CONCERNS REGARDING INDEPENDENCE AND AUTONOMY IN THE [redacted] PROTECTION & ADVOCACY SYSTEM

Governing Authorities: *Developmental Disabilities Assistance and Bill of Rights Act of 2000, P.L. 106-402 (DD Act); Federal Regulations 45 CFR 1386.19-25*

AREA OF NONCOMPLIANCE	LEGAL MANDATE	EXAMPLES OF COMPLIANCE
Independence & Authority: Rights & Powers of the P&A; P&A Structure	**DD ACT, Sec. 143** (a) SYSTEM REQUIRED. In order for a State to receive an allotment under subtitle B or this subtitle- the State shall have in effect a system to protect and advocate the rights of individuals with developmental disabilities; (2) such system shall- (G) be independent of any agency that provides treatment, services, or habilitation to individuals with developmental disabilities; (K): If the P&A is in state government, there are specific provisions which protect its operations from hiring freezes, training limitations, restrictions on obtaining and maintaining equipment, materials and supplies and services. **Sec.144(b)(1):**The P&A represents	**Rights & Powers** The P&A must be independent of any agency that provides treatment, services, or habilitation to individuals with developmental disabilities. Any statute establishing the P&A should have clear language that no state law can diminish the required authority of the Protection and Advocacy System under federal law **P&A Structure** A P&A that operates within state government must have policies and procedures that allow it to advocate for the rights of people with disabilities independently and without oversight by another governmental entity. The following formats are ways to establish an independent P&A within state government: 1. Independent agency (adopted by Indiana, North Dakota): The P&A is a separate, independent agency that does not report to any other agency head or to the Governor; **OR** 2. Separate sub-agency that deals only with P&A funding and programs (adopted by Kentucky). The P&A may be housed in a larger agency, but it retains its separate budgeting abilities, staffing procedures, and advocacy priorities in order to comply with federal law; **OR**

	individuals with developmental disabilities in lawsuits against the State or any agency or instrumentality of the state without limitation **45 CFR 1386.21 - REQUIREMENTS AND AUTHORITY OF THE PROTECTION AND ADVOCACY SYSTEM** • (d) A P&A system shall be free from hiring freezes, reductions in force, prohibitions on staff travel, or other policies, imposed by the State, to the extent that such policies would impact system program staff or functions funded with Federal funds and would prevent the system from carrying out its mandates under the Act. • (f) A Protection and Advocacy System may exercise its authority under State law where the authority exceeds the authority required by the Developmental Disabilities Assistance and Bill of Rights Act, as amended. **However, State law must not diminish the required authority of the Protection and Advocacy System.**	3. The P&A is a separate agency that sits under the public university structure (adopted by Alabama)

Independence & Authority: Governing Body	**DD Act, Sec. 144** In a State in which the system described in section 15043 of this title is organized as a private nonprofit entity with a multimember governing board, or a public system with a multimember governing board, such governing board shall be selected according to the policies and procedures of the system, except that- (1)(A) the governing board shall be composed of members who broadly represent or are knowledgeable about the needs of the individuals served by the system; (B) a majority of the members of the board shall be-individuals with disabilities, including individuals with developmental disabilities, who are eligible for services, or have received or are receiving services through the system; or parents, family members, guardians, advocates, or authorized representatives of individuals referred to in clause (i); and (C) the board may include a representative of the State Council on Developmental Disabilities, the Centers in the State, and the self-advocacy organization described in section 15024(c)(4)(A)(ii)(I) of this title; (2) not more than 1/3 of the members of the governing board may be appointed by the chief executive officer of the State involved, in the case of any State in which such	To ensure independence from the office of the Governor, the P&A must be guided by a Board, Commission or Committee that appoints the executive leadership and establishes the goals and priorities of the P&A. The Governor may only appoint a minority of the governing body's members. Below are several options for implementing a governing body. 1. Commission/Board • The agency is governed by a Commission established by statute. The Commission self-nominates at least two-thirds or more of the members. The remaining members are appointed by the Governor or the legislature. This approach has been adopted by Indiana and North Dakota. • The Executive Director serves at the pleasure of the Commission, which has broad authority to hire and fire the Executive Director. The Governor does not have authority to fire the Executive Director. • The Commission sets the goals and priorities of the P&A, consistent with public input. These priorities determine what kind of cases the P&A will take and how they will allocate their resources among different case areas. • A majority of Commission members must be people with disabilities or family members of people with disabilities. 2. Advisory Committee • The agency has a committee that advises the Executive Director. The committee self-nominates at least two-thirds or more of the members. The remaining members are appointed by the Governor or the legislature. • When a new Executive Director is needed, the committee submits three nominees to the Governor, who must choose from those individuals. • The Executive Director then serves at the pleasure of the

	officer has the authority to appoint members of the board; (3) the membership of the governing board shall be subject to term limits set by the system to ensure rotating membership; (4) any vacancy in the board shall be filled not later than 60 days after the date on which the vacancy occurs; and (5) in a State in which the system is organized as a public system without a multimember governing or advisory board, the system shall establish an advisory council- that shall advise the system on policies and priorities to be carried out in protecting and advocating the rights of individuals with developmental disabilities; and on which a majority of the members shall be- individuals with developmental disabilities who are eligible for services, or have received or are receiving services, through the system; or parents, family members, guardians, advocates, or authorized representatives of individuals referred to in clause (i).	Committee. Connecticut has proposed this model. Vacancies in either Commission or Advisory Committee must be filled in a timely manner. A vacancy must be filled by appointment not later than sixty (60) days after the vacancy occurs. A member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of the term.

	45 CFR 1386.21(g) REQUIREMENTS AND AUTHORITY OF THE PROTECTION AND ADVOCACY SYSTEM • (g) Each P&A system that is a public system without a multimember governing or advisory board must establish an advisory council in order to provide a voice for individuals with developmental disabilities. The Advisory Council shall advise the P&A on program policies and priorities and shall be comprised of a majority of individuals with developmental disabilities who are eligible for services, or have received or are receiving services or parents or family members, (including those representing individuals with developmental disabilities who live in institutions and home and community based settings), guardians, advocates, or authorized representatives of such individuals.	
Independence & Authority: Appointment of the Executive Director	**DD ACT, Sec. 143** (a) SYSTEM REQUIRED. • In order for a State to receive an allotment under subtitle B or this subtitle- • the State shall have in effect a system to protect and advocate the rights of individuals with developmental disabilities;	The Executive Director leads the P&A and makes critical decisions regarding staffing and case strategy. He or she ensures that the P&A follows the goals and priorities set out by the advisory body. To allow the P&A to be independent, the advisory body should play a major role in the selection of the Director. Once selected or appointed, the Director should serve at the pleasure of the advisory body. The Governor should not have the power to fire the Director. Below are options to encourage an independent appointment

	Sec. 144 (b) Legal action (1) In general -- Nothing in this subchapter shall preclude a system from bringing a suit on behalf of individuals with developmental disabilities against a State, or an agency or instrumentality of a State.	process. 1. Board/Committee selects and approves ED (Indiana, North Dakota). • The executive director serves at the pleasure of the commission and shall devote the director's time exclusively to the performance of the duties of the office. 2. Board/Committee provides a set number of nominations to the Governor or other appointing official, who then chooses the ED from those nominations (Proposed Connecticut system) • The protection and advocacy board shall recommend to the Governor three candidates for appointment as director of the Office of Protection and Advocacy for Persons with Disabilities. Within 45 days of the receipt of the names of the three recommended candidates, the Governor shall appoint one of them to serve as the director. In the event the Governor fails to appoint one of the recommended candidates within 45 days of receipt of the Board's recommendations, the candidate identified by the Board as most qualified shall become director. 3. If P&A is organized within the University, the ED is appointed by the University President (Alabama)
Independence & Authority: Staffing and Financial Controls	**DD Act, Sec. 143(2)(k)** The system shall hire and maintain sufficient numbers and types of staff (qualified by training and experience) to carry out such system's functions, except that the State involved shall not apply hiring freezes, reductions in force, prohibitions on travel, or other policies to the staff of the system, to the extent that such policies would impact	The Executive Director has broad authority to allocate and expend federal funds for • The hiring of appropriate legal, advocacy, and support staff • The training and necessary travel of P&A staff • The purchase of necessary equipment, materials and supplies for staff to perform the functions of the P&A There are specific provisions which protect the P&A's operations from hiring freezes, training limitations, and restrictions on obtaining and maintaining equipment, materials and supplies and

	the staff or functions of the system funded with Federal funds or would prevent the system from carrying out the functions of the system	services.