



LAC

SOUTH CAROLINA GENERAL ASSEMBLY

Legislative Audit Council

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A LIMITED REVIEW OF THE S.C. DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS

AGENCY STRUCTURE AND
COMMISSION ISSUES
[PART 1 OF 2]



Legislative Audit Council

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Agency Structure and Commission Issues

Audit Objectives

Members of the General Assembly asked the Legislative Audit Council (LAC) to conduct an audit of the S.C. Department of Disabilities and Special Needs (DDSN). The requestors were concerned with agency organization and structure, service delivery, employment practices, compliance with state and federal laws and regulations, and use of best practices.

One of our six audit objectives included evaluating the pros and cons of DDSN's current structure as a standalone agency with a commission. Another of our objectives included reviewing training provided to Commissioners. During this review, we also identified an increase in expenditures by the Commission, and our analysis of those expenditures is discussed in this report. We are addressing only these sections of the audit in this publication [Part 1 of a 2-part report], with the following findings relating to:

- Changes Needed to Agency Structure
- Inappropriate Commissioner Behavior
- Increase in Commission Expenses

The remaining audit objectives, and majority of the audit, will be addressed in Part 2 and published at a later date.

Scope and Methodology

The period of our review was generally calendar years 2021 through 2022, with consideration of earlier and later periods, when relevant. To conduct this part of the audit, we used the following sources of evidence:

- Interviews with DDSN employees and employees of other state agencies.
- Documentation from national sources, including the National Conference of State Legislatures (NCSL) and the National Association of State Directors of Developmental Disabilities Services (NASDDDS).
- LAC surveys of DDSN employees, Disabilities and Special Needs (DSN) boards, and qualified providers.
- Interested parties, including various advocacy groups.
- State laws.
- Commission meetings and minutes of meetings.
- Agency emails of Commissioners.
- South Carolina Enterprise Information System (SCEIS)/Statewide Accounting System (SAP®) data and documentation.
- Financial data from DDSN.

Criteria used to measure performance included primarily state law, the practices of other states, and principles of good business practice. We reviewed responses to LAC surveys of DDSN employees, DSN boards and qualified providers, attended Commission meetings, and reviewed samples of expenditures. We also reviewed an entire population of emails involving Commissioners in a specified timeframe. Other samples and reviews of internal controls will be addressed in Part 2 of this audit.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those generally accepted government auditing standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on these audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on these audit objectives.

S.C. Code §2-15-50(b)(2) requires us to review the effectiveness of an agency to determine if it should be continued, revised, or eliminated. We did not conclude from the review of these sections of the audit that the S.C. Department of Disabilities and Special Needs should be eliminated; however, we are recommending the elimination of the seven-member Commission appointed by the Governor with the advice and consent of the Senate in favor of a standalone, cabinet agency. We are also including recommendations for improvement regarding these sections of the audit.

Changes Needed to Agency Structure

DDSN's current Commission structure may need to be changed for the agency to succeed in the future. South Carolina's DDSN is unique in its structure and responsibilities compared to other states. Also, we believe that the current Commission has likely violated the S.C. Freedom of Information Act (FOIA) multiple times. Further, some Commissioners, still serving as of March 2023, have overly burdened staff and increased expenditures in their attempts to micromanage the agency.

Current Structure

DDSN is governed by a seven-member Commission appointed by the Governor with the advice and consent of the Senate. A Commission member is appointed from each of the state's seven congressional districts. The Commission hires an executive director for the agency. As of March 2023, only two Commissioners were serving unexpired terms.

According to the National Association of State Directors of Developmental Disabilities Services (NASDDDS), South Carolina's DDSN Commission is unique in its structure and responsibilities. According to a 2017 NASDDDS survey of its member states, only one state, South Carolina, responded that it was a standalone state agency reporting to a commission with members appointed by the Governor and confirmed by the Senate.

We have confirmed that no other state has an independent state disability agency governed by a commission, like South Carolina. Also, we found that there are fewer than ten standalone disability agencies nationwide.

Other States' Structures

Other states' entities serving individuals with disabilities and special needs are primarily divisions or programs of overarching agencies serving vulnerable adults or agencies administering their respective state Medicaid programs. These overarching agencies in other states often house programs addressing mental health, aging, behavioral health, or long-term support services for vulnerable adults. There are many options for placement of DDSN; however, until further research can be done to determine where, in our state, this agency can thrive, establishing it as a cabinet agency may be the best initial decision.

Results of Employee Surveys

We conducted surveys of DDSN's central office staff, qualified providers, and DSN boards on various topics for this audit, and included questions about DDSN's structure.

For the central office survey, we sent 214 surveys and had a 63% response rate. We asked central office staff if they thought the agency should continue to be run by a commission. Of those responding to this question, 33% said "no."

Do you think the agency should continue to be run by a commission?		
ANSWER CHOICES	RESPONSES	
Yes	19.49%	23
No	33.05%	39
No Opinion	47.46%	56
TOTAL		118

We also asked if the amount of time responding to requests from Commissioners or preparing for Commission meetings was reasonable. Approximately 27% responded "rarely" or "never."

To what extent is the amount of time you spend responding to requests from commissioners or preparing for commission meetings reasonable? (This includes requests directly from the commission or a commission member and requests from your supervisors on behalf of the commission or a commission member.)		
ANSWER CHOICES	RESPONSES	
Always	11.02%	13
Usually	12.71%	15
Sometimes	12.71%	15
Rarely	16.95%	20
Never	10.17%	12
No Opinion	36.44%	43
TOTAL		118

The survey allowed for open comments for those stating that the agency should not continue its current structure with a Commission. The majority selecting a structure for the agency chose having DDSN as a cabinet agency.

Respondents from the central office also made negative comments about the current Commission, including:

"I feel that the Commission is not focused on the mission of our agency nor are they focused on the immediate needs of our consumers."

"The current Commission members (most) [are] overly involved [in the] running of the agency versus advising."

"We are so controlled by the Commission that it impacts ability to serve individuals."

"I feel like the commission process generally slows the agency down."

"They are in [sic] too involved in operational matters and leverage their personal agendas."

We also sent surveys to 161 DDSN qualified providers and DSN boards in a separate survey, with a 27% response rate, and asked if they thought DDSN should keep its Commission structure. Approximately 54% said "no."

Do you think DDSN should keep its commission structure?		
ANSWER CHOICES	RESPONSES	
Yes	21.95%	9
No	53.66%	22
No Opinion	24.39%	10
TOTAL		41

Respondents overwhelmingly stated that DDSN should be a cabinet agency. There were also negative comments about the current Commission from the qualified providers and DSN board respondents, including:

"The current DDSN Commission has an extremely negative opinion of boards."

"I feel the agenda of the Commission does not effectively represent the provider network nor the best interest of the people served by DDSN. I feel the Commission has its own agenda."

"...members have come with set agendas and don't understand the system and how supports should and do work."

"The Commission structure is antiquated and not held as accountable as a cabinet agency."

"The Commission structure is not working. Instead of oversight, they have gotten into the day to day [sic] operations of the agency and this creates problems."

Both surveys, with all questions asked, respondents' answers, and calculations of their responses, will be presented as appendices in Part 2 of the audit report.

Authority of Other State Boards and Commissions in South Carolina

Other boards in South Carolina do not seem to have the overreaching authority that DDSN's Commission has. For example, the S.C. Department of Transportation, another state agency with a commission, has a secretary (who serves in a similar position as director) who is responsible for administering the day-to-day affairs of the department. The secretary may employ personnel and prescribe their duties, powers, and functions as the secretary deems necessary, among other statewide duties. In fact, state law prohibits the S.C. Department of Transportation's Commission from entering into the day-to-day operations of the department. The S.C. Department of Natural Resources' board sets the policies for the department, but the board has no duty or authority concerning the management of, control over, or administration of the day-to-day affairs of the department.

In contrast, S.C. Code §44-20-230 regarding DDSN states:

Subject to the supervision, direction, and control of the commission, the director shall administer the policies and regulations established by the commission. The director may appoint and in his discretion remove all other officers and employees of the department subject to the approval of the commission.

The agency director should have the ability to implement policies, manage staff, and handle the day-to-day workings of the agency without total involvement by the Commission. However, the Commission is deeply involved in reviewing all agency policies and participating in the appointment or removal of all officers of the department. For example, the Commission's policy committee discussed, amended, and approved a policy regarding coverage of the front desk phone. Normally, a commission's involvement in policy is on a higher level.

The current level of oversight does not allow the director to manage the day-to-day functions of the agency without Commission input, essentially tying the hands of the director to run the agency.

Minimum Qualifications for State Director Needed in State Law

State law currently does not require specific minimum qualifications for the DDSN director. Requiring a high standard of minimum requirements for the agency director should help to ensure the agency has effective leadership. The establishment of minimum qualifications in state law for the state director could include:

- An advanced degree.
- Experience with the disabilities and special needs population, including working with parents, consumers, and advocacy groups.
- Exhibiting a certain number of years of senior leadership experience, including experience leading a large agency.

These were generally the minimum and preferred qualifications outlined by the agency when it advertised for the director position at DDSN in 2021. The person hired under these qualifications and holding the position until December 2022 had the following credentials:

- Attorney with extended studies in international business and economic law.
- Commissioner for the Indiana Civil Rights Commission.
- General Counsel to a state board of education.
- Presenter at national conferences regarding the rights of students with disabilities and civil rights.
- Author of peer-reviewed publications regarding special education and civil rights issues.

Limiting the powers of an appointed, citizen-run commission and requiring a high standard of minimum requirements for the agency director could improve the effectiveness of an agency serving this vulnerable population in our state.

Other Advocacy Entities

Although Commissioners have said their role is an important resource for constituents looking for information or helping with family members with disabilities, there are at least two other federally-mandated and/or -funded entities in our state which provide that service.

S.C. DEVELOPMENTAL DISABILITIES COUNCIL

This entity provides similar advocacy services. An official with the council said that the staff provides guidance, leadership, and advocacy regarding issues including quality of life improvements for individuals with disabilities. Staff handles calls every day from consumers and their families and helps them navigate identified issues. DDSN's director is a member on the council, which meets every other month.

DISABILITY RIGHTS OF SOUTH CAROLINA | (formerly) PROTECTION AND ADVOCACY

This is another federally-mandated agency serving our state whose mission is to help people with disabilities understand and defend their rights. This agency provides a variety of services, including client assistance, training, abuse and neglect investigations, legal assistance, and advocacy for change.

Recommendations

1. The General Assembly should amend state law to eliminate the Commission for the S.C. Department of Disabilities and Special Needs and establish the S.C. Department of Disabilities and Special Needs as a cabinet agency under the Governor's Office.
2. If the General Assembly eliminates the Commission and establishes the agency as a cabinet agency, S.C. Code §44-20-230 should be amended to require minimum qualifications for the director to include, but not be limited to, holding an advanced degree, being an experienced senior leader in a large state agency, and working with consumers, families, and advocacy groups related to individuals with intellectual disabilities and special needs.
3. If the General Assembly leaves the current structure of the S.C. Department of Disabilities and Special Needs as it is, Commissioners who violate state law should be immediately removed from their positions.
4. If the General Assembly leaves the current structure of the S.C. Department of Disabilities and Special Needs as it is, state law should be amended to clarify the Commission's duties as advisory in nature.

Identified Commission Issues

The current Commission has overreached in its role, may have violated state law, and has exhibited inappropriate behavior. These are other indications that change is needed to the agency structure. We found that the current DDSN Commission:

- Allows certain Commissioners to micromanage the agency when there is a competent director in place.
- Interferes with staff time outside of regular Commission meetings. This goes beyond requests from the Commissioners to the agency director or general counsel and includes mid-level staff.
- Requests reimbursements for visits to the agency for one-on-one meetings with staff, meetings with providers, reappointment hearings, and meetings with the Governor's Office, in addition to the monthly Commission meetings.
- Spends money frivolously for items solely for the Commissioners, such as a separate logo from the agency's new logo, new conference room chairs, frames for Commissioners' pictures, and soundproofing three conference rooms, one of which is used for public meetings.
- Expends much more in per diem and travel reimbursements than in years past.
- Meets via emails, discusses issues in executive session which were not properly noted on the agenda, and meets with a quorum in circumstances where no agenda or public notice was given, all of which most likely violate the S.C. Freedom of Information Act (FOIA).
- Allows certain Commissioners to speak for the Commission without the other Commissioners' knowledge.
- Has members who use their positions as Commissioners to access information or acquire assistance for their own family members.

These issues are discussed in more detail in this report.

Inappropriate Commissioner Behavior

Commissioners for the S.C. Department of Disabilities and Special Needs act inappropriately toward agency staff and are likely violating the S.C. Freedom of Information Act (FOIA). We attended Commission meetings, conducted interviews, and reviewed email correspondence from September 1, 2021 to August 31, 2022, and found:

- Commissioners are most likely violating FOIA by engaging in meetings via email correspondence and misusing executive sessions even though the Commission has received FOIA training.
- Some Commissioners use their positions within the agency to access information and acquire assistance for their family members who are receiving services from DDSN. It is likely that other consumers' families would not have this level of access.
- Some Commissioners are overly involved in agency personnel actions, which shows that state law is overly broad and prevents the state director from efficiently handling personnel changes to better agency performance.
- Some Commissioners are uncooperative with agency staff, and the frequency of Commissioner information requests and meetings results in overworked staff who are pulled from their daily job duties.

By improving the treatment of agency staff and fostering a more transparent environment, the Commission for DDSN could more efficiently support the agency in its mission to serve individuals with disabilities.

Potential FOIA Violations

Meetings Via Email Correspondence

Commissioners are most likely violating FOIA by holding meetings through email correspondence. We requested and reviewed all emails to and from Commissioner email addresses between September 1, 2021 and August 31, 2022. Of the emails received, 22 were identified as potential meetings between all 7 Commissioners, and 12 were identified as potential meetings between a quorum of Commission committee members. These emails involve more than planning logistics for Commission meetings and include discussions of agency business. Many of these emails were sent after the Commission (excluding one Commissioner appointed after the training occurred) received FOIA training on September 15, 2021.

The S.C. Freedom of Information Act defines a meeting as:

...the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.

On September 15, 2021, current members of the Commission (excluding one Commissioner who was appointed after the training occurred) received FOIA training from an outside law firm. The training included a discussion on how to avoid most, if not all, of the FOIA issues we found with DDSN's current Commission. The training reviewed the definition of a meeting under FOIA and emphasized that the definition applies to both in-person and electronic gatherings, including Commission committee meetings, work sessions, email conversations, and text messages between a quorum of members, even when personal technology is used.

Examples of email communications between quorums of Commissioners that likely violate FOIA's public meeting requirements include:

- An email in which a Commissioner states that the Commission does not need additional FOIA training, and that violations of the Commission's policies are not risks to "dismantling that or any other policy of this agency."
- An email where some Commissioners discuss and agree to no longer communicate with a particular member of the public or allow that individual to speak before the Commission.
- An email between a quorum of finance committee members discussing whether a vote should be held on the provision of financial assistance to a local disabilities and special needs board. In the same email thread, a Commissioner asks, "What do we need to discuss in an open meeting that can't be resolved outside a 'public meeting'?"
- Emails between a quorum of finance committee members discussing loans to providers, solicitations, updates on improvements to Coastal Center's fire alarms, provider payback of funds, the practicality of ongoing maintenance at the regional centers, settlement payments, and amendments to committee minutes.

Commissioners also attempt to avoid the appearance of a quorum by sending emails to other Commissioners separately, or by splitting the recipients into groups. Examples of both are shown in Chart 1.

Chart 1: Commission Member Emails

To	From	Subject	Received ▼
Commissioner 2	Commissioner 1	Fwd: for review and discussion	Tue 7/26/2022 3:15 PM
Commissioner 3	Commissioner 1	Fwd: for review and discussion	Tue 7/26/2022 3:14 PM
Commissioner 4	Commissioner 1	Fwd: for review and discussion	Tue 7/26/2022 3:14 PM
Commissioner 5	Commissioner 1	Fwd: for review and discussion	Tue 7/26/2022 3:14 PM
Commissioner 6	Commissioner 1	Fwd: for review and discussion	Tue 7/26/2022 3:13 PM
Commissioner 7	Commissioner 1	Fwd: for review and discussion	Tue 7/26/2022 3:13 PM
Commissioners 4 and 5	Commissioner 1	Fwd: New Directive 700-09-DD	Tue 7/26/2022 3:06 PM
Commissioner 6 and DDSN staff	Commissioner 1	Fwd: New Directive 700-09-DD	Tue 7/26/2022 3:04 PM

Source: DDSN Commissioner's Microsoft® Outlook Email

Executive Sessions

We believe Commissioners are also violating FOIA during their executive sessions. We observed the executive session during the March 17, 2022 Commission meeting, and found that Commissioners frequently strayed from the topics of discussion on the executive session agenda. Commissioners, while eating lunch together, discussed a variety of topics before beginning discussion of the executive session agenda, but after the public meeting had been adjourned.

FOIA allows a public body to hold a closed meeting in certain situations; however, the public body must announce a specific purpose for entering executive session. The September 15, 2021 training identified common executive session issues for the Commissioners to avoid. These issues included discussion of topics not on the agenda and discussion unlawfully occurring during executive session that is later not disclosed to the public.

While eating lunch before the March 17, 2022 executive session, Commissioners discussed topics from the public meeting. Once discussion of the executive session agenda began, Commissioners needed frequent reminders by DDSN staff of what could and could not be discussed outside of public session. Commissioners continued to discuss financial issues not listed on the executive session agenda. These additional items of discussion were not disclosed to the public, nor were they included in the meeting minutes.

Commissioners are aware of the requirements of FOIA and have received thorough training on the law. However, potential FOIA violations continue to occur. The Commission's actions discourage transparency in the governance of DDSN and may erode consumer trust in the agency.

Inappropriate Behavior Toward Agency Staff

Several Commissioners have behaved inappropriately toward agency staff. We requested and reviewed all emails to and from Commissioner email addresses between September 1, 2021 and August 31, 2022 and found that Commissioners:

- Use their positions to access information and acquire assistance for their family members.
- Are overly involved in agency personnel actions.
- Are uncooperative and make time-consuming requests of agency staff.

Abuse of Position

At least three Commissioners used their positions to access information and assistance for their family members who are receiving services from DDSN. During our review of Commissioner email correspondence, we found emails from three separate Commissioners asking DDSN staff for assistance or information on behalf of a family member, or that family member's caregivers.

One Commissioner forwarded information from the Commissioner's child's case manager regarding log-in issues for the child's caregiver to the agency director. In the accompanying email to the agency director, the Commissioner states, "If they want to know why I don't want to renew their contract, this is why. If they will do this to a commissioner imagine what they do to those who's [sic] families are not advocates." This implies that the Commissioner is not only aware of the privilege of the Commissioner's position, but that the Commissioner would vote against a contract based on personal frustrations, and not based on the potential benefit to the agency.

A separate Commissioner requested a meeting with an associate state director to discuss adding environmental modifications to the Commissioner's child's waiver. In the email, the Commissioner tells an associate state director, "I was told you were my go to person if I needed to escalate something." The email elaborates that the Commissioner had investigated adding the environmental modifications to the waiver a few years ago, before the individual was a Commissioner, but did not "because of the limitations that were put on us to get that done...the biggest issue was the fact that we were limited to only using the materials that they said were covered by the [waiver]."

"If they will do this to a commissioner imagine what they do to those who's [sic] families are not advocates."

Another series of emails involves a third Commissioner, whose child's caregiver had questions about rate increases and pay. The Commissioner emailed the DDSN chief financial officer for information, who then contacted the caregiver's provider. This same Commissioner, on a separate occasion, emailed an upper-level manager for information on payments to the Commissioner's child's caregiver. When the Commissioner received the information, the Commissioner then continued to ask for information on the provider's late or incorrect payments to caregivers, contracts with the agency, and consumer complaints. This is information that would likely be unavailable to the average consumer.

Commissioners with family members receiving services have greater access to agency staff than most recipients of DDSN assistance. The average DDSN consumer is unable to easily contact upper-level staff members at the agency when experiencing issues or delays in services. Given the Commission's authority, it is unlikely that DDSN staff are comfortable redirecting Commissioners back to the regular process to receive information on behalf of their family members. By directly contacting DDSN executive staff with their family members' issues, Commissioners are taking advantage of the influence of the Commission.

Involvement in Personnel Actions

Commissioners are overly involved in agency personnel actions. In our review of email correspondence, we found multiple emails regarding a member of the executive staff who left a position with the agency. A Commissioner sent multiple emails expressing displeasure with this personnel change, as shown in Chart 2.

Chart 2: Commission Response to Personnel Action

SENDER	CONTENTS
Sent by a Commissioner to a member of the agency's executive staff regarding the agency asking the former employee to pick up personal items from the lobby.	"I specifically spoke with [the agency director] last week and instructed [the agency director] per the commission that, 'no one at DDSN was to touch [the former employee's] office'... <i>You all will meet 7 very upset commissioners if anyone has touched a thing in [the former employee's] office</i> [emphasis added]."
Sent by a Commissioner to the agency director regarding the agency asking the former employee to pick up personal items from the lobby.	"I understand [the executive staff member] had [the executive staff member's] way of doing things in the past but that is not the will of this commission. If [the executive staff member] doesn't like it then peehaps [sic] [the executive staff member] should look for an agency that [the executive staff member] can run. Yet another issue we have with how [the executive staff member] handles things... <i>Rather than cause a huge stink about this please just do what the commission has asked</i> [emphasis added]."
Sent by a Commissioner to the agency director regarding the former employee's release from the agency.	"Several of the commissioners want to hear both sides of this situation in executive session as they believe [the former employee] was set up. <i>[The executive staff member] does not have the confidence or trust of the commission</i> [emphasis added]."

Source: DDSN Commission Emails

Additionally, a Commissioner threatened the agency director's position in reaction to the personnel action. Subsequently, the Commission amended its executive limitations policy to add that "the state director shall present to the Commission for approval any change at the executive level to the organizational chart." This change aligns with S.C. Code §44-20-230, which grants the director the authority to appoint and remove all officers and employees of DDSN subject to the approval of the Commission. However, as can be seen in this situation, the authority granted to the Commission by state law is overly broad. This prevents the agency director, who works more directly with agency staff than the Commissioners, from efficiently making changes to personnel to better agency performance.

Interactions with Agency Staff

Some Commissioners are uncooperative and make time-consuming requests of agency staff. In our review of Commissioner emails, we found the following:

Individual Commissioners frequently request highly-detailed information on the agency's daily operations from agency staff.

Some Commissioners were upset when DDSN staff sent a memorandum reminding them of the requirements of FOIA and their own Commission policies. The memorandum also stated that the agency would schedule additional FOIA training. Two Commissioners responded that they did not need additional FOIA training. One Commissioner wrote to the agency director and stated that "the commissioners feel very disrespected" by the memorandum.

Some Commissioners are concerned with how one Commissioner treats DDSN staff, noting that the Commissioner "really has to bring it down a notch or two."

A Commissioner messaged a mid-level employee of a regional center for information, instead of following the chain of command at DDSN. In the email, the Commissioner stated to the employee that "there is no need to copy anyone else on this email."

The agency sends bi-weekly update packets to Commissioners. An agency employee stated that this is to repair the lack of trust the Commissioners have in agency staff. Collection of information for the update packets is time consuming, and the information included would be more appropriately addressed during a normal Commission meeting.

Several employees commented on the Commission in response to an open-ended question in our survey of central office staff. Employees stated that the Commission constantly requests information, can be unreasonable in its requests, and frequently implies wrongdoing by the agency.

The negative treatment of agency staff and overinvolvement in daily operations at the agency encourages a culture of distrust between employees and the Commission. The Commission for DDSN should interact more appropriately with staff to support them and the agency in its mission to serve individuals with disabilities.

Recommendations

5. The Commission for the S.C. Department of Disabilities and Special Needs should always comply with the S.C. Freedom of Information Act.
6. The Commission for the S.C. Department of Disabilities and Special Needs should immediately stop meeting via personal electronic communication in a non-public manner, in possible violation of the S.C. Freedom of Information Act.
7. The Commission for the S.C. Department of Disabilities and Special Needs should only discuss properly noticed executive session agenda items during closed meetings.
8. The Commission for the S.C. Department of Disabilities and Special Needs should participate in annual S.C. Freedom of Information Act training and general board governance training. As each new member is appointed, that member should receive an explanation of the S.C. Freedom of Information Act and Commission requirements.
9. The Commission for the S.C. Department of Disabilities and Special Needs should not allow members to use their positions to resolve issues with their family members' services through the agency.
10. The S.C. General Assembly should consider amending S.C. Code §44-20-230 to allow the state director of the S.C. Department of Disabilities and Special Needs to make personnel changes without the approval of the Commission.
11. If the agency structure remains as it is, the agency should establish a protocol where Commissioners forward questions or concerns to the agency director and the director will determine who is best suited to address them.
12. The Commission for the S.C. Department of Disabilities and Special Needs should work to foster a more trusting environment between agency staff and the Commission.

Increase in Commission Expenses

Expenses related to the Commission for the S.C. Department of Disabilities and Special Needs have significantly increased. We reviewed financial information from SCEIS SAP® and DDSN and found:

- From 2016 to 2021, Commissioner per diem and travel reimbursements increased by 60%, due to an increase in Commission-related meetings.
- Reimbursements for a Commissioner's expenses are not always adequately documented.
- From 2019 to 2021, all Commission-related expenditures, including per diem and travel reimbursements, increased from \$16,661 to \$84,472.

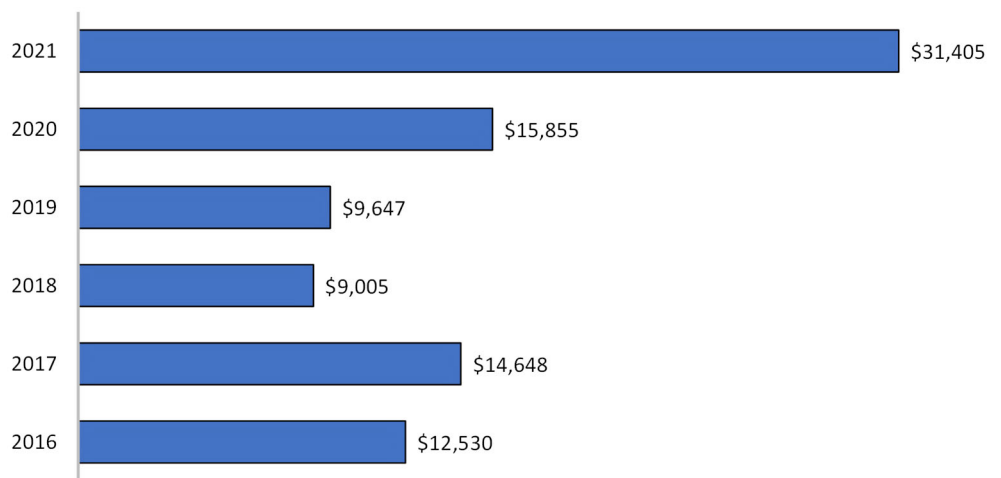
Reduction of Commission-related expenses could financially benefit the agency in other areas.

Per Diem and Travel Reimbursements

Commissioner per diem and travel reimbursements have significantly increased. We reviewed reimbursements for calendar years 2016 through 2021 in SCEIS SAP® and found that yearly reimbursements for per diem and travel grew by 60% — from \$12,530 in 2016 to \$31,405 in 2021.

Like state employees, commissioners are allowed reimbursement for actual expenses incurred while away from their places of residence on official business of the state. Commissioners are also entitled to a daily per diem allowance. In FY 22-23, the amount of allowable per diem was increased from \$35 to \$50 a day; however, because we reviewed reimbursements for calendar years 2016–2021, this increase does not affect our analysis. Yearly per diem and travel reimbursements for the Commissioners from 2016 to 2021 are illustrated in Chart 3.

Chart 3: Commissioner Per Diem and Travel Reimbursements, CY 2016 – CY 2021

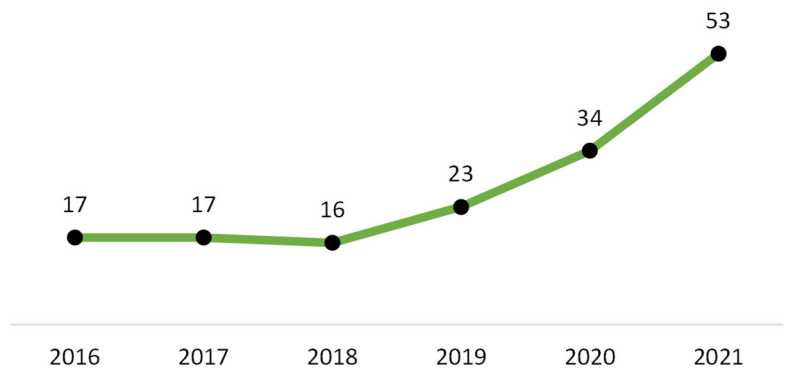


Source: LAC analysis of SCEIS SAP® data

Frequency of Meetings

A rise in the frequency of Commission meetings is responsible for the increase in reimbursements. We reviewed meeting notices posted on the agency's website from 2016 to 2021 and found that the Commission held more meetings in 2021 than in 2016, 2017, and 2018 combined. This increase is illustrated in Chart 4.

Chart 4: Frequency of Commission Meetings, CY 2016 – CY 2021



Source: LAC analysis of DDSN data

In addition to travel reimbursements for meetings of the Commission and its committees, the current Commissioners also claim travel reimbursements for one-on-one meetings with agency staff and meetings with providers in DDSN's network. Some current Commissioners have also requested reimbursements for lodging in conjunction with their reappointment hearings and meetings with the Governor's Office. These meetings are not included in the meeting totals in Chart 4 but are likely also responsible for the increase in travel reimbursements and per diem.

The rise in frequency of Commission-related meetings not only results in increased travel expenses for the state, but also in strain on staff who are pulled from their daily job duties to attend the meetings and address the concerns of the current Commissioners.

Inadequate Reimbursement Documentation

Reimbursements for a Commissioner's expenses are not always adequately documented. We reviewed supporting documentation in SCEIS SAP® and found invoices for a Commissioner's aides' hourly wages that do not identify the number of hours worked or the hourly rate of pay.

By proviso, one person accompanying an individual with a disability serving on a state commission on official business of the state is entitled to "the same reimbursement for actual expenses incurred" by the commissioner. These expenses include lodging, meals, and mileage. An individual currently serving on the Commission for DDSN has arranged with the agency via a memorandum to provide for "the assistance of an aid [*sic.*] to attend the monthly meetings"; however, the proviso is silent on the payment of aide wages.

The memorandum between the agency and the Commissioner states that reimbursements for the aides are paid directly to the Commissioner's business, and that it is the responsibility of the business to reimburse the aides for services provided "while attending the monthly board meeting." An agreed-upon hourly rate for the aides is not provided in the memorandum, nor is there a requirement that proof of the reimbursement to the aides be provided by the Commissioner's business.

We reviewed invoices from the Commissioner's business in SCEIS SAP® from January 2021 to June 2022 and found that almost every invoice requesting reimbursement for aide wages failed to identify an hourly rate or number of hours worked for the aides. Only 2 of 21 invoices contained the number of hours worked by the aides, allowing determination of the hourly rate. Instead, most invoices list an amount and identify it as a "fee for [aide's] time this month." Some months have more than one invoice submitted, despite the memorandum between the agency and the Commissioner stating that reimbursements are for attending the monthly board meeting.

During this time frame, the Commissioner's business has been reimbursed \$9,509 for aides' wages without adequate documentation, as illustrated in Chart 5.

We asked agency staff whether the Commissioner's business submits documentation that the reimbursements are eventually paid by the Commissioner's business to the aides, but we did not receive a direct response. Emails between DDSN staff question the lack of detail provided by the Commissioner regarding the aides' wages and reimbursement to the business; however, the Comptroller General's office ultimately approved the method of reimbursement, and the Commissioner has continued to submit invoices and be reimbursed in the same manner.

During preliminary exit, this Commissioner provided the LAC with copies of canceled checks to show that the Commissioner's aides were paid for their time by the Commissioner's business. We reviewed those checks and compared them to the dates and times of meetings and found the following:

- Two instances where the same hotel room invoice was submitted for payment under the Commissioner's name and again under the name of the Commissioner's business to reimburse for the aide's expenses. This resulted in an overpayment to the Commissioner's business of \$201.96.
- If an aide was paid \$17 an hour, as was noted by the Commissioner in the preliminary agency response to this report, the number of hours for all but three of the instances reviewed resulted in an unusually specific (e.g. 39.705882352) number of hours worked.
- From the documentation submitted, it seems unlikely that the aides were paid \$17 per hour.

While it is critical to make accommodations for any individual on a commission with a disability, without verification of hours worked or an hourly rate, the agency cannot determine whether the aides' reimbursements are appropriate or directly related to the Commissioner's duties. By reimbursing the Commissioner's business, and not the aides directly, the agency cannot determine whether the aides are being reimbursed for their time. Further, the reimbursements do not align with conditions in the memorandum authorizing the payments for the monthly Commission meeting, as multiple invoices are submitted per month.

**Chart 5: Invoice Amounts
for Aides' Time,
January 2021 – June 2022**

INVOICE DATE	INVOICE AMOUNT
2021	
January 2021	–
February 2021	\$290
March 2021	\$405
March 2021	\$119
March 2021	\$147
April 2021	\$403
May 2021	\$450
May 2021	\$360
June 2021	\$145
June 2021	\$450
July 2021	\$675
August 2021	\$195
August 2021	\$480
September 2021	\$450
September 2021	\$500
October 2021	\$450
November 2021	\$400
December 2021	\$450
2022	
January 2022	\$450
February 2022	\$425
March 2022	\$480
April 2022	\$450
May 2022	\$425
June 2022	\$135
June 2022	\$325
June 2022	\$450
TOTAL	\$9,509

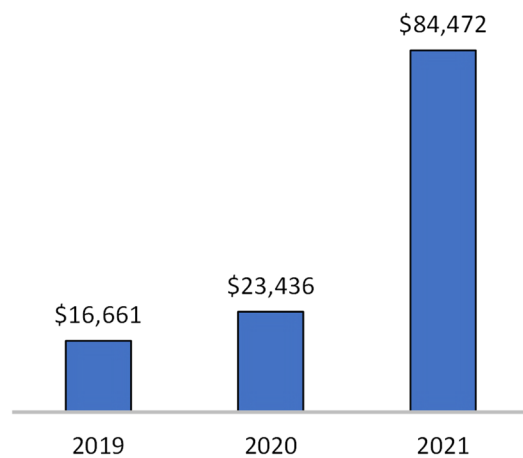
☐ Indicates months with more than one invoice.

Source: LAC analysis of SCEIS SAP® data

Other Expenses

Commission-related expenditures have also significantly increased. We reviewed financial information from DDSN and SCEIS SAP®, and found that from 2019 to 2021, all Commission-related expenditures, including per diem and travel reimbursements, increased from \$16,661 to \$84,472, as illustrated in Chart 6.

Chart 6: Commission-Related Expenses, CY 2019 – CY 2021



Source: LAC analysis of SCEIS SAP® and DDSN data

In 2021, \$84,472 was spent on the following items:

- Per diem and travel reimbursements.
- Name badges.
- A state seal for the Commission conference room.
- Custom tablecloths and table runners.
- Leather chairs and a new podium.
- A desk marker.
- FedEx costs to send packets to two Commissioners.
- Tort insurance.
- Monthly cell phone expenses.
- Soundproofing and television upgrades to the Commission conference room.

In 2022, \$8,314 was also spent to add soundproofing to two other conference rooms the Commission uses at DDSN's central office—the Commission conference room and the executive session room. Also, as of September 2022, Commissioners had plans to spend an estimated \$1,000 to design a Commission logo separate from the agency logo, and \$531 to purchase plaque picture frames of each Commissioner to place in the DDSN office lobby.

Purchases of items like custom tablecloths, table runners, plaque picture frames, and a design of a Commission logo only benefit the Commissioners and add little value to the agency and the people it serves. By ensuring that only necessary expenses are made on behalf of the Commission, DDSN could utilize this money to support its mission elsewhere.

Recommendations

13. The Commission for the S.C. Department of Disabilities and Special Needs should ensure that meetings are scheduled in such a way that days of travel for Commissioners are reduced.
14. The Commission for the S.C. Department of Disabilities and Special Needs should limit meetings to only those that are necessary to conduct the business of the agency.
15. The Commission for the S.C. Department of Disabilities and Special Needs should limit one-on-one Commissioner meetings with S.C. Department of Disabilities and Special Needs staff.
16. The General Assembly should consider adding language to future provisos to include reimbursements for aide hourly wages.
17. The S.C. Department of Disabilities and Special Needs should modify its memorandum with the Commissioner requiring assistance for Commission meetings to specify the hourly rate for any aides used.
18. The S.C. Department of Disabilities and Special Needs should modify its memorandum with the Commissioner requiring assistance for Commission meetings to reflect how often reimbursements will be requested for aide wages.
19. The S.C. Department of Disabilities and Special Needs should always require the number of hours worked and hourly rate information to reimburse aide wages.
20. The S.C. Department of Disabilities and Special Needs should require documentation showing that any reimbursement made to a Commissioner's business has been correctly paid to the Commissioner's aides.
21. The S.C. Department of Disabilities and Special Needs should immediately discontinue reimbursing the Commissioner's business for aides and reimburse the aides directly.
22. The S.C. Department of Disabilities and Special Needs should immediately request a review by the Office of the State Auditor of the current process and payment of reimbursements to the Commissioner who requires an aide.
23. The Commission for the S.C. Department of Disabilities and Special Needs should limit expenses to only those necessary to support the S.C. Department of Disabilities and Special Needs in its duties.

Agency Comments

Appendix
Agency Comments

Constance Holloway
*Interim State Director/General
Counsel*

Janet Brock Priest
*Associate State Director
Operations*

Lori Manos
*Associate State Director
Policy*

Harley T. Davis, Ph.D.
Chief Administrative Officer

Quincy Swygert
Chief Financial Officer

Greg Meetze
Chief Information Officer



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Gary Kocher, M.D.
Eddie L. Miller

David L. Thomas
Michelle Woodhead

March 20, 2023

VIA EMAIL MLindsay@lac.sc.gov

Marcia Lindsay
Deputy Director
Legislative Audit Council
1331 Elmwood Avenue, Suite 315
Columbia, SC 29201

Dear Ms. Lindsay,

On February 15, 2023, the South Carolina Department of Disabilities and Special Needs (“DDSN”) received the Legislative Audit Council (“LAC”) Draft Report entitled *A Limited Review of the S.C. Department of Disabilities and Special Needs – Agency Structure and Commission Issues (Part 1 of 2)* (“Draft Report”). DDSN submitted its preliminary response to the LAC on March 1, 2023. On March 15, 2023, DDSN received the Final Draft Report (“Final Draft Report”) from the LAC. DDSN now offers this document as its response to the Final Draft Report.

Agency Response

DDSN appreciates the time and commitment the LAC placed into investigating and reporting on important issues. DDSN remains steadfast in its mission to assist people with disabilities and their families through choice in meeting needs, pursuing possibilities, and achieving life goals. Accordingly, DDSN will take into consideration all suggestions provided in the Final Draft Report and work diligently to make the appropriate changes for the betterment of the Agency and the people the Agency supports.

Commission Response

The South Carolina Department of Disabilities and Special Needs Commission (“Commission”) is currently comprised of seven commissioners: Stephanie Rawlinson (“Commissioner Rawlinson”), Chairman; Barry D. Malphrus (“Commissioner Malphrus”), Vice Chairman; Robin B. Blackwood (“Commissioner Blackwood”), Secretary; Gary Kocher, M.D. (“Commissioner Kocher”); Eddie L. Miller (“Commissioner Miller”); David L. Thomas (“Commissioner Thomas”); and Michelle Woodhead (“Commissioner Woodhead”). Each commissioner had the opportunity to review the Final Draft Report and provide an individual response to Interim State Director/General Counsel Constance Holloway. Those responses are as follows.

Commissioner Rawlinson utilizes the following seven discussion points in her response to the Final Draft Report: (1) Employee micromanagement; (2) Abuse of Power; (3) Expenditures and reimbursements; (4) Freedom of Information Act (“FOIA”); (5) Relationship between the Commission and Providers/Regional Centers; (6) Relationship between the Commission and the Agency; and (7) Importance of the Commission. Initially, Commissioner Rawlinson establishes that the Commission does not have daily control over the operations of DDSN. Nevertheless, Commissioner Rawlinson acknowledges that Commissioners may occasionally ask for more information on a topic, and therefore, she agrees that a procedure of how and when Commissioners interact with DDSN staff should be implemented. In fact, Commissioner Rawlinson maintains that the Commission has repeatedly requested that DDSN staff create such a policy since the issuance of the 2017 Report made by Senate Medical Affairs Committee which suggested that the Commission debate and adopt formal policies on how Commissioners engage in individual communications with DDSN staff. Commissioner Rawlinson also maintains that the Commission made the recommendation of starting with a Memorandum of Understanding (“MOU”) with DDSN staff to ensure everyone was on the same page of how the policy should be drafted. However, Commissioner Rawlinson argues that DDSN staff informed the Commission that a MOU was not possible because the parties were all a part of the same Agency. Given the resistance of DDSN staff to move forward on the policy, Commissioner Rawlinson maintains that the Commission did not push the issue any further. In regards to the allegation of employee micromanagement, Commissioner Rawlinson maintains that, as Chair of the Commission, she personally looked into the issue several months ago. Commissioner Rawlinson explains that she met with the State Director and the two Commissioners identified as causing the problems. Commissioner Rawlinson suggests that there was a difference of opinion on what micromanagement meant. Commissioner Rawlinson reports that the two Commissioners believed they were asking questions within the scope of their responsibilities to the Commission, but she further reports that, after a lengthy conversation, the two Commissioners understood how their actions were taken and apologized for their behavior. Commissioner Rawlinson argues that everyone makes mistakes, and the State Director accepted the Commissioners’ apologies for their innocent mistakes. Commissioner Rawlinson maintains the Commission has moved forward with no further discussion of the issue being brought to their attention.

Commissioner Rawlinson admits to forwarding information regarding her child who receives DDSN’s services to the State Director. Commissioner Rawlinson maintains that she was unaware that this would be considered Abuse of Power as described in the Final Draft Report. Commissioner Rawlinson argues that she never received training on these types of scenarios and will request DDSN develop training to prevent improper communications from happening in the future.

Commissioner Rawlinson acknowledges the increase in expenses for the Commission and provides several explanations for that increase. First, Commissioner Rawlinson points out that the current Commission is operating with a full seven-member Commission, whereas in recent past, the Commission did not have enough Commissioners to even hold a quorum. Second, Commissioner Rawlinson maintains that one of the Commissioners has a disability and thus, pursuant to Federal American with Disabilities Act (“ADA”) guidelines, requires certain accommodations. Third, Commissioner Rawlinson attributes part of the increase in expenses to the necessity of additional Commission meetings. In particular, Commissioner Rawlinson maintains that DDSN was in poor financial state in 2019 and was failing to implement the policy change of fee for service which was five years in the works by 2019. Commissioner Rawlinson suggests that, due to these failures, the Commission had to reinstate the Finance Committee. Furthermore, Commissioner Rawlinson believes the Commission felt they were required to hold more meetings following the issuance of the Senate Medical Affairs Committee Report, which directed the Commission to become more involved in the day to day operations by reactivating committees and putting them to work. Fourth, with regards to specific expenses, Commissioner Rawlinson maintains that the Commission did not request new leather chairs; the Commission did not request an upgraded sound system or monitors; and the Commission did not request Agency phones, but instead, the Commission complied with the request of the General Counsel to receive Agency phones for FOIA purposes. In addition, Commissioner Rawlinson maintains that soundproofing was necessary, so the public could hear the Commission over the noise in the offices and hallways; the new tablecloths were necessary because the old tablecloths had spills and looked awful; and the Commission logo was made in-house.

Commissioner Rawlinson disagrees with the Final Draft Report’s claim that the Commissioners are most likely committing FOIA violations. Commissioner Rawlinson asserts that someone cannot “most likely” violate a law; either they do or they do not. As such, Commissioner Rawlinson considers the Final Draft Report’s claim to be without merit and slanderous. Commissioner Rawlinson maintains that the Commission underwent FOIA training, and to her knowledge, the Commission has acted consistently with that training. Also, Commissioner Rawlinson points out that the portion of FOIA law that says “discuss or act upon” is key, noting that the Commission never discussed or acted upon any matter via email. Instead, Commissioner Rawlinson maintains that Commissioners only reviewed information sent to them by either DDSN staff or other Commissioners, so that the Commissioners would be informed on the issues before the next meeting.

Commissioner Rawlinson argues that the relationship between the current Commission and Providers is strained because the Commission implemented several changes which were unpopular with Providers. To begin, Commissioner Rawlinson maintains that the Commission implemented the recommendation made by the Senate Medical Affairs Committee in the 2017 Report and moved DDSN to a fee for service model. Commissioner Rawlinson maintains that, despite the recommendation being made in 2017, it was largely ignored by the State Director and previous Commissions prior to 2021. Commissioner Rawlinson explains that this change was not well received by Providers as Providers only receive payment for services actually rendered under the fee for service model. Commissioner Rawlinson maintains that since its release, the fee for service model has saved the State millions of dollars and has provided reassurance to consumers that they will indeed receive the services to which they are entitled. Moreover, Commissioner Rawlinson maintains that, as the Finance Committee was taking a closer look at DDSN’s finances, it discovered that DDSN was making “loans” to DDSN Boards and was paying the rent on the administrative buildings of Rich/Lex, a private DDSN Board serving Richland and Lexington counties. Commissioner Rawlinson maintains that these arrangements were created without the Commission’s consent or approval. Commissioner Rawlinson points out that

the rent to Rich/Lex alone was costing DDSN \$124,000 annually. Due to the fact that the other 44 counties in South Carolina were not reaping the same benefit as Rich/Lex, the Commission decided to end the rent payments. As a last note, Commissioner Rawlinson maintains that the Finance Committee uncovered the fact that DDSN staff had failed to file cost reports for over 10 years, and as a consequence, the Commission had to step in and hold DDSN staff accountable. Commissioner Rawlinson argues that it still took over two years and the hiring of additional consultants to bring the cost reports up-to-date. Commissioner Rawlinson maintains that these cost reports directly impacted the fees and salaries of the Direct Support Professionals (“DSPs”), and this accounting initiated the shortage of DSPs in DDSN’s regional centers.

Commissioner Rawlinson would like it to be known that no request made by the State Director to the Commission has been denied in the last two years. Commissioner Rawlinson maintains that the State Director received an “exceeds expectations” performance review from the Commission, and the State Director publicly thanked the Commission during multiple public meetings and in private. Furthermore, Commissioner Rawlinson maintains that the Commission fully supported the State Director and even approved a raise for the State Director after just one year of service. Commissioner Rawlinson argues that the Commission felt passionately about providing the raise to the State Director after Human Resources informed the Commission that the State Director of DDSN was paid less than any other state director. Commissioner Rawlinson maintains that the Commission even petitioned the Agency Head Salary Commission (“AHS”) to increase the salary of the State Director of DDSN to be more in-line with the other state directors. Commissioner Rawlinson asserts that the Commission has yet to receive a response to their request made over a year ago. Moreover, Commissioner Rawlinson acknowledges that the Commission could have been more supportive of DDSN staff, but she maintains that trust works in two ways. While Commissioner Rawlinson believes the Commission must learn to trust DDSN staff, she also believes DDSN staff must learn to trust the Commission in order to create a more trusting and transparent environment. Commissioner Rawlinson maintains that previous DDSN staff often used half-truths to create an environment of distrust, which must now be corrected.

Finally, Commissioner Rawlinson notes the importance of the Commission. Commissioner Rawlinson maintains that the Commissioners are unpaid volunteers who give tirelessly of their time and money to help those with disabilities. Commissioner Rawlinson reports spending hours responding to emails from consumers and their families as well as speaking with them on the phone; and she reports listening to complaints about the services offered by DDSN, DDSN staff, the State Legislature, and the South Carolina Department of Health and Human Services (“DHHS”). Additionally, Commissioner Rawlinson echoes Commissioner Blackwood’s sentiment that it is not feasible for two small federally mandated organizations to effectively and broadly educate over a million people in South Carolina that live with a disability about the services offered by DDSN. In particular, Commissioner Rawlinson argues that these two organizations highlighted by the Final Draft Report to fill the role of the Commission are not handling advocacy of constituents in all communities and do not have offices in these communities where DDSN consumers can walk-in and talk to someone and get assistance. Commissioner Rawlinson further argues that the local private providers and quasi-state county boards provide a range of services that is often random, inconsistent, and very limited.

Commissioner Malphrus focuses on the following six overarching discussion points in his response to the Final Draft Report: (1) Effects of substantial and fast-paced changes to DDSN; (2) Review of DDSN’s policies; (3) Surveys; (4) FOIA; (5) Expenditures and Reimbursements; and (6) Importance of the Commission. To begin, Commissioner Malphrus notes the Commission’s challenge, beginning in 2019 – 2020, to assist and overcome DDSN’s substantial financial problems. Commissioner

Malphrus alleges that DDSN, as an Agency, was greatly outspending the money held in the General Fund. Accordingly, Commissioner Malphrus asserts that the Commission worked aggressively with DDSN staff to place DDSN in a sustainable financial position in a short amount of time. Commissioner Malphrus acknowledges that this effort caused some staff to feel overworked, and he acknowledges that some communications may have inadvertently violated FOIA. However, Commissioner Malphrus stresses the LAC's failure to recognize the important, lasting reforms and accomplishments that the Commission and DDSN staff worked together to make during this period of time along with the issues detailed by the LAC.

Commissioner Malphrus maintains that the Final Draft Report criticizes the Commission for its involvement with reviewing and updating DDSN's policies without proper acknowledgement of the recommendation provided by the 2017 Report made by the Senate Medical Affairs Committee. Specifically, Commissioner Malphrus asserts that the Senate Medical Affairs Committee encouraged the Commission to make an effort to correct failures and adopt policies to address deficiencies at DDSN. In addition, Commissioner Malphrus points to the Commission's statutory authority to "determine the policy and promulgate regulations governing the operation of the department and the employment of professional staff and personnel." SC Code of Laws § 44-20-220. Commissioner Malphrus also maintains that the State Director of DDSN is similarly obligated by the law to "administer the policies and regulations established by the commission." SC Code of Laws § 44-20-230. Commissioner Malphrus believes it is improper for the LAC to criticize the Commission for acting under its statutory authority and for abiding by the recommendations of the legislative committees with direct oversight of DDSN.

Commissioner Malphrus has significant reservations with the surveys administered and reported on by the LAC. For instance, Commissioner Malphrus maintains that the surveys are vague and provide little detail about exactly who was surveyed. Additionally, Commissioner Malphrus believes that the LAC is misleading with the findings of their surveys. Commissioner Malphrus provides the example that the Final Draft Report suggests that the majority of DDSN staff supports the elimination of the Commission when, in fact, only 33% of DDSN staff share that opinion. He notes that the majority of DDSN staff, 47%, had no opinion on whether the Commission should be eliminated. Moreover, Commissioner Malphrus points out the LAC's failure to survey DDSN consumers or the parents of DDSN consumers when they are the Commission's primary stakeholders. Commissioner Malphrus makes a final point that the Legislative Oversight Report published in November 2018 recommended that the Commission of seven volunteers should remain in place.

Commissioner Malphrus maintains that, as a Commissioner, he takes his obligations under FOIA seriously and has never intentionally violated FOIA during Executive session or otherwise. Commissioner Malphrus asserts that FOIA is a complex statute that is susceptible to different interpretations by lawyers on many issues that have not been resolved by the courts. Furthermore, Commissioner Malphrus maintains that it is his understanding, along with other Commissioners, that it is appropriate to use email to provide information to Commissioners if Commissioners do not communicate with each other about said information. Commissioner Malphrus notes that the Commission received legal training on FOIA and has since, to his knowledge, acted consistently with the information provided in the legal training. Thus, Commissioner Malphrus does not understand the LAC's position that FOIA violations continue to occur.

Commissioner Malphrus rebukes the LAC's criticism of the Commission regarding the money spent on mobile phones and leather chairs. Commissioner Malphrus asserts that the mobile phones were

purchased at the urging of DDSN's General Counsel for FOIA purposes and the leather chairs were purchased by the State Director, without the knowledge of the Commission. In addition, Commissioner Malphrus takes issue with the criticism of soundproofing rooms at DDSN's Central Office, which he argues was only two rooms and not three as written in the Final Draft Report. Commissioner Malphrus suggests that the soundproofing was necessary due to the walls being so thin that conversations were easily heard outside, posing a FOIA risk. Commissioner Malphrus believes the purchase of the video monitors was to the benefit of the public because the previous set-up only made available poor-quality audio. Commissioner Malphrus contends the video monitors increase transparency to the public by allowing the public to properly hear and see Commissioners during meetings. With regards to the "frivolous items" mentioned in the Final Draft Report, i.e. the Commission logo and portraits of the Commissioners, Commissioner Malphrus maintains that the Commission wanted to update DDSN's logo to be more consistent with other state agencies in an effort to strengthen DDSN and wanted to help the public better understand that the Commissioners are there to serve them and are accountable to them. Commissioner Malphrus would like the LAC and the Final Draft Report to acknowledge that all items purchased were purchased pursuant to state procurement guidelines and only a small portion of DDSN's \$22 million Administrative Budget for the year.

Along with his rebuke of the Final Draft Report's criticism of expenditures, Commissioner Malphrus vehemently disagrees with the Final Draft Report's criticism of the increase in reimbursements to the Commissioners. First, Commissioner Malphrus points out that the amount of reimbursements is directly related to the number of Commissioners serving at the time. Commissioner Malphrus maintains that the current seven-member Commission is responsible for significantly more expenses due to the fact that it is fully staffed whereas, prior to 2020, there were multiple vacancies on the Commission. Second, Commissioner Malphrus asserts that the current Commission needed additional meetings to address the essential reforms and obtain feedback from the public regarding those reforms. Commissioner Malphrus maintains that travel expenses necessarily increased due to the increase in meetings. Commissioner Malphrus also attributes the increase in meetings to the 2017 Report made by the Senate Medical Affairs Committee, which he suggests criticized the Commission for not being properly engaged in and knowledgeable of DDSN. Commissioner Malphrus further cites to the Commission's statutory authority to "educate the public and state and local officials as to the need for funding, development, and coordination of services for persons with intellectual disability, related disabilities, head injuries, and spinal cord injuries" in support of the Commission's decision to increase the number of meetings. SC Code of Laws § 44-20-220. Commissioner Malphrus notes that, in recent months, the Commission has recently returned to holding fewer meetings following the implementation of many of the key reforms. Third, and finally, Commissioner Malphrus attributes part of the increase in expenditures to the accommodations he requires for his disability. Specifically, Commissioner Malphrus has cerebral palsy which is a disability that is covered under the Rehabilitation Act and the ADA. Commissioner Malphrus explains that due to his extensive mobility impairments, he is only able to drive short distances, so when he travels to conduct Commission business, Commissioner Malphrus requires the assistance of a wheelchair and an aide. Commissioner Malphrus notes that the Chief Financial Officer ("CFO") of the State Comptroller General's Office approved the reasonableness of Commissioner Malphrus's aide and the manner in which the aide's fees were paid by Commissioner Malphrus to his aide. Additionally, Commissioner Malphrus maintains that the CFO approved an hourly pay rate of \$17.00 an hour for his aide. Commissioner Malphrus suggests that, on occasion, the aide was paid on a daily rate rather than an hourly rate, which resulted in the State having to pay less for his aide's services. Commissioner Malphrus included an accounting of the money paid to the aide along with cancelled checks made out to the aide for the LAC's review. As a final note on this topic, Commissioner Malphrus stresses the importance of an individual with a disability serving

on the Commission, or on any board for that matter. Commissioner Malphrus has grave concerns about how the Final Draft Report's criticism of costs associated with reasonable accommodations will deter individuals with disabilities from serving in the future.

Finally, Commissioner Malphrus highlights the importance of the Commission. Commissioner Malphrus maintains that the Commission has a fundamental responsibility to provide oversight to ensure fairness between the competing interest of the vulnerable population served by DDSN and those who provide those services. Commissioner Malphrus notes that one of the statutory duties assigned to the Commission, specifically, is to "promote the best interest of persons with intellectual disability, related disabilities, head injuries, and spinal cord injuries." S.C. Code of Laws § 44-20-220. As such, Commissioner Malphrus believes it is improper for the Final Draft Report to assert that several Commissioners engaged in Abuse of Power when the Commissioners were referencing examples of problems they faced as family members of consumers.

Commissioner Blackwood begins her response to the Final Draft Report by citing two sections of the South Carolina ("SC") Code of Laws. First, Commissioner Blackwood emphasizes the importance of the Commission's role as opposed to other advocacy entities listed in the Final Draft Report by relying on SC Code of Laws § 44-20-220, which states:

The [C]ommission may educate the public and state and local officials as to the need for the funding, development, and coordination of services for persons with intellectual disability, related disabilities, head injuries, and spinal cord injuries and promote the best interest of persons with intellectual disability, related disabilities, head injuries, and spinal cord injuries.

Commissioner Blackwood maintains that most Commissioners appreciate the responsibility of helping others understand the complex and multi-faceted system of services provided by DDSN and how difficult it is for consumers and their families to navigate said system. Commissioner Blackwood highlights the fact that many Commissioners are parents of DDSN consumers and are therefore committed to helping their districts better understand and have access to DDSN services. Commissioner Blackwood believes that it is not feasible for two small federally mandated organizations to effectively and broadly educate over a million people in South Carolina that live with a disability about the services offered by DDSN.

Second, Commissioner Blackwood responds to the allegations of Abuse of Position by citing SC Code of Laws § 44-20-20, which states:

The State recognizes the importance of the role of parents and families in shaping services for persons with intellectual disability, related disabilities, head injuries, or spinal cord injuries as well as the importance of providing services to families to enable them to care for a family member with these disabilities. . . . Parental involvement and participation in mutual planning with the department to meet the needs of the client

Commissioner Blackwood asserts that Commissioners with family members who are DDSN consumers have first-hand information on: (1) how Providers are meeting contractual obligations to provide DDSN services; and (2) what Providers are telling DDSN consumers about the services provided. Commissioner Blackwood maintains this knowledge is beneficial to DDSN because it directly helps DDSN staff understand how Providers are delivering or not delivering the contracted

services. Commissioner Blackwood believes that the failure of a Commissioner to disclose this type of information to DDSN staff would be a neglect of their duty as a Commissioner. Moreover, Commissioner Blackwood maintains that when constituents ask questions about DDSN matters such as rate increases, it is within a Commissioner's duty to ask DDSN staff to provide clarification. Commissioner Blackwood believes these inquiries are equally permissible when the DDSN consumer is a family member of a Commissioner. As a final note, Commissioner Blackwood relates back to the 2008 LAC Report which admonished DDSN for not properly communicating changes and updates and maintains that those problems still exist at DDSN.

In addition to the statutory responsibilities of the Commission, Commissioner Blackwood emphasizes that the Commissioners had the responsibility of implementing the changes suggested by previous LAC reports and by the Senate Medical Affairs Committee. Specifically, Commissioner Blackwood maintains that these oversight entities had recommended for years that the DDSN Commission do away with the deficient capitated payment system and replace it with a fee for service model, which better utilizes the Medicaid match and encourages Providers to improve service delivery to consumers. Commissioner Blackwood asserts that the Commission thus voted unanimously to move to the fee for service model in all service areas. However, Commissioner Blackwood maintains that some of the Commissioners accused of wrongdoing in the Final Draft Report were the ones to recognize that the Agency failed to act upon the will of the Commission and start the transition process to the fee for service model. Commissioner Blackwood suggests that the Agency's failure reasonably caused the accused Commissioners to have a new level of scrutiny and suspicion of the Agency's Executive Staff. Commissioner Blackwood maintains that the accused Commissioners distrust of Executive Staff only increased after the Commission agreed to allow the Agency to extend a contract for a six-month period for a Provider that was not effectively delivering home and community-based services to consumers and later discovered that the Executive Staff secretly wrote and executed the contract for a one-year period instead of the approved six-month period. Commissioner Blackwood further explains the accused Commissioners distrust in Executive Staff by asserting that around the same period as the contract execution, the Commission discovered that two DDSN Boards secretly received large loans that exceeded the amount in the Commission's executive limitations policy and which further continued the unfair practice between DDSN and some DDSN Boards. Accordingly, Commissioner Blackwood maintains that the accused Commissioners had to adopt a trust but verify approach with the Executive Staff.

Similarly, Commissioner Blackwood asserts that the Final Draft Report fails to share the positive changes an effective form of governance can produce when Commissioners are actively engaged in the functioning of DDSN. Commissioner Blackwood points out that, among other statutory obligations, DDSN is mandated by the SC Code of Laws to provide services to people with Autism. Commissioner Blackwood alleges that there was a time in which Executive Staff dissolved the Autism division without Commission approval, and after the Commission learned of the illegal activity taken by the Agency, the Commission moved to have DDSN reinstate the Autism division. Commissioner Blackwood also makes note that the Commission is currently working on a State level Autism plan to ensure individuals diagnosed with Autism have timely evaluations and better eligibility determinations. Commissioner Blackwood maintains that this new focus of DDSN would most likely not have occurred without engaged and involved Commissioners asking questions and listening to the public regarding poor service delivery.

Lastly, Commissioner Blackwood takes issue with the internal and external criticism made in the Final Draft Report as she believes many commissioners are actively connecting and learning about how

services are being delivered. Commissioner Blackwood alleges that the Final Draft Report takes the Commissioners willingness to learn and make improvements out of context and misrepresents and overly exaggerates the actions of several Commissioners. Commissioner Blackwood maintains that the accused Commissioners have always pushed for more transparency by asking the Agency to hold “listening sessions” across the State and encouraging stakeholders to speak at Commission meetings. Commissioner Blackwood asserts that these actions stand in contrast to the Agency’s minimal promotion of these opportunities for public input. Additionally, Commissioner Blackwood makes note that the accused Commissioners have visited several regional centers, met regularly with the guardians of loved ones, and engaged in many discussions with Providers to ensure their voice is heard and understood. Commissioner Blackwood believes that stakeholder and citizen access to DDSN will likely not be greater in a bureaucratic form of governance due to the fact that it would make nimble and quick actions to help the needs of the disability community a bigger challenge.

In contrast, Commissioner Kocher and Commissioner Miller generally accept and agree with the findings of the Final Draft Report. Commissioner Kocher believes the wrongdoing discovered during the audit lies with two to three specific commissioners, and therefore, believes the best course of action would be for those commissioners to be removed from their post. In furtherance of that belief, Commissioner Kocher has requested the resignations of those specific commissioners, to no avail. On the other hand, the only request offered from Commissioner Miller is that the LAC identify the names of the commissioners in the report, so that there is no uncertainty as to who on the Commission is responsible for the wrongdoing.

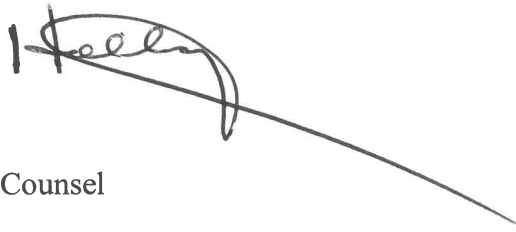
Commissioner Woodhead is the newest member of the Commission, attending a Commission meeting in-person for the first time in April 2022. As such, Commissioner Woodhead points out that she was not a part of the Commission for the majority of the LAC review period which ranged from 2017-2022. Additionally, Commissioner Woodhead highlights the fact that she never received any formal training as a Commissioner including the FOIA training which took place on September 21, 2021. Therefore, Commissioner Woodhead argues that the Final Draft Report is misleading because it often identifies the Commission as a whole and does not take into account when each Commissioner became a part of the Commission and further does not identify, by name, which Commissioners are responsible for which improper acts. Finally, Commissioner Woodhead would like to provide background as to what she believes is an accusation of Abuse of Position made in the Final Draft Report. Commissioner Woodhead acknowledges that she escalated a personal concern as the parent of a DDSN Consumer; however, Commissioner Woodhead maintains that she did so in the same manner as she escalates concerns brought to her as a Commissioner from other parents or other DDSN consumers. Commissioner Woodhead also maintains that her personal concern was a question which needed clarification and not a request for any particular action to be taken on behalf of her child, the DDSN Consumer. As a final note, Commissioner Woodhead maintains that she clearly articulated that the personal concern was being escalated as a parent of a DDSN Consumer and not as a Commissioner in order to keep complete transparency.

Conclusion

Following an in-depth review of the Final Draft Report, Commissioner Rawlinson, Commissioner Malphrus, and Commissioner Blackwood all agree that the best course of action for DDSN moving forward would be for the Agency to be made a part of the Governor’s proposed \$5 million dollar Restructuring Study and Plan for Health Agencies, if DDSN is not already considered a part of the study. These Commissioners believe that DDSN’s participation in the study would provide a

comprehensive plan for DDSN and provide better insight as to whether the Commission should be eliminated.

Sincerely,

A handwritten signature in cursive script that reads "Constance".A handwritten signature in cursive script that reads "Holloway". A long, thin horizontal line extends from the end of the signature across the page.

Constance Holloway
Interim State Director/General Counsel

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