

Developmental Disabilities Council
Meeting Minutes
Wednesday, March 13, 2019
DDDS Fox Run, 2540 Wrangle Hill Road, Bear DE
6:00 – 9:00 p.m.

Members Present: Rick Kosmalski (Chairperson), Maitri Campbell, Monica Edgar, Derrick George, Laura Greene, Terri Hancharick, Michael Harris, Nancy Lemus, Debra McCann, Daniese McMullin-Powell, Carrie Melchisky, Joseph Merritt, Jr., Beth Mineo, Angela Mitchell, Chris Oakes, Shawn Rohe, Laura Waterland

Members Absent: Teesie Bonk, Alvin Emory, Jr., Karen Gallagher, Isabel Rivera-Green, Katie Howe, HarrietAnn Litwin, Katie Macklin, Dale Matusевич, Steve Yeatman

Staff: Stefanie Lancaster, Kristin Harvey, Emmanuel Jenkins, Pat Maichle

Guests: Victorian Counihan (Deputy Attorney General), Bill Powell, Catherine Pringle, Diann Jones

I. Call to Order – A quorum being present, Rick Kosmalski called the meeting to order at 6:20 p.m.

II. Approval of January Council Minutes and January Executive Session minutes – There were two edits requested by Daniese McMullin-Powell. Section V. Executive Session on page 2 – there needs to be a notation that states an affirmative vote was taken to go into Executive Session. Also, Daniese stated that in section VI. Chairperson report – the last sentence should reflect that food is unable to be paid for with Council funds. With these edits, a motion was made by Daniese McMullin-Powell to approve the minutes, and was seconded by Chris Oakes. The minutes were approved as amended. The January Executive Session minutes were distributed to all voting members present by Victoria Counihan for review and approval. Carrie Melchisky made a motion to approve, seconded by Shawn Rohe. The January Executive Session minutes were approved as submitted.

III. Approval of Agenda – Michael Harris made a motion to approve the agenda as written. Daniese McMullin-Powell seconded. The agenda was approved as submitted.

IV. Public Comment Period – Debra McCann had a question regarding a Walk/Run being hosted by The Arc of Delaware in May. She asked if the Council could donate \$25 for someone with an intellectual disability to be able to participate in the walk. Kristin Harvey stated that it this request would need to be tied directly to our Five Year State Plan and would need to be received in writing and approved by the Council. Deb will share the flyer with the DDC Staff. Michael Harris also stated that there is a Disability Dance hosted by the Arc of Delaware. He stated that the funding available for this event is minimal and thought that this would be a great opportunity for the Council to support the community. Kristin stated that the Council could possibly fund DJ services, however an unsolicited proposal would need to be received and a Council vote taken in order to accommodate this request. Daniese McMullin-Powell state she wants the Council to ensure that the organizations the Council supports have similar core beliefs as the Development Disabilities Council (DDC).

V. Financial Advisory Committee update – FFY 2018 Funding obligations needing approval – The Financial Advisory Committee met two weeks ago to discuss remaining FFY 2018 Funding obligations left to approve. There is \$25,000 left un-obligated in the 2018 grant. It was discussed to add these funds to the LIFE Conference. With the growth of this conference, the need for accommodations and additional ways to improve the number of individuals with disabilities who are supported to attend the Conference has been discussed. This funding request would be in addition to the \$25,000 previously obligated by the Council for the 2020 LIFE Conference. Laura Greene made a motion to approve, seconded by Nancy Lemus. The motion was approved to add the remaining \$25,000 of FFY 2018 funds to the 2020 LIFE Conference for a total of \$50,000.

Of the FFY 2019 grant, there is still \$150,000 left to obligate. There was a discussion regarding a project recognizing Disability Pride Day in Delaware in each county. Rick stated this project should be discussed in more depth with the full Council therefore it will be discussed at the May Council meeting. A draft scope of services was provided to the members present in their packets.

It was requested that Stefanie reformat the document to be more user friendly having only one Federal Fiscal year to a page. This will allow for anyone to be able to easily understand this document.

VI. Current Business

1. Travel Policy Discussion – review of recent draft with proposed changes and approval needed of travel request form as well as recommended change to amount obligated to travel – Stefanie Lancaster stated that she has incorporated feedback from Victoria Counihan as well as Sheryl Matney from ITACC regarding the proposed updates to the DDC’s Travel Policy. There was a concern raised by Daniese regarding the Chair and Vice Chair making unilateral decisions for the Council. With the edits recommended, Michael Harris made a motion to approve, seconded by Deb McCann. Angela Mitchell and Daniese McMullin-Powell abstained from the vote. The updated policy was approved with recommended edits previously provided by Laura Waterland incorporated. With these changes, moving forward, all requests for travel will be submitted to the Executive Director and/or the Administrative Officer (currently Stefanie Lancaster) for review and approval. All requests for travel will be reviewed by the Executive Director, Administrative Officer, and/or the Chair OR Vice-Chair. In the absence of an Executive Director at this time, all requests will be reviewed by the Administrative Officer, Chair and/or the Vice Chair. All recommendations have been incorporated. The DDC Staff can provide a detailed copy upon request of the tracked changes that were reviewed at this meeting.

Rick also discussed the concern from our federal granting agency regarding the amount of funding related to conferences the Council attends. The thought is to move in a direction of bringing more conferences here to Delaware. Rick recommends trying to bring a speaker here to Delaware to be able to benefit more individuals in Delaware. This can be explored further as requests for travel come in. Deb McCann asked if the DDC Staff could request information from other states on “how can we bring conferences to Delaware?”. Kristin stated any member of the Council can join the listerv by going to <https://nacdd.org/itacc/> to register. One on that site, scroll to the bottom of the page and there will be a button to sign up.

Beth Mineo stated she would like for the Council to be more strategic in the travel being approved – reviewing the Council’s Five Year State Plan and building on the areas we have already committed to improving.

2. Recommendations for possible committee restructuring – three options provided per Executive Committee’s request – approval needed - Due to time constraints, Rick requested that this item will be added to the May Council meeting agenda.

3. Recommendation for project idea – SA6 – Disability History objective- approval needed – Due to time constraints, Rick requested that this item be added to the May Council meeting agenda.

VII. New Business

1. Discussion of Auditors report by Pat Maichle – Pat Maichle was invited by the Chairperson following a majority vote to do so by the Executive Committee to discuss the allegations and findings in the Developmental Disabilities Council Special Investigation/Audit report released on June 29, 2018. Pat stated that this is only her second time speaking regarding these allegations. She stated she was not contacted while the investigation was being conducted. Pat stated that the first time she was questioned about this report was in January by Secretary Coupe’s staff at the Department of Safety and Homeland Security.

Below is a list of the allegations (in bold) noted in the report and the position of Pat Maichle, in her capacity as the DDC Executive Director, (listed below each allegation).

The Director violated State procurement rules by issuing contracts without Requests for Proposals (RFPs) or competitive bidding.

- a.** Pat stated that the DDC does not do “contracts” but does “mini-grants”. It is her view that there are no rules in state for grants. Pat said in the past two year the Council was asked to sign a Schedule of Expenditures of Federal Award (SEFA) document with Department of Safety and Homeland Security that says we are grantees and those we fund are sub-recipients of that grant.
- b.** Pat stated that 30 years ago – the Deputy Attorney General at that time for the Council established the process the Council was using (prior to the audit). Pat stated that the process was put into place to stay as close to the procurement laws as possible. She indicated that this process was put in place before she became the DDC Executive Director. Pat stated the process was accepted and approved by the AG, the three different Designated State Agencies (DSA) that the Council has been under and the Office of Management and Budget (OMB).
- c.** Pat said that the Council only receives \$20,000 for the Partners in Policymaking Program from the General Assembly which is considered State funds. Pat said the rest of the Council’s funds are federal funds not state funds.
- d.** Pat stated, “We don’t have to abide by the state’s procurement laws because we are federally funded”.

- e. Pat stated that the DDC contracts would go out for formal Request for Proposals (RFP) through the DDC office. If an awarded vendor had contract for three years, then the contract would go out for rebid.
 - f. Pat stated that the Council issued RFPs for under the \$50,000 threshold for utilizing the state's procurement office. Pat claims that all contracts were put out for RFP to get a better variety of vendors.
 - g. Pat stated that the State is small. The community of people who come forward to bid and submit proposals is very small. The pool of vendors is usually very small. Our population is not very important to many people. Typically we would get one proposal per project.
 - h. Pat stated that the process of issuing the DDC contracts has been "blessed" by the Attorney General's office, and all three of the DSA's the Council has been under and the advice of the Deputy Attorney Generals.
 - i. Pat stated "Council approves the project ideas, approves the vendors used, and approves the amounts for each project" all of which is recorded in the meeting minutes.
 - j. Pat asserted that the Council is audited by the state annually. She said for the 20 years she has been a part of DDC, the issues raised in the Auditor's report were never raised during these annual audits.
 - k. Pat stated that an onsite audit was completed by Administration on Developmental Disabilities (ADD) currently known as the Administration on Intellectual and Developmental Disabilities (AIDD) several years ago. Pat said that during their visit, ADD reviewed all of the Delaware DDC's records and processes. Pat stated that ADD staff interviewed the DSA, staff, Council, Governor's office, and the University of Delaware Center for Disabilities Studies. Pat said that all of those agencies and oversights approved our payment process and procurement process. Pat stated that ADD had no findings and listed no need for corrections in the report summarizing the audit.
 - l. Pat stated that she did not know why the Auditor claimed the DDC violated the procurement code. She said the procurement code requires three contracts, but the Council directed her to only draft a one year contract for each year of the three year time frame. She speculated that perhaps it is the state's position that the DDC didn't rebid properly after the three year time period. Pat said she knows of no other issue. The reason the Council did it one year at a time was because the amount the Council receives from Congress is unknown every year so the Council felt they did not want to lock into a contract that may not be able to be funded.
- b) The Director continued to issue contracts to a vendor who was not doing the work it was contracted for.**
- a. Pat stated that it is her position that it usually takes vendors 2 years to get the process and project down to understand the requirements that we have regarding venues, culture, etc. for the LIFE Conference, Junior Partners in Policymaking, and Partners in Policymaking. Because it takes this long for vendors to learn the process, the committees that oversees those projects and staff do a lot of the work that needs to be done to order for the projects to be successful and help build up the base of knowledge.

- b. Pat said that she guesses that the Junior Partners in Policymaking contract is one in particular that they were referencing in the report. The vendor, Jamie Wolfe, had difficulty understanding the basic knowledge and not all was her fault. Council had to find a new venue each of the two years she worked on the project. Delaware State University could not accommodate the program during the first year it was held away from the University of Delaware. Pat said that this required redoing all documents, contracts, flyers, etc.
 - c. Pat said that in 2014, the Council had difficulty getting vendors to spend all of the money in their contracts. The Staff had difficulty getting the vendors to tell us in advance. So some money had to be reverted to the feds. Due to this, Pat spoke with the Council's DAG to update contract language in the contracts regarding spending contracts in full. At the same time, the University of Delaware Provost Office called to state that they were unhappy with the language changes in the contract. Pat stated that she recalls that UD attempted to get the Council's DSA to tell the DDC to change language back. Ultimately, the University of Delaware decided not to proceed with signing the contract. Typically the Council had a contract signed by August so that the University could hit the ground running in September. It was months before the staff could receive a budget. Pat said that it was November before she received word that the University of Delaware (UD) was not going to proceed with the contract. Pat said that Diann Jones (the Chairperson at that time), the Executive Committee and the Partners Oversight Committee were very involved in this process. An RFP would be put out. Money had previously been approved for this contract. Only had one proposal received. Therefore, it was awarded to Jamie Wolfe.
- c) The Director helped friends complete the 501(c)(3) paperwork to establish a non-profit so that it would be eligible to receive contracts.**
- a. Pat admitted to helping "the only self-advocacy organization in the State of Delaware to get their non-profit status which was Delaware People First". She stated she did so for free. Pat said that in year's past, "the Council has never required any organization to have a 501(c)(3), so this organization did not do this to get our contracts".
 - b. Pat said she provided this assistance for free. She said "Yes it was for friends, because Delaware is so small".
 - c. Laura Waterland asked for clarification regarding whether Pat did the paperwork on her own time or work time. Pat stated she did some during work hours and some on her own time.
 - d. Pat also stated for full disclosure that she assisted Emmanuel Jenkins with his non-profit paperwork for his organization to get started.
 - e. Pat said that as with Delaware People First, she did not receive payment for assisting Emmanuel to file 501(c)(3) paperwork.
- d) The Director would show preferential treatment to some contractors by waiving the match requirement.**
- a. Pat stated the whole DD Act grant requires a 25% match which includes the administrative funds received. Pat said that it is at the Council's discretion on how to

- g) There is no reporting back to the Council or the Committees as to what the individual learned at training while they were away.**
- a. Pat stated that all Council members who travel to trainings/conferences typically do not provide a full report to the Council.
 - b. Typically Pat or staff members provide a report on what was discussed and then each member is asked if they would like to speak. Pat said that some members are not comfortable speaking in front of larger audiences.
 - c. Pat said that there has never been a requirement that members provide anything in writing to the full Council when they return.
- h) Contractors are required to submit their contract expenditure log by the 15th of each month but typically do not. In addition, the Council does not require the contractors to provide receipts/proof for the items they are being reimbursed for.**
- a. Pat said that expense reports are due by 15th of each month as represented in contracts.
 - b. She stated that some organizations, such as hospitals, state agencies, and universities are hard to obtain these reports from on time. Pat said some larger organizations do not bill monthly because they can absorb these costs. Some bill every six months or yearly as it is more cost effective for those organizations.
 - c. Pat said that this has been a problem for some time. She said that it can be very frustrating even after staff calls to remind contractors of the due dates.
 - d. Pat said that receipts have never been required of vendors to process payments. Vendors have been told to keep all receipts in case they were ever audited. Pat asserted that under the three designated state agencies the Council has been under, she was told “there is not enough space at these agencies to hold all the receipts from each vendor we contract with. Archives did not want them because they did not have space to store them. And the Council would have had to get storage space in able to store all the documents. We would have had to pay for a storage unit to keep all of these documents. Therefore, we have never requested receipts from vendors”.
 - e. Pat stated “This is something I inherited and how I was trained”.
 - f. Pat asserted that all expense reports have been processed throughout the years without question until this came up in the audit. None of the DSAs ever questioned not having receipts.
- i) Council documents are often signed via a signature stamp.**
- a. Pat stated, “That has been the way this was handled when I came to DDC. This is the way we have continued since I have been with the DDC. This is the way I was taught”.
 - b. Pat stated that each Council Chairperson authorizes the use of their stamp to be made. Many chairpersons do not have time to come to Dover to sign documents in person because they have full time jobs or are people with disabilities.
 - c. Pat stated that every chairperson has agreed to provide their signature for a signature stamp.
 - d. Pat stated, “The stamps are returned to the member when they leave the Chairperson position”.

- e. Pat explained that this practice is something the Governor’s Advisory Council for Exceptional Citizens (GACEC) uses as well as the State Council for Persons with Disabilities (SCPD) uses. They all have a signature stamp and utilize them as well.
- j) **The Director used the Council to obtain a salary increase.**
 - a. This item was never addressed by Pat.

Other items discussed by Pat:

- a) **Unallowable contracts-** Pat stated that the Disability History Project was discussed with GACEC and SCPD for at least five years prior to any action being taken to initiate this project. She said that a significant amount of research was conducted prior to this contract being completed. Staff and contractors for the project talked to a variety of organizations throughout Delaware for their input on this project. Pat stated that this project is part of our State Plan. Pat said, “Council approved it and were well aware of the process and work that was being done and decided to approve it”. Pat said the Council decided on a two prong approach to do the disability history videos and the disability play. Laura Waterland stated it was a question of whether it fit in the state plan. Pat referenced goal number 1 objective 3. Pat said, “I was dumbfounded to see this on here. The significance of the work we did was most pronounced when the Governor put the video of Jamie Wolfe on his Facebook page when she passed away so this represents the significance of the videos”.

Council member questions:

- a. **Michael Harris asked Pat about when she was interviewed by the Auditors to share her side of these allegations.** RESPONSE: Pat stated she was not questioned until January 2019 after the report was published.
- b. **Laura Waterland asked if the Auditor of Accounts who completed this report is a state entity.** RESPONSE: Victoria stated that this entity is the one who completed and is a state entity.
- c. **A question was asked if the Council is audited annually.** Pat stated that the state does an audit of our Council each year. The federal granting agency (AIDD) completed a federal MTAR audit several years ago and asked to see the annual audits completed by the state. Pat said she had to get a printout of the audits from the Auditor’s office.
- d. **Laura Waterland also asked if the language for the contracts regarding receipt retention was approved outside the DD Council by some other entity.** Pat stated, “It has gone through the Council, the DSAs, the Office of Management and Budget and the Controller General’s office. Our process is not a secret and all of these years had been approved by those entities”.
- e. **Laura Waterland asked if the paperwork Pat completed for the 501(c)(3) organizations was completed on her own time or while at work.** Pat stated, “Some was done on my own time and some was done in the office”.
- f. **Laura Waterland asked what documents the signature stamp was used for.** Pat said, “Contracts and leave slips. Those two were the primary things.”
- g. **Daniese McMullin-Powell referenced the item in the report relating to several town cars being reserved for members to attend the same conference. Daniese stated only state employees are able to use Fleet vehicles – non state employees are not able to ride in state**

vehicles. Pat said, “That is correct. Non state employees are not able or permitted to ride in Fleet vehicles”.

- h. Michael asked about the Council’s funds and whether they are state or federal funds.** Pat stated, “The only time we use state funds is for Partners in Policymaking for \$20,000. It is match money. It is not thrown into our core money. It is dependent on whether we are listed in the State’s Appropriation Act. Our organization is not listed there. And it is also not listed in the Supplementary Appropriations Act either. Our agency is part of the State’s budget bill. Our staff is not paid with state money”. Victoria stated the Council can question the DSA as to their position on this if they so choose.
- i. Rick asked if the Council compiles a response, if the previous audits should be referenced in that response.** Pat stated that the copies of the MTAR audit should be in the closets at the office. Everyone who was talked to, documents referenced, and institutional documents were sent to the feds prior to them coming to interview the individuals. Pat noted that they looked at everything and we were fine.

Following Pat’s departure, there were some additional discussions regarding the following:

Some Council members discussed compiling a response to some of the allegations to provide a written response if questioned by anyone regarding this report. This could be done with a small group of the Council. This would allow for the Council to reference this response if ever questioned about the audit.

Michael Harris stated if the Council is not happy with this Auditors report and feels that the Cabinet Secretary of the Department of Safety and Homeland Security, the Council’s DSA is the issue, than everything discussed with Pat should be discussed with someone above him such as the Governor.

Victoria stated that if the Council does wish to respond to the Auditor’s report that it should be noted that the timeframe of contracts that were covered by and reviewed for this report fell during the time that she has been the DDC’s DAG. Victoria stated this is the first time that she has heard Pat have the opinion that the Council does not have to follow state procurement laws as well as Council money being grant funds and not procurement funds. Victoria said has always advised the Council and the Executive Director to follow the state procurement code and that she has always made it her practice to question if each contract discussed at a meeting is over the threshold of the state procurement rules and is bid properly.

The Council feels they don’t have all the information regarding the audit and what is being reviewed to determine the outcome of this investigation. Victoria reminded the Council that there has been a complete investigation done by multiple parties and that all information is being considered by the Secretary of DSHS, of which AIDD and ITACC have affirmed that they are authorized to make those decisions. Victoria noted that the Council previously requested information from the Auditor’s office, and was told by the Auditor’s DAG that the information is protected under auditing standards and guidelines and will not be shared with the Council as it is not subject to the Freedom of Information Act (FOIA).

Deb McCann said that Council is unaware of how to move forward and asked, “How does the Council operate moving forward?” Stefanie Lancaster stated the recommendations received from our federal granting agency following their visit and subsequent report of findings and recommendations in October, 2018 are being incorporated and that these are things that are done on the administrative side of our grant. Stefanie assured the Council that the Council Staff that are present now are ensuring proper policies and procedures are being followed, both at the state and federal level. This is an administrative function of the staff.

Michael asked if the Council’s funds are federal or state. Victoria responded that all federal money received by the state becomes state money when it hits the state’s clearinghouse which is the process of receiving outside grants into the state’s fiscal system. Stefanie added that money paid to the contractors is truly state funds because the state processes the checks to the vendors using state money. Then, on a quarterly basis, the state conducts what is called a “drawdown” which is a request to the federal granting agency for reimbursement of the money expended.

Michael stated there is one item regarding Fleet in the Auditor’s report that the Council feels is wrong. He recommends bringing the Governor into this because he appoints the Secretary and members to the Council. He also questioned the process of moving from under our current DSA to another agency if the Council is unhappy. Michael stated the Council is stuck in the middle of while the DSA makes decisions about the Executive Director and is unable to move forward. The Council needs closure on this matter.

Terri Hancharick questioned what happens if the Council disagrees with the Secretary’s position. Rick stated that because Pat is a state merit employee she is under the Secretary of DSHS direct supervision therefore this takes the matter out of the Council’s hands to make a decision.

Laura Waterland stated the DDC feels powerless and stuck in neutral and unable to proceed with the great work of the Council. She stated Pat handled relationships with members of the legislature at the Legislative Hall. Laura said it is her opinion that no one is able to give DDC’s position on various bills being discussed. Stefanie stated that the current staff takes extreme offense to the statement that Council is not getting any great work done in the past two years since this investigation has begun. Stefanie reminded the Council that the Council has held two very successful LIFE Conferences, Junior Partners in Policymaking session, Partners in Policymaking session, and been able to approve all of the scopes of services but two or three of the objectives for this federal fiscal year in the state plan.

VIII. Other Council Business / Recommendations for Future Guest Speakers – Laura Waterland discussed the issue relating to the Developmental Disabilities Services (DDDS) eligibility for the Home and Community-Based Services (HCBS) waiver and the ability to receive services from DDDS recipients to be able to receive Medicaid. Neighboring states have a long waiting list and our state does not intend to have this issue. This will directly impact families who receive state services or on the Medicaid waiver. Laura noted that the public comment period for proposed revisions to the waiver has already ended.

IX. Adjournment – Due to quorum being lost at 8:55 p.m., the meeting was adjourned.