior to the annual election.

SECTION 4. Committees, Sub-Committees and Ad-Hoc Committees and Task Forces:

- (a) Committees, Sub-committees, Ad-Hoc committees and Task Forces may be established by the Council to carry out specified California State Strategic Plan on Developmental Disabilities objectives and purposes of the Council.

- (b) The term of office and, qualifications of these groups' chairpersons and members shall be established by the Council. The membership of Sub-Committees and Ad-Hoc committees shall be open to non-members of the Council and shall be appointed by the Chairperson of the Council. The expenses of non-Council members may be reimbursed on the same basis as a Council member with the exception of the honorarium.

ARTICLE X. COUNCIL GENERAL PROVISIONS

SECTION 1. Certification and Inspection:

The original or a copy of the By-laws, as amended or otherwise altered to date, certified by the Council shall be recorded and kept in a book that shall be kept in a location in the principal office of the Council, and such book shall be open to public inspection at all times during office hours.

SECTION 2. Records, Reports and Inspection:

- (a) The Council shall maintain adequate and correct accounts, books and records of all its business and properties.
- (b) Such records shall be kept at its principal place of business. All books and records shall be open to inspection by the Council and the general public, except those records or data regarding an employee, if such disclosure would constitute an unwarranted invasion of personal privacy, or records of the Council relating to its participation in a judicial proceeding.
- (c) An annual financial report and budgets shall be available for inspection at the Council's principal place of business.

ARTICLE XI. AMENDMENTS OF BY-LAWS

Subject to the limitations of federal and state law, these By-laws shall be reviewed at least annually. The Executive Committee shall be responsible for the annual review of the By-laws, submitting recommendations for adoption of new By-laws and amendments or repeal of existing By-laws to the Council. These By-laws may be amended, repealed or adopted by a two – thirds majority during any regular or special meeting of the Council so long as a draft of the proposed action was submitted in writing to the Council at least ten (10) days prior to the meeting.

ARTICLE XII. INDEMNIFICATION

SECTION 1. Definitions:

For the purposes of this Article XII, "agent" means any person who is or was a director or member as appropriate, officer, employee, or other agent of the Council. Proceeding means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative; and expenses include without limitation attorney's fees and any

expenses of establishing a right to indemnification under Section 4 or 5(b) of this Article XII.

SECTION 2. Indemnification in Actions by Third Parties:

The Council shall have power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the Council to procure a judgment in its favor, by reason of the fact that such person is or was an agent of the Council, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with such proceeding if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Council and, in the case of a criminal proceeding, has no reasonable cause to believe the conduct of such person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the Council or that the person had reasonable cause to believe that the person's conduct was unlawful.

SECTION 3. Indemnification in Actions by or in the Right of the Council:

The Council shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action by or in the right of the Council, to procure a judgment in its favor by reason of the fact that such person is or was an agent of the Council, against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such action if such person acted in good faith, in a manner such person believed to be in the best interests of the Council, and with such care, including reasonable inquiry as an ordinarily prudent person in a like position would use under similar circumstances. No indemnification shall be made under this Section 3:

- (a) In respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable to the Council in the performance of such person's duty to the Council, unless and only to the extent that the court in which such proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for the expenses which such court shall determine;
- (b) Of amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval; or
- (c) Of expenses incurred in defending a threatened or pending action, which is settled or otherwise disposed of without court approval, unless it is settled with the approval of the Attorney General.

SECTION 4. Indemnification Against Expenses:

To the extent that an agent of the Council has been successful on the merits in defense of any proceeding referred to in Section 2 or 3 of this Article XII or in defense of any claim, issue, or matter therein, the agent shall be indemnified against expenses actually and reasonably

incurred by the agent in connection therewith.

SECTION 5. Required Determinations:

Except as provided in Section 4 of this Article XII any indemnification under this Article XII shall be made by the Council only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in Section 2 or 3 of this Article XII, by:

- (a) A majority vote of a quorum consisting of directors or members as appropriate, who are not parties to such proceeding; or
- (b) The court in which such proceeding is or was pending upon application made by the Council or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney, or other person is opposed by the Council.

SECTION 6. Advance of Expenses:

Expenses incurred in defending any proceeding may be advanced by the Council prior to the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the agent to repay such amount unless it shall be determined ultimately that the agent is entitled to be indemnified as authorized in this Article XII.

SECTION 7. Other Indemnification:

No provision made by the Council to indemnify its or its subsidiary's directors or members as appropriate, or officers for the defense of any proceeding, whether contained in the Articles, Bylaws, a resolution directors or members as appropriate, or an agreement, or otherwise, shall be valid unless consistent with this Article XII. Nothing contained in this Article XII shall affect any right to indemnification to which persons other than such directors or members as appropriate, and officers may be entitled by contract or otherwise.

SECTION 8. Forms of Indemnification Not Permitted:

No indemnification or advance shall be made under this Article XII, except as provided in Section 4 or 5(b), in any circumstances where it appears:

- (a) That it would be inconsistent with a provision of the Articles, these By-laws, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or
- (b) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.