



ACL Compliance Response: Mitigation & Strategic Plan

PATRICK REINHART
GCDSE, EXECUTIVE DIRECTOR
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Part 1: ACL Compliance Findings

In February 2022, Administration for Community Living (ACL) initially found the Governor's Council on Disabilities and Special Education (GCDSE) out of compliance in two areas:

1. Executive Order (EO) separating the Department of Health and Social Services (DHSS) Department in two departments. These are the Department of Health (DOH) and Department of Family and Community Services (DFCS)
2. GCDSE staff working on projects that are not related to the DD Act.

GCDSE staff are working on projects outside of the DD Act. The Governor's Council on Disabilities and Special Education (GCDSE) was found to be out of compliance with the Federal DD Act of 2000. The Act requires the State DD Council and its staff to work only on DD council business. The GCDSE is not in compliance with the DD Act because it is currently set up to have the council and its staff oversee multiple other programs. These programs are:

- Special Education Advisory Panel (SEAP)
- Special Education Service Agency (SESA)
- Interagency Coordinating Council for Infants and Toddlers with Disabilities (ICC).
- Statutory Advisory Board for the Mental Health Trust Authority

Later, ACL found the provisions described by the Administration (EO) did not raise issues of non-compliance and will be monitoring the implementation and impacts moving forward.

GCDSE was directed by ACL to provide education to the Executive Branch, including the Office of the Governor and DHSS Commissioner, on the requirements for non-interference and autonomy afforded the State Council on Developmental Disabilities (SCDD) operations and protections for staff assignments defined within the DD Act. A key concern is that the current scope of GCDSE extends outside the provisions of the DD Act which could result in conflict with other federal programs, including those funded under IDEA.

Part 2: Initial Mitigation Efforts

During a March 2nd, 2022, Executive Committee meeting, attended by a majority of Council members, the issues of DD Act Compliance and developing a mitigation strategy were discussed in detail.¹ During the meeting, Council members received information on the ACL findings and discussed potential mitigation options. A motion was adopted to temporarily suspend all other GCDSE committee meetings to allow staff more time to focus on developing the mitigation plan and consulting with stakeholders

Preliminary Stakeholder Engagement

GCDSE staff have had numerous meetings and conversations discussing compliance and mitigation issues with various stakeholder groups. A brief list capturing some of these interactions from the last few months are described in the table below but is not an exhaustive list. This information is provided to offer visibility into the efforts GCDSE has made to engage meaningfully with the community and administration on these compliance issues during the development of the mitigation plan.

#	Stakeholder Group	Engagement Dates
1	DHSS Commissioner & Staff	12/17/2021
2	DHSS Commissioner, Office of the Governor	12/17/2021
3	GCDSE, DHSS, ACL	1/28/2022
4	DEED	3/01/2022
5	GCDSE, ABADA/AMHB/SSIP Executive Director	3/01/2022
6	SDS Director John Lee	3/02/2022
7	Patrick Reinhart, Past GCDSE Executive Director	3/14/2022
8	DHSS, DEED, SDS, ILP, B&C	3/14/2022
9	Key Coalition	3/15/2022
10	SESA Board of Directors	3/16/2022
11	DHSS Commissioner & Staff	3/25/2022
12	MHTA CEO	3/29/2022
13	DHSS Commissioner & Staff, Office of the Governor, Law	4/05/2022
14	Key Coalition	4/19/2022
15	SDS Admin & Budget Staff	4/19/2022
16	MHTA CEO & Staff	4/22/2022
17	GCDSE, ABADA/AMHB/SSIP Executive Director	4/26/2022

¹ See Draft Meeting Minutes, March 2, 2022, Executive Committee Meeting

Part 3: Organizational Background

Governor's Council on Disabilities and Special Education (GCDSE)

GCDSE's purpose, authority, duties, and responsibilities are established in both federal and state law. The Council works to create change that improves lives of people with disabilities in their community. GCDSE was created by the Alaska State Legislature in 1978 and located within DHSS.

The federal laws that oversee the Council are the DD Act² and IDEA³. The state laws that oversee the Council are Programs for Peoples with Disabilities⁴, Special Education Service Agency⁵, Services for Developmentally Delayed or Disabled Children⁶, and the Mental Health Trust⁷.

The responsibilities of the Council are wide ranging and significant. They include policy development, reporting, advising, and advocacy functions.⁸ GCDSE currently has five roles within Alaska.

1. Serves as the State Council on Developmental Disabilities
2. Serves as the Special Education Advisory Panel
3. Governs the Special Education Service Agency
4. Serves as the Interagency Coordinating Council for Infants and Toddlers with Disabilities
5. Statutory Advisory Board for the Mental Health Trust Authority

Non-SCDD Staff Assignments

As of April 2022, there are four (4) GCDSE permanent positions which continually work on non-SCDD tasks: the ED, the Planner, a Program Coordinator 2, and the Administrative Assistant 2. A summary of the non-SCDD jobs completed by those positions and how this impacts GCDSE operations are below:

- **Administrative Assistant 2:** Duties that support work done for non-SCDD roles. Including the processing of timesheets for staff who work on non-SCDD activities. This also includes the development and tracking of contracts & RSAs, and travel planning for non-SCDD tasks.
- **Program Coordinator 2 (PC2):** Significant responsibility to work on non-SCDD projects. The PC2 is the main support for the ICC, SEAP, and SESA. The PC2 is responsible for recruiting and keeping membership, meeting facilitation, and annual report development. The PC2 is the subject matter expert for ICC, SEAP, and SESA.
- **Planner 3:** Supervisory responsibilities for staff working on non-SCDD activities. This involves supervisory, task assignment, training, and evaluations of staff. The Planner is also expected to cover the duties and responsibilities of staff when positions are vacant.
- **Executive Director (ED):** In charge of the work of all staff, including those working on non-DD Council tasks. The ED also has duties to sign and manage contracts and RSAs for this work. The ED must serve as an ex-officio board member for SESA or appoint a staff to serve.

² 42 U.S.C § 15001 et seq. Each of the cited federal acts has numerous precursors and incorporates multiple amendments. Citations to these omitted for brevity.

³ 20 U.S.C § 1400 et seq.

⁴ AS 47.80; Source: <http://www.akleg.gov/basis/statutes.asp#47.80>, accessed 4/18/22

⁵ AS 14.30.600; Source: <http://www.akleg.gov/basis/statutes.asp#14.30.600>, accessed 4/18/22

⁶ AS 47.20.060; Source: <http://www.akleg.gov/basis/statutes.asp#47.20.060>, accessed 4/18/22

⁷ AS 47.30.016 Source: <http://www.akleg.gov/basis/statutes.asp#47.30.016>, accessed 4/18/22

⁸ AS 47.80.090(1) through AS 47.80.090(13), source: <http://www.akleg.gov/basis/statutes.asp#47.80.090>, accessed 4/18/22

Alaska Mental Health Trust Authority (MHTA) Advisory Board

The Alaska MHTA is a state corporation responsible for administering the Mental Health Trust (Trust) and is the only organization of its kind in the nation. The MHTA is governed by the board of trustees, and the process for their selection includes review by a six-member panel including one individual selected by the GCDSE.⁹ This provision establishes that GCDSE is considered one of the statutory advisory boards for the MHTA.

⁹ AS 47.30.016(b)(2)(B)

Part 4: Compliance Plan

There are several options which could be pursued to bring about DD Act Compliance, or conversely to move Alaska towards a model of operations which do not include having an SCDD overseen by ACL.

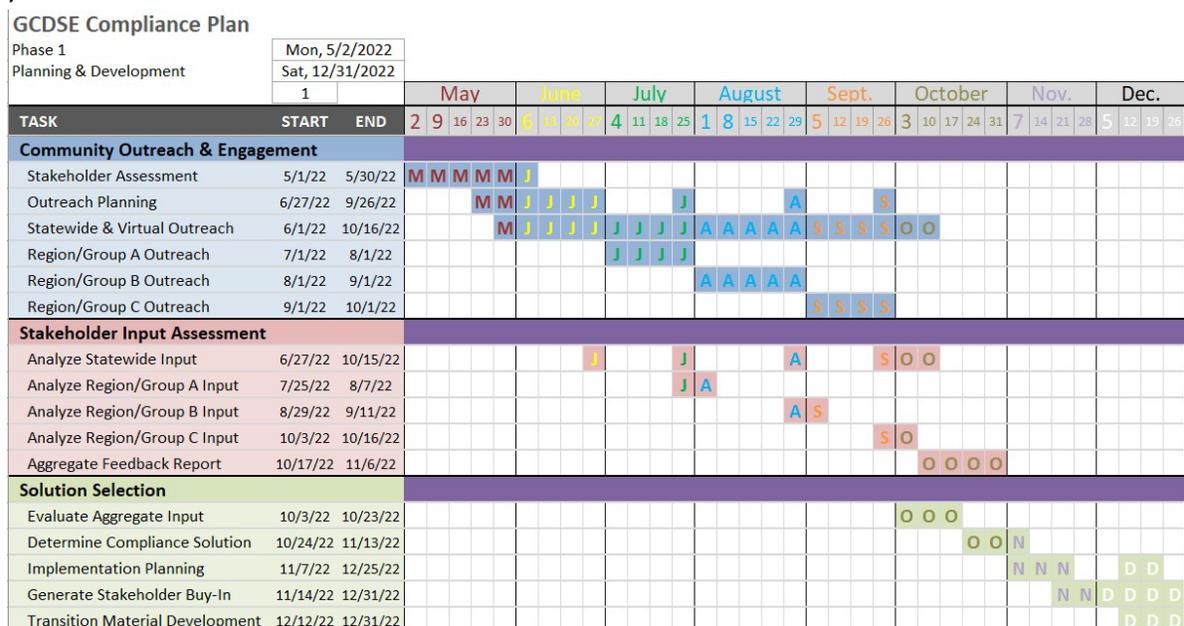


Stakeholder & Community Engagement

Ongoing discussions with the Administration during the development of this report emphasized the importance of meaningful and productive stakeholder communications. There are a wide array of groups and individuals who impacted by the work done by GCDSE, directly and indirectly, and who will need to be part of the implementation of any changes undertaken moving forward.

That means that the initial phase of our compliance plan will focus on the public rollout and stakeholder communications. We expect that the work described in this phase will take several months and last through the end of calendar year 2022.

Key activities and timelines shown on the Gantt chart below:



The proposed timeline anticipates the GCDSE will substantively engage in conversations with the Administration to establish general expectations, verify needed participation from GCDSE and Department staff, and define resource need and availability during the months of May and June 2022. This phase will have an early momentum building event with the GCDSE Council meeting scheduled for June 1st & 2nd where stakeholders will have an opportunity to hear from and ask questions of ACL. The Council meeting will also provide an opportunity for public input from across the state.

This plan has a goal of reaching one major region or group each during the months of July, August, and September with additional statewide engagement opportunities interspersed.

Input Analysis & Decision Point

Following the conclusion of the input and feedback gathering processes the GCDSE and the Administration will regroup and evaluate the data gathered, targeting development of a comprehensive overview of the statewide community engagement and final report be completed by the beginning of Fall. We expect that this process will be a joint effort between GCDSE and the Administration. Once that report is complete, we will use the information to help guide the selection of a preferred solution.

During this portion of the mitigation plan, there are several key events which could have a marked impact on the plan and solution selection processes. These include the primary and general elections. The makeup of the next legislature will vary significantly from the previous one due to the redrawing of legislative boundaries which happens every 10 years following the census. Further, much of the work envisioned for the remainder of 2022 involves GCDSE partnering with the current Administration. However, should a new administration be selected during the election, it would be necessary to adjust the timeline and plan to allow GCDSE to evaluate the level of engagement offered and the policy positions adopted before moving forward again.

Possible Compliance Strategies

Several changes have been discussed and are being evaluated for potential implementation in the future.

Any compliance plans requiring changes in statute or additional funding could all be ratified by the Alaska Legislature. Options which do not require substantive changes to state law or additional monetary appropriations could be enacted via an Executive Order introduced by the Governor. Additional research and guidance from the Department of Law would be required before we can explore how these options could be implemented more fully.

Continuing to develop solutions and better define methods of implementation is expected to be an ongoing process and will be an important part of the work done over the next year. This plan anticipates that delving into these sorts of details will occur following the stakeholder outreach done over the summer of 2022. Implementation research and planning would begin in the fall of 2022 and ideally wrap up just ahead of the 2023 legislative session.

Below are brief overviews of several compliance strategies which have been identified so far. All options require a change in the GCDSE enabling statute.

1. Create financial and personnel separations within the Council administration that could satisfy the federal government’s concerns.

This approach would adopt positive timekeeping, separate budget components and internal separation of staff duties and who they report to, according to fund sources. For instance, SEAP staff would report to Department of Education, ICC would report to DHHS, etc. This option has not been discussed yet with ACL

2. Divide Council and rededicate as two or three separate boards, but under one roof for statewide coordination purposes.

This approach would separate the existing GCDSE into separate Councils based on their primary focus. One would comprise the SCDD and would serve as an advisory board to the MHTA. One would be the SEAP and govern SESA. The third would be the ICC. The third option is to combine the previous two into one board.

3. Create public corporate entities.

Alaska could explore reestablishing the SCDD as a public corporate entity. The SCDD and MHTA advisory functions could be housed in a public corporation like those created for Alaska Permanent Fund Corporation¹⁰, the Alaska Industry Development and Export Agency¹¹, and the Alaska Housing Finance Corporation¹².

4. Create private corporate entities.

Alaska could look to vest the SCDD and MHTA Advisory Board responsibilities within a newly established non-profit corporation. This would be like how the Alaska Children’s Trust was transitioned from being within the executive branch to existing as a stand-alone non-profit¹³.

5. Joint management of discreet boards co-located under the GCDSE umbrella.

The state could co-locate the SEAP, ICC, SESA, and SCDD within the GCDSE. The Governor, through boards and commissions, would make individual appointments to each board. The staffing and operations of these boards would be jointly supported by a separate staff.

6. Forgo federal SCDD funding from ACL and continue GCDSE operations using state resources.

If compliance with the DD Act is identified as being too challenging, the state could instead elect to continue forward with the existing GCDSE structure and authority. While the loss of federal SCDD funding from ACL would reduce the GCDSE revenues by seventy percent (70%), these funds could be replaced with increased state support.

END OF REPORT

¹⁰ Source: [History - Alaska Permanent Fund Corporation \(apfc.org\)](https://www.apfc.org/), accessed 4/27/22

¹¹ Source: [FAQs \(aidea.org\)](https://www.aidea.org/), accessed 4/27/22

¹² Source: [Alaska Housing Finance Corporation: About Us \(ahfc.us\)](https://www.ahfc.us/), accessed 4/27/22

¹³ Source: [History — Alaska Children's Trust \(alaskachildrenstrust.org\)](https://www.alaskachildrenstrust.org/), accessed 4/27/22

Appendix

Acronyms

ACL	Administration for Community Living
GCDSE	Governor’s Council on Disabilities and Special Education
SCDD	State Council on Developmental Disabilities
EO	Executive Order
DHSS	Department of Health and Social Services
DSA	Designated State Agency
DD Act	Developmental Disabilities Assistance & Bill of Rights Act of 2000.
IDEA	Individuals with Disabilities Education Act
AK MHTA	Alaska Mental Health Trust Authority
MHTAAR	Mental Health Trust Authority Authorized Receipts
SEAP	Special Education Advisory Panel
ICC	Interagency Coordinating Council for Infants and Toddlers with Disabilities
SDS	Senior & Disability Services
DEED	Department of Education & Early Development
SESA	Special Education Services Agency
ILP	Infant Learning Program
ED	Executive Director
RSA	Reimbursable Services Agreement
DOH	Department of Health
AS	Alaska Statute
FY	Fiscal Year
FFY	Federal Fiscal Year
SFY	State Fiscal Year
APFC	Alaska Permanent Fund Corporation
TLO	Trust Land Office
DOR	Department of Revenue
ABADA	Advisory Board on Alcoholism & Drug Abuse
AMHB	Alaska Mental Health Board
SSPC	State Suicide Prevention Council
FFR	Federal Financial Report
FTE	Full Time Equivalent
LW	Living Well on the Last Frontier Grant
SLA	Session Laws of Alaska
SEA	State Educational Agency

MHTA Establishment & Authority

Prior to achieving statehood in 1959, mental illness was considered a crime in the then Territory of Alaska. Alaskan children and adults convicted of the crime of mental illness were forcibly relocated by the United States federal government and subject to confinement in a private institution, Morningside Hospital, located in Portland Oregon¹⁴. During the transition of Alaska from territory to statehood, Congress passed the Alaska Mental Health Trust Enabling Act of 1956¹⁵ (AMHEA), which transferred the responsibility for mental health service provision from the federal government to Alaska. Included in this law were provisions to set aside one million acres of prime land which would be held in trust and generate revenue to fund mental health services.

The Alaska Legislature was charged with managing the land on behalf of Alaskans with mental illness in a fiduciarily responsible way. However, there were pressures to transfer land out of the trust for private development and recreational use. This culminated in 1978 with action by the Legislature to completely abolish the MHTA. By 1982, 65% of Trust lands was no longer under state ownership.

In 1982, Vern Weiss filed a lawsuit on behalf of his son, Carl Weiss, who required mental health services and care which were not available in Alaska. Other beneficiary groups joined in a class action suit which alleged the state breached the public trust by redesignating trust lands and using revenues improperly to fund programs not related to providing mental health treatment and services for Alaskans. This case was decided by the Alaska Supreme Court in 1984, which ordered the original Trust be restored¹⁶. To facilitate this, the legislature established the Interim Mental Health Trust Commission in 1986¹⁷ which was charged with making recommendations to resolve the litigation and vested with power to approve proposals for the sale, lease, or exchange of trust land to third parties. While settlement negotiations were ongoing, the State continued to convey original trust lands. However, plaintiffs were able to successfully secure an injunction prohibiting the practice pending final disposition of the claims.

The legislature again attempted to settle this litigation in 1991 by enacting a procedure to reconstitute the mental health lands entirely via land exchange and created a new agency the Alaska Mental Health Trust Authority to act as the trustee.¹⁸ A proposed settlement incorporating these provisions was signed by the state and attorneys representing three out of the four plaintiffs. This agreement was challenged by the fourth claimant who alleged the negotiations had been conducted improperly. On December 30th, 1993, the Alaska Superior Court denied preliminary approval of the settlement and ruled that the settlement could not be approved without substantial revision due to material deficiencies found within the agreement.

After renewed negotiations, the legislature enacted a settlement during a special session following the

¹⁴ Morningside Hospital | In territorial days, Alaskans could be one of three places... Inside (in Alaska), Outside (anywhere else), or Morningside (Morningside Hospital).

¹⁵ [Mental-Health-Trust-Enabling-Act-1956.pdf \(alaskamentalhealthtrust.org\)](#)

¹⁶ [State v. Weiss :: 1985 :: Alaska Supreme Court Decisions :: Alaska Case Law :: Alaska Law :: US Law :: Justia](#)

¹⁷ Ch. 132, sec 2(d), 4, SLA 1986

¹⁸ Ch. 66, sec. 10, SLA 1991

regular 1994 legislative session, known as HB201¹⁹. The mental health budgeting procedures contained within HB201 provided for a comprehensive mental health budget which would be separate from the other appropriations of the legislature²⁰. This final settlement agreement included the remaining and reclaimed original trust lands, an additional 500,000 acres of replacement land, plus \$200 million in cash. Settlement terms included stipulations that cash assets be managed through the APFC, while land and non-cash assets are managed through the TLO located within the Alaska Department of Natural Resources. Oversight of the MHTA was vested in an independent board of trustees who are appointed by the Governor and confirmed by the Legislature.

Following a four-day evidentiary hearing, preliminary approval to the HB201 settlement was granted in superior court on July 29th, 1994. Finally, after reviewing the comments and holding an evidentiary hearing on the fairness of the settlement, the Alaska Superior Court issued final approval on December 6th, 1994²¹. In both preliminary and final approval, they recognized that the constitutionality of the MHTA's power to spend trust income absent legislative appropriation was uncertain.

The superior court found that the MHTA was a “fundamental and significant part” of the settlement agreement, in part after consideration of “all its powers and its advocacy position.” The trial court also relied on the expectation that the MHTA would serve as an advocate for the trust and would, “actively oppose any attempt by the legislature to make any material change in the terms of the settlement and remind the legislature of the possibility of another long and costly lawsuit against the state. The Trust Authority may also be able to influence the governor to veto any legislation which makes a material change to this settlement.”²²

One facet of the appeal focused on whether individuals with developmental disabilities should be considered beneficiaries of the trust. The courts examined the legislative history of the AMHEA which had created the trust. An argument was put forward that Congress had not intended to include the developmentally disabled and that they should be excluded. This assertion was rejected by the superior court. They ruled that the developmentally disabled were beneficiaries of the trust and hence members of the plaintiff class in this litigation.

However, the settlement was appealed to the Alaska Supreme Court. In the May 2nd, 1997, decision, the findings and ruling of the Superior Court were affirmed and the provisions of HB201 settlement upheld. A Petition for Certiorari²³ was filed asking the United States Supreme Court to review the decision, but it declined to do so in November 1997.

¹⁹ Ch. 5, 6, FSSLA 1994

²⁰ These provisions are set forth in AS 47.30.046 and AS 37.14.003-.005

²¹ [Settlement-Agreement-and-Stipulation-to-Terms-of-Dismissal.pdf](#) ([alaskamentalhealthtrust.org](#))

²² <https://jukebox.uaf.edu/site7/sites/default/files/documents/Weiss%20v%20State.pdf>

²³ [Petition for Certiorari: Weiss v. Alaska PETITION.htm](#) ([touchngo.com](#))

Additional Reference Material & Sources

- Legal Memorandum from Attorney Harriet Dinegar-Milks 12.15.2021
- High Level Briefing to Governor's Office & DHSS Leadership 12.17.2021
- Memorandum to DHSS & DEED regarding FY20 RSA for SEAP 08.13.2019
- Memorandum to Department of Law 11.23.2021
- Draft Minutes from Winter 2022 GCDSE Council Meeting
- FY21 MHTAAR SOI Awards (RA3 & BEE)
- FY22 MHTAAR SOI Awards (Joint Staffing, BEE, ETE)
- Draft Minutes March 3, 2022, GCDSE Executive Committee Meeting
- SEAP Annual Report FY2021