

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	Lanterman Act requires staff positions at the deputy director level	Lanterman Act requires staff positions at the deputy director level
Governor’s Office role in Council hiring process	Governor’s Office role in Council hiring process	Governor’s Office role in Council hiring process
Membership		
Long-Term Unfilled Vacancies on State Council	Long-Term Unfilled Vacancies on State Council	Long-Term Unfilled Vacancies on State Council
Nominations	Nominations	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	
<i>II.1 Staff</i>	<i>2013 MTARS Finding</i>
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	
<i>III.1 Membership policies</i>	<i>2013 MTARS Finding</i>
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. <p>Sec.125(b)(6)</p>	<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>
V. EVALUATION AND REPORTS	
<i>Program Performance Report</i>	<i>2013 MTARS Finding</i>
<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>
<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>
VI. FISCAL	
<i>VI.1 Fiscal Requirements</i>	<i>2013 MTARS Finding</i>
<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>

	<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.
VI.2 Fiscal Policies	2013 MTARS Finding
<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 it 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 	
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?