

**GOVERNOR'S COUNCIL ON DISABILITIES  
AND SPECIAL EDUCATION**

**Executive Committee  
MINUTES**

**Videoconference Host:  
Governor's Council  
550 W. 7th Avenue, Suite 1230  
Anchorage, Alaska**

**Meeting Date**  
Monday, January 3, 2022  
4:00 p.m.

**Attendees:**

Heidi Lieb-Williams - Chair  
Jena Crafton  
Art Delaune  
Corey Gilmore  
Jeanne Gerhardt-Cyrus  
Ric Nelson  
Dean Paul  
Commissioner Adam Crum  
Director John Lee  
Deputy Director Heather Carpenter

**Staff:**

Myranda Walso  
Jackie Kim  
Lanny Mommsen  
Jess Doherty  
Jamie Kokoszka

**Prepared by:** Sheila Garrant, Peninsula Reporting

**CALL TO ORDER** – 4:00 p.m.  
**ROLL CALL** – Quorum established

**WELCOME FROM THE CHAIR**

Jena Crafton welcomed committee members to the meeting.

**Introductions, Announcements, or Good News**

No introductions, announcements, nor good news was shared.

**CONFLICTS OF INTEREST DECLARATIONS**

No conflicts of interest were declared.

**APPROVAL OF AGENDA AND APPROVAL OF PAST MINUTES**

Ric Nelson **MOVED** to approve the agenda as presented, **SECONDED** by Jeanne Gerhardt-Cyrus. Hearing no opposition, the motion **PASSED**.

Ric Nelson **MOVED** to approve the December 14, 2021 Executive Committee meeting minutes as presented, **SECONDED** by Art Delaune. Hearing no opposition, the motion **PASSED**.

**REPORTS**

**Chair Report**

Jena Crafton extended best wishes for the new year.

Heidi Lieb-Williams offered best wishes for the new year. She shared that she is back in Alaska and recovering from major surgery. She has already overcome some complications from surgery and is grateful for the improvement.

**Executive Director Report and Correspondence**

Myranda Walso reported that she met with the Governor's office on December 17<sup>th</sup>, 2021, and expected a follow-up summary of that meeting on December 20<sup>th</sup>, 2021, which didn't come. The Council contacted Commissioner Crum's office and was told the Department was meeting with their attorneys and preparing an update to share at the January 3, 2022 Executive Committee meeting.

Myranda Walso noted that the Council discussed the communications with the Governor's office and DHSS Commissioner's office with the Council's attorney and requested her presence at the January 3, 2022 Executive Committee meeting. The

attorney got permission to attend, but cautioned the Council that her presence at the meeting might appear adversarial. As a result, the Council withdrew the request to have the attorney participate in the meeting. Myranda noted that the attorney would be available for additional meetings if necessary.

Myranda Walso reported receiving a resignation notice from Michele Binkley effective December 31<sup>st</sup>, 2021. The Council's website is updated to reflect the change, and she is restructuring the staff assignments to support the change. Myranda stated that she initiated the recruitment process and indicated that she doesn't expect a replacement sooner than the middle of February.

Myranda Walso reported that she met with the Council's federal partners. She anticipates a federal inquiry into the Council's concerns with the proposed Executive Order. She expects that she will have a formal letter of inquiry from ACL ahead of the winter Council meeting regarding the Council's status.

## **NEW BUSINESS**

### **Commissioner Adam Crum - Update on EO and DHSS/GCDSE Issues**

Commissioner Adam Crum, Director John Lee, and Deputy Director Heather Carpenter joined the meeting to share an update on the Executive Order and discuss issues involving the Department of Health and Social Services (DHSS) and the Council. Commissioner Crum reported that with regards to the pending Executive Order (EO) to restructure DHSS into two departments, there was an item of concern that the Governor's Council had brought forward to the Department in September. There has been ongoing dialogue between DHSS and the Council to address the Designated Service Agency (DSA) aspect of the relationship.

Commissioner Crum stated that he wanted to be very clear that the Council's funding would not come into question. If the Department were to run afoul with the federal partners, the Council would be taken care of by the Department and the Governor. The Governor's Council would have the funding to continue under ACL. The next step would be to find the most appropriate placement of the Governor's Council. The Governor's Council is currently housed under DHSS because of the grandfathering clause. The proposed language for the EO, signed off by the Governor's office and the Department of Law, was drafted and is currently being reviewed by Legislative Legal. The proposed language is as follows:

This Executive Order shall have no effect on the substantive work of the Governor's Council on Disabilities and Special Education (GCDSE), established under Alaska Statute 47.80.030-095. This Executive Order is intended to facilitate the uninterrupted continuation of the Council's efforts despite the reorganization of DHSS into the Department of Health (DOH) and Department of Family and Community Services (DFCS). To that end, GCDSE is proposed to be

located in the new Department of Health. This placement is intended to be a continuation of the state service agency designation in place under 42 USC 15025(d)(2)(B). If this continued designation status is not accepted by the federal government, the GCDSE will be designated to another Executive Branch department by the Governor as authorized by federal law.

Commissioner Crum reported that the goal of the language is to ensure that the grandfathering clause continues. He noted that it is not necessary for the placement of the DSA to occur under the Executive Order. The goal is to try to continue with no disruption to current services until such time that the Executive Order goes through. At that time, the proper placement and the other concerns brought forward by the Council can be addressed.

Myranda Walso added that the Council has had discussions with the federal partners in anticipation of the Executive Order. The proposed language was drafted by the Department's attorneys based on the guidance that the Council received from ACL, NACDD, and the Council's attorney. The Council believes that if the language is included under the Executive Order, it will address immediate issues that pertain to the Council. She noted that the Council raised some further issues, but she believes that the language protects the Council and manages the immediate concerns.

The floor was opened for questions, a summary of which follows:

**Q:** If the EO passes, and the Council's DSA is changed to either the DOH or DFCS, how can the Council be sure they are not violating regulations because the Council is not allowed to be under a department that funds or pays for services? Once the Council is no longer grandfathered in, does the Council have the authority to choose where it would like to be housed?

**A:** *The DHSS and the DOL believe the grandfathering clause will be extended. If it is not, both the federal law and the Constitution say it is ultimately the Governor's decision on the placement of executive agencies and councils. If there comes a time that a move is necessary, then the Council will be involved in the process. There is a window to ensure appropriate placement because of the time between the EO becoming law and the implementation.*

*The Executive Order would be introduced on January 18<sup>th</sup>, 2022. After 60 days, if not disproved by the legislature, it would become effective law on March 19<sup>th</sup>, 2022. While the full effect doesn't come into place until July 1<sup>st</sup>, between March 19<sup>th</sup> and July 1<sup>st</sup>, the State can establish, with federal partners and the Governor's Council, if the grandfathering clause would still allow a DSA that provides Medicaid services; and if not, what is the next most appropriate placement. If an arrangement cannot be met with the federal partners, the Council will be maintained as a Council, and the funding will be made whole via State investment while it gets figured out with federal partners.*

Q: This is an election year. The current administration promises to take care of the Council's funding concerns, but would the Council possibly lose all promises and assurances if there is a new administration?

A: *The Governor's Council is established in federal law and is a critical and central community component. No governor or legislature would ever let the Governor's Council, situated as it is, be harmed in that way. The 2023 fiscal year starts on July 1<sup>st</sup>, 2022. The election doesn't happen until November, and no matter, the Governor's Council will have the FY 23 funding in hand before an administration change.*

Q: If the Council funding assurance was in the Department's budget for 2023 and there's a new administration, can they change or cut it if they choose?

A: *The Commissioner of DHSS has a unique ability that gives them full discretion to move money around in any way they see fit outside the Medicaid budget. This would be something that while we didn't put forward in the FY 23 budget to do this, we would make sure the Council was covered and whole on budget. Moving forward hypothetically, for FY 24, no governor or legislature is going to want to be in blatant misrepresentation of federal law, so they will absolutely work to make sure there is a way that the Council is compliant with the ACL and make sure there is a mechanism in place to make sure the funding is protected. The Governor's Council can continue doing great work. Technically, yes, that could happen, but it never will because of the role the Council serves. Politically, the governor wouldn't do it no matter the party, and the legislature would not stand for it either.*

Myranda Walso commented that the risk is jeopardizing the federal funding; however, there is no requirement for states to accept federal funding. In the event that this goes wrong, the only thing that is lost is that Alaska would not receive the DD award. The guarantee from the administration to help sustain the funding and help make that loss or the risk whole through the transition process is a great show of good faith. She noted that compliance with the DD Act and issues the Council raised with the new DSA regarding the legal components only affect the Council. Myranda stated that if it doesn't work out, the worst case is that the Council is not compliant. In that case, the Council loses the federal funding. The administration and Commissioner Crum's guarantee to hold the Council harmless and provide the funding from other state resources is the best it gets. The Council has no requirement for that funding; it is an option for states to pursue it. She recognized that there is some risk to the Council's funding, but it's always the administration's purview whether or not to accept the federal funding and how to support it. She noted that the Council couldn't ask for more than they are guaranteeing, that the State would provide funding from other sources if federal funding were jeopardized. She added the caveat that it is a small risk that it would happen.

Myranda Walso said that the Council, the Council's attorney, and the federal government have been working for months to ensure that the Council has a reasonable path forward so that the funding isn't lost. The administration's commitment to helping

resolve the other issues raised is the part that needs to be emphasized because it was never the funding that was the risk in a single year; it was long term. Regarding the questions about the placement and the scope of the Council, she noted that it would always be dependent on the administration and governor's decisions.

Myranda Walso added that the DD Council funding and the aspects of it that are different are that the protection that comes from being guaranteed autonomy and independence is a condition of receiving federal funding. If the State were to decline that and say, "We don't want the federal funding. We'll establish our own DD Council and fund it with State funds," the most considerable distinction would be that the protections and autonomy of the DD Council currently in place would not be guaranteed. They would be subject to the same restrictions as any other board and commission regarding the ability to advocate independent of an administration or department.

Q: There is an understaffing situation at the Council to support the separate roles of the ICC, SEAP, SESA, and the DD Council work. Can the administration recognize that and see if there are any thoughts about possibly separating some of the roles, like three different Councils instead of one? Is there a possibility for funding additional staff positions for the Council?

A: *The Council has taken a lot of time to explain the items that need long-term solutions to the administration, and those will be discussed post-EO. Staffing has become an issue across the State system. The Department will assist the Council in the recruitment process to ensure current staff positions get filled.*

Q: If the Council is looking at changing the setup with the ICC, SEAP, and SESA, at what point will that information be shared with the other entities?

A: *That is a subject that would not be discussed in earnest until late March. There would be meetings between the Department and the Council to address those changes, and it will ultimately be a governor's decision on how that happens.*

Myranda Walso added that some provisions in the roles of the ICC and SEAP are initially delegated to the Governor's Council, and as it stands, those entities don't exist separately. SESA does because it is its own agency that the Council governs. The discussion with the board members for the other groups is dependent on the initial decisions that the Council has made. She shared what's appropriate, and other items cannot be discussed until finalized. Myranda noted that some concerns are complex. Until the Council can explain them within the Governor's Council itself, she was not comfortable bringing all the information to outside groups. Jeanne Gerhardt-Cyrus commented that those other groups should be brought into the discussion before final decisions are made.

Commissioner Crum noted that he is confident that the EO will help avoid issues in the future when it comes to the other councils and groups, because they will get addressed much sooner. The Department can help sooner so the Governor's Council can focus on critical aspects, making for a healthier organization. He noted that the administration is waiting for the final approval on the language shared with the Executive Committee. If approved, as the Council members prepare for the legislative visits, they could include an item in a position paper on the EO and talk about the EO and how it can help get the Council where it wants to go.

Myranda Walso commented that the Council has talked about their willingness to emphasize to the legislature why the EO is important and the relay the challenges of navigating the DHSS as it is currently. The concern is that the EO isn't a Council issue, except that it impacts the Council because of the funding and the DSA issues. Concern has been expressed that focusing on the administrative organization aspects of state government is taking away from the focus on the DD waitlist, waivers, and other issues of importance to the Council. She noted that the Council is willing to support the Department's work to the legislature because they believe it will work long term. In return, the Council needs clarity on the message. Commissioner Crum shared a link to information and offered to produce a list of points the Council could choose from to champion. Deputy Director Carpenter offered to work with Art Delaune, the Legislative Committee chair, on a position paper and talking points.

The Executive Committee members thanked Commissioner Crum and Deputy Director Carpenter for their attendance and the information relayed.

Director John Lee thanked the committee for the invitation to the meeting. He stated that today's discussion shows the importance of why DHSS needs to split and focus on individual issues. He looks forward to focusing on what the Division does and having more time with the Commissioner and staff to work on issues that are important to Alaskans.

Ric Nelson brought forward issues related to supported employment and the new regulation that requires all DSPs to take the National Certification Employment Services training (NCES) to provide supported employment within a year of hire. Director Lee stated that the Division received a lot of stakeholder input on the certification as something important to improve the services provided under the program. He understands there was concern with the timeframe; therefore, they extended the timeframe hoping that the flexibilities can be kept in place to allow providers to onboard their staff and train them appropriately. He reiterated that there was provider and stakeholders' feedback that the State could significantly improve employment services by having programs in place that ensure that the staff supporting individuals receiving employment services have the very best staff as possible. He noted that it is difficult to have a one-size-fits-all policy. Still, for the overall program of employment services and the fact that the State is paying higher for those types of services is something that they could benefit from by elevating the credentials of the staff performing the services.

Myranda Walso reminded the committee that Director Lee is on the agenda of an upcoming Community Inclusion, Supports, and Services Committee meeting. Members could ask Director Lee to speak at that meeting on other issues unrelated to the Executive Committee agenda item. Dean Paul brought forward the importance of the DSP workforce to the Shared Vision. The committee members thanked Director Lee for attending the meeting.

Myranda Walso opened the floor for members to bring forward questions to pose the Council's attorney at the meeting on Tuesday. Heidi Lieb-Williams recommended ensuring the Council is protected from all sides in all subject matters now and in the future.

Myranda Walso stated that if there is no issue with being with the Department of Health or the restructure because of the language in the EO, there is still material conflict with the DD Council and the IDEA and those other roles. Even if the grandfathering of the DSA is moved, that does not absolve all the Council's issues. She said that what the language does is buy the Council time. The guarantee from the Department to hold harmless the funding is helpful in some ways, but it is important to note that the immediate loss of funding was never really the biggest concern. It's the long-term funding. Holding harmless for a single year is very different from doing it forever. The Council gets guaranteed funding from the federal government to support the work in perpetuity. The volatility in State government and the ability of departments and commissioners to change money to move between allocations is not. The most considerable risk is not necessarily just the loss of the funding, it's the loss of autonomy. She emphasized that that is what it has always been about, even more so than the dollar amount. Without the protection and status as the DD Council funded by ACL, the Council doesn't have those provisions that set the Council apart. Myranda stated that as the discussion moves forward about how to resolve and reconcile the issues with education roles, the DD Council, funding, and staff levels, it is important to note that the provisions and the ability to advocate independently is contingent on the ACL funding and maintaining the separation between the DD Council and all the other aspects of work done by the Council.

When asked what the Council's autonomy meant, Myranda Walso answered that the Council's autonomy is reflected in its discretion and ability to hire its executive director, its ability to travel where and when they want with their budget, the ability to set the priorities and goals for the Council, the ability to decide how to implement the State Plan, and the ability to advocate for regulation that may not align with the administration. All of that is dependent on being autonomous and independent. Otherwise, the positions the administration takes are the positions of the Council.

Myranda Walso brought forward the question of what level of reporting should be given at the winter Council meeting. After a lengthy discussion about the complexity of the subject matter and the ongoing negotiations, Art Delaune recommended waiting to see

the final EO verbiage. After that, prepare a summary of events and note that there are outstanding issues the Council needs to address related to the Council's roles in the DD Act and IDEA. Myranda asked the committee to provide staff with the messaging they want to present at the winter Council meeting by the January 12<sup>th</sup>, 2022 Executive Committee meeting. Ric Nelson asked Myranda for her recommendation. Myranda recommended providing an overview to the Council of what's happened to date, summarizing the discussions and negotiations with the administration, the language in the Executive Order, the impacts on funding, and talking about negotiations with the Department to maintain stability over the next couple of months. She added that it would be helpful to discuss how the Council needs to decide how the education and DD Act roles are managed and how the Council presents that to stakeholders. Myranda noted that there needs to be an opportunity for the rest of the Council to engage with and ask questions of the attorney. She also recommended asking Commissioner Crum to speak at the Council meeting.

Myranda Walso asked the Executive Committee whether or not to split the DD and education aspects of the Council into separate entities. She stated that she does not believe there is a way to reconcile those roles as they are now. The Council will either be in a position where it maintains things the way they are and continue to be unable to meet obligations and start to sacrifice important things or pursue separating and focusing on the DD Council work. She stated that her ask is that the Executive Committee recommend pursuing the establishment of the education components as a separate Council.

Ric Nelson **MOVED** to formally recommend pursuing separating the DD Council and the special education roles into two separate stand-alone Councils, **SECONDED** by Heidi Lieb-Williams. There was an objection for the purpose of discussion. Ric Nelson yielded the floor to Art Delaune and Jeanne Gerhardt-Cyrus for comment. Art Delaune indicated that he objects to the motion because he feels the Executive Committee shouldn't make that decision without hearing from the rest of the Council and others. Jeanne Gerhardt-Cyrus stated she objects and believes the Council needs to let the rest of the partners know, and also there might be potential for additional staffing.

Ric Nelson explained that Commissioner Crum committed to funding one year, not the future. Ric noted that if you look across the nation, Alaska is the only Council that functions with other roles, and it can't reconcile the IDEA and the DD Act. He stated that the Council would not maintain and receive funding if it didn't separate the roles. Heidi Lieb-Williams said splitting into stand-alone councils is the only path forward that doesn't sacrifice the remaining compliant DD Council and the federal funding. Jeanne Gerhardt-Cyrus noted that she understands this is something the Council has to do but still thinks it should do it with as much input as possible. It seems premature to do it so fast. Ric Nelson noted that the motion is to pursue it. The action is not making a defining decision; it just needs to pursue it to move forward. Art Delaune understood that pursuing means going after it and getting it done. If the motion language were

changed to “look at the options or the impact,” that would change the intention. Ric Nelson **WITHDREW** the motion to reword it.

Ric Nelson **MOVED** to recommend moving forward in further researching the separation of the DD and the special education roles into their own separate Councils, **SECONDED** by Heidi Lieb-Williams. Various members of the committee shared their thoughts in support of the motion. Myranda Walso clarified that the legal research has been done, and the Council does not have a way to maintain compliance with the federal laws. The pro of staying together is that it is consistent with how things have been and would continue to carry forward the scope as it is currently. The con is that that is not compliant with federal law, and the Council cannot reconcile the two aspects of the DD Act and the IDEA in a single board. The advice the Council has gotten from the attorneys, NACDD, ITAC, and ACL all point towards the Council has to separate those aspects. To maintain it, the Council would have to have the State assume responsibility and fund it, and the Council would be at risk of losing the federal funding for the DD Council because of it. She stated that other caveats include that there are many different ways separation can look like, and part of the discussion has to do with the mechanisms of implementation.

Myranda Walso emphasized that this isn't a change in the Council's ability to pursue education work. Education is listed in the DD Act as relevant advocacy and systems change. The difference is that the Council's ability to self-select what aspects of education the Council wants to look at is not maintained with the other responsibilities. The Council can still participate in and offer input on regulations. Myranda stated that currently, the Council's responsibility and duty to work as an interdepartmental budgetary function and other roles is not getting done. The Council is not meeting its obligations currently. It is getting worse in that the Council's ability to maintain the bare minimum for the other functions compromises the Council's ability to move forward with State Plan implementation.

Myranda Walso shared that the Council's discussions with ACL and ITAC about the EO all stipulated that the combination of functions is not compliant. The Council has the time to fix it because it negotiated and asked for federal assistance in moving it forward. The Council does not have an option to not deal with it. By being proactive, Council has managed to protect itself for another year, guaranteeing that there will be consistent maintenance of funding. The Council has time to implement the changes. In the negotiations with DHSS in March, the Council was not granted a seat at the table. The State has indicated they are willing to work with the Council on it and wants the Council's input, but it is not mandatory. The Council can buy time to fix it but cannot maintain and remain compliant with the law. That's the reality. The Council has the opportunity to show its ability to resolve complex systemic issues.

Heidi Lieb-Williams called for a roll call vote. The motion **PASSED**. (5/0/0)

## **Upcoming Juneau Travel Logistic Updates**

Myranda Walso reported that the Council has made travel arrangements for Council members traveling to Juneau for meetings with legislators. She noted that Ian Miner has done an excellent job working with Council members to ensure their needs are met in preparation for successful advocacy. The logistical planning included air travel, accommodations, and transportation. The scheduled meetings with legislators and Governor's office visits have not been confirmed, and specific advocacy priorities have not been finalized.

The remainder of the discussion was tabled

## **Winter Council Meeting Planning**

Tabled.

## **TIME AND DATE OF NEXT MEETING**

The next Executive Committee meeting is scheduled for Wednesday, January 12, 2022, from 2:00 p.m. to 4:00 p.m.

## **GOOD OF THE ORDER AND ADJOURNMENT**

Ric Nelson **MOVED** to adjourn, **SECONDED** by Jena Crafton. Hearing no opposition, the motion **PASSED**, and the meeting adjourned at 7:35 p.m.