

WHY DO WE HAVE A LAWYER?

Myranda Walso



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

Introduction & Agenda

- Current GCDSE Roles
- Statutory Authority & Duty
- DD Act vs IDEA
- IDEA Part B vs Part C
- DD Council Specific Requirements – Part 1
 - What is a Designated Services Agency?
 - New Five-Year Plan Development
- DD Council Specific Requirements – Part 2
 - Designated Services Agency Review
 - New Memorandum of Understanding (MOU)
- Executive Order on DHSS Restructure
 - Federal Partner Guidance
 - Requested Hedge Language
- Securing Legal Counsel for GCDSE
- Questions

Current GCDSE State & Federal Roles

- There are thirteen (13) separate responsibilities assigned to the GCDSE.
- These compliment and overlap with the five (5) State and Federal Roles of the Council.



Statutory Authority & Duty

- Developmental Disabilities Council (DD Council)
 - Developmental Disabilities Assistance and Bill of Rights Act of 2000.
- State Education Advisory Panel (SEAP)
 - Individuals with Disabilities Education Act, Part B
- Governing Body for Special Education Service Agency (SESA)
 - Individuals with Disabilities Education Act, Part B
- State Interagency Coordinating Council on Infants and Toddlers with Disabilities (ICC)
 - Individuals with Disabilities Education Act, Part C
- Beneficiary Advisory Board, Alaska Mental Health Trust Authority (MHTA)
 - State of Alaska role

Alaska Statute outlines thirteen (13) separate responsibilities & tasks.

These include duties to provide annual reports to the Governor, reports to the Commissioners of several departments, to provide review and input on the Integrated Comprehensive Mental Health Plan, review spending & encourage coordinated federal, state, and private resources supporting those with disabilities.

DD Council Requirements

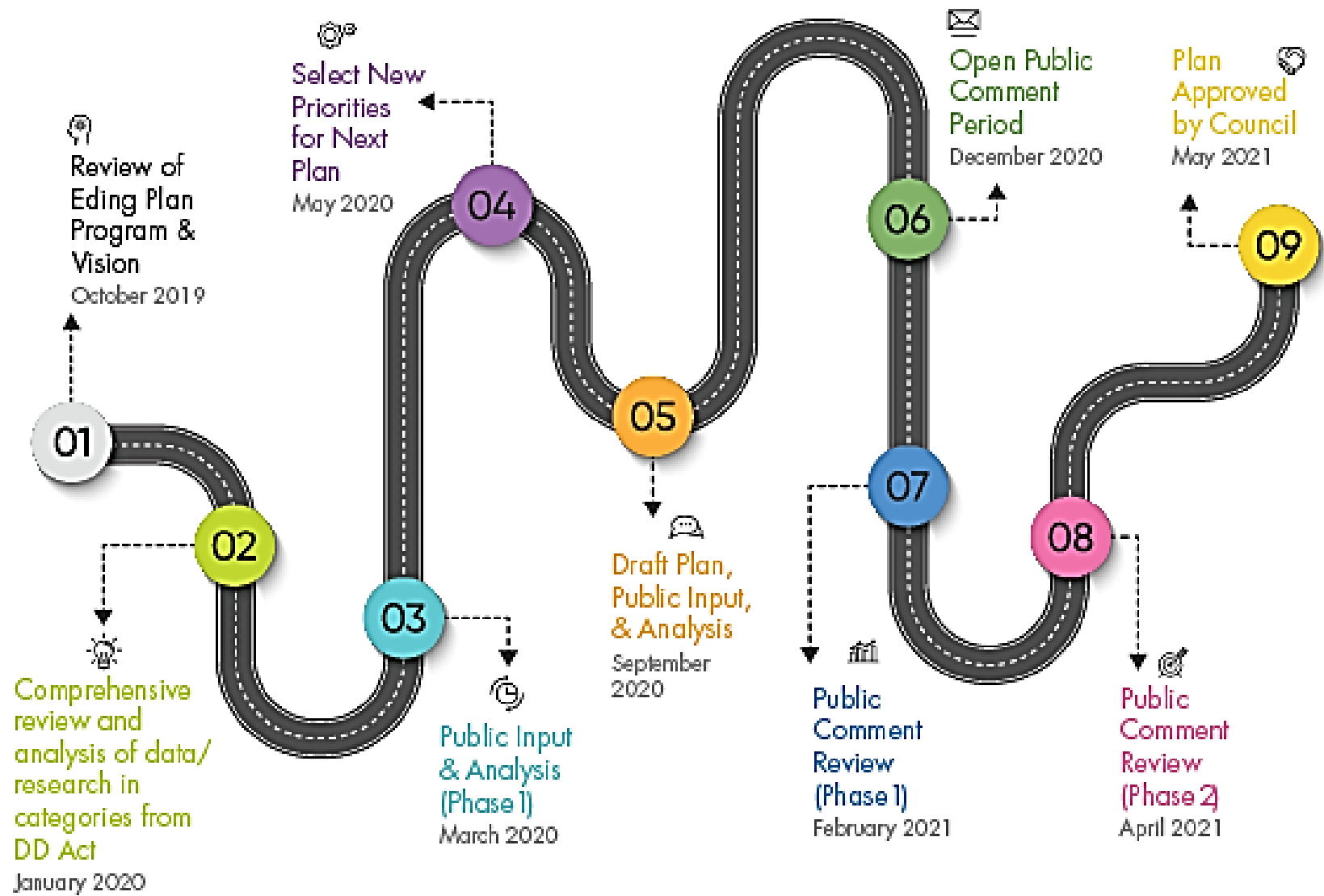
What is a Designated Services Agency (DSA) ?

- Developmental Disabilities Councils must have a DSA. The DSA receives the federal funds for the Council and pays for all expenses incurred.
- The DSA can be the Council itself, or another agency or office of the State.
- The Administration on Intellectual and Developmental Disabilities has stated, “There does not have to be any program relationship between the Council and its designated State agency. It is primarily a fiscal relationship.”
- The DSA is selected by the Governor and/or Legislature.
- The DD Act says that a Council cannot have a DSA that is an agency that pays for or provides services to people with developmental disabilities, unless such was selected as the DSA before 1994.

DD Council Requirements

What is a Designated Services Agency (DSA) ?

- In general, the DSA must provide the following supports for a DD Council:
 - Support services as requested and negotiated by/with the DD Council
 - Maintain proper fiscal controls and fund accounting procedures
 - Provide timely financial reports about the status of expenditures, obligations, and liquidations of Council resources
 - Provide the required Non-federal share
 - Can be in-kind contributions, funding from political subdivisions, public or private entities, and more variations
 - Assist the Council in obtaining the required Assurances
 - Provide a Memorandum of Understanding on request of the Council



Designated Services Agency (DSA) Review

- GCDSE Staff conducted a review of the DSA in August 2020. Key excerpts below.

7) Does the DSA receive, account for and disburse Council funds? Items to be considered may include prompt processing of fiscal requests; authorization at the director's level, are the number of levels of consent to expend Council funds minimal and no more than a department level request; look for procedures that are only applied to the Council and not to other departments/offices within the DSA.

While the DSA does receive, account for, and disburse Council funds; the level of consent is not at the director's level and the GCDSE must get approval within the department and then and outside of the department with the OMB. The process now includes justifying amounts as small as \$250/annually for supplying an accessible option for water, and inventorying office supplies to justify an annual request for approval of expenditure (of federal funds).

10) Has there been any interference or attempted interference with Council activities or budget? Yes. Approval has been repeatedly denied for travel budget that is funded by federal grant and is for implementation of self-advocacy objectives, and other activities of the state 5-Year Plan. Authority has also been exerted over content of brochures printed by procured printer with federal funding to assist self-advocacy organization grantee with promotion of DD Shared Vision. There are other examples, including requesting justification of expenditures of federal funds for office supplies necessary for implementing the 5-year Plan, and requiring submission to DSA fiscal staff for approval of the scope of contracts offered to partners under federal grant. Staff was also furloughed with other state employees in the past.

To: Corey Gilmore, Council Chair, GCDSE
Kristin Vandagriff, Executive Director

From: Anne Applegate, Planner III, GCDSE

Date: August 26, 2020

Re: Review of Designated Service Agency under DD Act and ITAAC guidance

6) Is the placement of the Council at an appropriate level? Since the DSA area(s) of responsibility are chiefly fiscal, is the Council placed at an administrative level or above, for instance in an Administrative services level or the department director level?
No. At unit level.

This review should lead to and inform the development a memorandum of understanding (MOU) that further delineates roles and responsibilities for the Council and its current DSA. It is the start of identifying areas of concern to Council operations or its ability to act as an independent advocate for people with developmental disabilities. It can also be used to consider a change of DSA, such as to a different department, a university, an existing nonprofit community organization, or to the Council itself. There are examples of all of these as DSAs among the states. An independent report with recommendations by an outside reviewer may be acquired by a Council for use in setting the terms of an MOU, or for proposing a change of DSA.

New MOU included the following provisions, agreed to by Administration

- Noninterference with the DD Council's budget
- Noninterference on personnel matters regarding recruitment, hiring, firing
- To not apply hiring freezes, reductions in force, or furloughs
- Not prohibit travel by DD Council members or staff
- Assist the DD Council in obtaining the appropriate assurances and compliance with law

New
Memorandum of
Understanding
(MOU)

Executive Order on DHSS Split

Federal & State Partner Guidance

- GCDSE Consulted with ACL, NACDD ITACC, DD Councils in other states, and Department of Law Attorneys working on behalf of DHSS to prepare for EO.
- Sent Memorandum to Department of Law November 24th, 2021 & had meeting
- Discussed recommended adjustments to EO, including approach to add “hedge language” providing for future adjustment to DSA as needed



Requested Hedge Language

“This Executive Order shall have no effect on the substantive work of the Governor’s Council on Disabilities and Special Education, 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 within the new Department of Health. This placement is intended to be a continuation of the state service agency 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.”

Securing Legal Counsel

Requests for Independent Attorney

- Discussions with Department of Law
- Obtaining Conflict Counsel
- Importance of Legal Advice & Support





GOVERNOR'S COUNCIL ON DISABILITIES AND SPECIAL EDUCATION

QUESTIONS?

References/ Citations

- GCDSE & DHSS/Gov MOU – March 2021
- GCDSE 11.24.21 Memorandum to Department of Law
- Governor's Office 12.20.21 Meeting – One Page Summary
- Alaska Statute 47.80.030 & 47.80.090
- 2020 Review of DSA by GCDSE Staff