**Bureau of Special Education Appeals (BSEA) Advisory Council**

**Monday, May 1, 2023, 10:00am-12:00pm**

**Hybrid Meeting**

**MINUTES**

**Attendance:**

*council Members Present*: Alyndra Canty, Co-Chair; Attorney Janine Solomon, Managing Attorney for the Massachusetts Advocates for Children, Attorney Michael Long, Counsel for the Massachusetts Association of School Superintendents; Pamela Nourse, representing the Massachusetts Association of School Committees; Ruth Diaz, representing the Federation for Children with Special Needs; and Attorney Stefanie Krantz, Senior Attorney for the Disability Law Center.

*Council Members Absent*: Kate Lipper-Garabedian, Co-Chair; Carla Jentz, Executive Director of the Massachusetts Administrators of Special Education.

*Invited Guests/Attendees*: Reece Erlichman, Director; Myrto Flessas, Coordinator of Mediation and Facilitation; Marguerite M. Mitchell, Hearing Officer; Rebecca Stone, Mediator; Steven “Archie” Archibald, Mediator; Leslie Bock, Mediator; Matthew Flynn, Mediator; and Beth Ross, Mediator (BSEA); Russell Johnston, Deputy Commissioner (DESE); Jamie Camacho, Assistant Director Special Education Policy and Planning (DESE); Julia Germani, legislative aide to Co-Chair Kate Lipper-Garabedian; and Victoria Ennis (public member).

Director Erlichman confirmed there remains a vacancy in the position of Chief Administrative Magistrate of DALA, however James Rooney is the Interim Director currently. Interim Director Rooney was not present for this meeting.

*Public Input Participants*: None.

**Agenda:**

1. Welcome and Agenda Review
2. Member Acknowledgments
3. Public Comment Period
4. Approval of Minutes of February 2023 Meeting
5. Old Business
6. Brief Review of Advisory Council Charge
7. Review BSEA and DESE Presentations and Materials from October 2022
8. BSEA Data Collection and Reporting
9. BSEA Training and Outreach Efforts for Stakeholders
10. Access for Families
11. BSEA Decisions and Rulings, DESE-Issued Guidance (Carla Jentz)

*Short Break*

1. Member Discussion
   1. Dialogue with BSEA and DESE re presentations
   2. Future meeting components/agendas
2. Next Steps/Closing

**I. Welcome and Agenda Review**

*Co-Chair Alyndra Canty began the meeting at 10:08 am.*

**II. MEMBER ACKNOWLEDGLEMENTS**

Members reintroduced themselves noting the agency they represent.

**III. Public Comment PERIOD**

None.

**IV. APPROVAL OF MINUTES OF February 2023 MEETING**

All members, except Attorney Solomon, confirmed receiving a copy of the minutes of the February 6, 2023, meeting. Co-Chair Canty advised Attorney Solomon they would work together to ensure her contact information was updated before the next meeting.

*On a Motion made by Attorney Long, seconded by Pamela Nourse, and so voted unanimously, the February 6, 2023, minutes were approved as drafted.*

**V. OLD BUSINESS**

Co-Chair Canty first reviewed the agenda for the meeting. She noted that due to technical issues that may have impacted public participation at the February meeting, this agenda is the same agenda that was discussed at the February 2023 meeting.

1. BRIEF REVIEW OF ADVISORY COUNCIL CHARGE

Co-Chair Canty again reviewed the charge of the Advisory Council. The Council is charged with providing advice and feedback regarding the BSEA’s performance, to provide fair and timely resolutions of disputes on special education matters; reviewing the MOU between DESE and the BSEA; reviewing data collected by the BSEA; discussing mechanisms for improving access for pro se parents and outreach to families who are non-English speaking and mechanisms to ensure that the BSEA is appropriately maintained and operated.

1. REVIEW OF BSEA AND DESE PRESENTATIONS AND MATERIALS FROM OCTOBER 2022 MEETING (NOTE: THE COUNCIL ALSO USED THIS TIME TO REVIEW THE PRESENTATIONS MADE AT THE FEBRUARY 2023 MEETING, THEREBY INCORPORATING **SECTIONS VI THROUGH X(A)** OF THE AGENDA INTO THIS PORTION OF THE MEETING)

Co-Chair Canty invited members to ask any questions or comments about any of the information that was presented at the October or February 2023 meeting.

Co-Chair Canty asked a question relating to other ways the dispute resolution systems in MA under IDEA are assessed. She noted she had reviewed the mediation survey provided to participants post-mediation and it looks like overall the feedback and input is positive.

Regarding mediations, Ms. Flessas advised participant feedback is only one piece as it only gives information from those who self-select to report. While this is typically people very happy or unhappy with the process, they still get many responses that are used to guide professional development and training of the mediators. Additionally, Ms. Flessas, as the Coordinator of Mediation observes mediations, reviews sample agreements the mediators share with her, meets monthly with the mediators for trainings and is in the process of developing a self-assessment tool for mediators to use as a checklist post-mediations. Ms. Flessas also receives phone calls from the public and shares constructive feedback with the mediators, especially as it relates to expectations and experiences of participants and their accommodation needs.

Attorney Krantz asked a question about the status of increased data sharing between DESE and the BSEA, and the status of the revised MOU.

Director Erlichman advised that the MOU is still under revision. She also continues to meet monthly with the head of PRS (a DESE employee), and Assistant Director Camacho. They have been discussing the Council’s suggestions about increased data sharing. Nothing is finalized yet, but they plan to act on the questions that have been raised by the Council and will be incorporating a data collection component into the MOU revisions. Assistant Director Camacho also added that since February, DESE has been engaging in ongoing work focused on BSEA and OSEP requirements, and is currently completing a self-assessment to ensure that its oversight obligations are being met. She confirmed she expects the next version of the MOU will have a data sharing component. Director Erlichman further advised that the Council’s concerns of privacy ramifications associated with data sharing are being fully vetted, which takes time.

Regarding mediations, Ms. Flessas also advised that she has begun sharing information weekly directly with PRS about closed cases. This information includes who made the mediation request, what the outcome of the request was, whether or not the mediation occurred and if it an agreement was reached or not, as well as the student and the district name. PRS uses this information to compare it to its records. In the past there had been an outside vendor that was involved in interfacing this data sharing between the BSEA and PRS, but that is no longer the case. Information is now shared directly between a mediator at the BSEA and a member of the PRS staff. Further, based upon the prior Council discussions, she is exploring how to collect the additional demographic information noted as part of the post mediation-participation survey meaningfully, without it causing any negative repercussions to the participants.

Finally, regarding due process hearing requests, Director Erlichman reiterated that she continues to share all decisions and substantive rulings with DESE to review for compliance and oversight. DESE reviews them collectively every 6 weeks (via a “book club”), and Deputy Commissioner Johnston noted that PRS always is already aware of the compliance follow up needs based upon a decision or ruling.

Attorney Solomon then asked whether the post-mediation surveys are translated into the home language.

Ms. Flessas advised that she would confirm this but noted that they can be, and the intent is for them to be provided in the home language.

Attorney Solomon questioned what the impact BSEA and PRS decisions have on tiered monitoring by DESE.

Deputy Commissioner Johnston explained that DESE’s Public School Monitoring Team, which is separate from PRS, reviews trends noted in decisions to identify needs that would result in a deeper dive when it is time for DESE’s on-site visit with a district. This Team is part of the “book club”. Director Erlichman also noted that, while rare, there are times that during the course of a hearing, a Hearing Officer identifies a concern that appears to be systemic, and has made a direct referral to PRS for investigation. She recalls a recent situation involving discipline training needs where this occurred, and noted this often is presented through witness testimony.

Attorney Krantz followed up to ask if the process for identifying trends is the same with BSEA decisions as it is with PRS decisions.

Deputy Commissioner Johnston advised that it is different as there are approximately 1500 PRS Rulings each year recently but only approximately 20 BSEA full decisions. Thus, it is easier to identify trends in PRS decisions, while BSEA decisions usually provide themes rather than trends. PRS also does its own trend review and individual monitoring, where needed, and notes topics or districts with repeat complaints. It is rare for there to be recurring Districts for BSEA decisions, but he confirms that the BSEA and DESE discusses themes and causes behind decisions together.

The Council then engaged in a discussion with Director Erlichman and the DESE attendees as to the changes in trends due to COVID. While the BSEA saw a decrease in filings during COVID, it has returned to pre-COVID numbers, with mediations up about 20% from pre-COVID numbers. Director Erlichman also noted that her current trend review indicates that similar to pre-COVID times, dyslexia and language-based learning disabilities currently make up a large number of the issues before the BSEA.

Attorney Long asked whether or not the District perspective was being assessed.

Regarding mediations, Ms. Flyssas confirmed that the post-mediation surveys are sent to all participants, and Districts provide a substantial number of the responses, often responding per mediation rather than thinking about multiple mediations in one month together. It is about a 50/50 response rate of districts to families. Attorney Long wondered if the BSEA had any other sources of information from which to learn if Districts had confidence in the BSEA’s dispute resolution processes given his prior and ongoing comments that Districts generally express that they do not feel they get a “fair shake” at the BSEA in the hearing process. He noted much of the discussion today has been directed at what Districts are doing wrong and how that can be resolved, but he finds Districts feel that Hearing Officers generally are oriented in certain ways, despite their legal separation from DESE. Director Erlichman noted that Hearing Officers are required to be impartial as the integrity of the process is important to uphold and that she often hears these same concerns of bias from the parents’ side of the bar too. Discussion occurred that although Districts tend to prevail significantly more often in BSEA full decisions, this is largely due to them choosing not to go forward on, and therefore resolving, most cases, especially upon learning who the assigned Hearing Officer is. Ms. Flessas also noted that over the years Districts have begun requesting mediations more frequently, and now make up about 40% of the mediation requests (Mediator Stone confirmed that for FY22 it was 42% of the requests). Further discussion occurred that the feedback to the BSEA from families is that they often feel the hearing process is skewed in favor of Districts. Further, while the prevailing party statistics largely favor Districts, the Council acknowledges this is a by-product of Districts not choosing to resolve the cases that go to hearing earlier for legitimate reasons.

Ms. Diaz questioned if PRS provides any outreach or training.

Deputy Commissioner Johnston advised that it is not obligated to do this, although it does work with the Federation for Children annually for its Human Rights trainings, but it does not do any outreach about how to engage in the PRS process. He also advised that since 2018 the number of PRS complaints has tripled to about 1500 (less than 500 in 2018). To address this there has been a dramatic increase to the number of PRS staff but DESE also discusses how to resolve complaints at their source and what additional Technical Assistance support DESE can provide at the local level to proactively address issues that could otherwise result in a complaint to the State. Discussion ensued that PRS is unique in the nation in that it addresses both special education and regular education issues, such as bullying. For bullying-related complaints, PRS will engage with the District to be sure the student is safe while the investigation is pending.

*\*Brief Break from 10:52-11:03 am\**

Upon returning from break Co-Chair Canty asked what trainings and outreach are provided to Districts by the BSEA or the BSEA process.

Regarding mediations, Ms. Flessas advised that, speaking only about what the BSEA offers, she will reach out a few times a year to all Districts, and will also make directed outreach to Districts that seem unsure about the process or those who do not participate regularly in mediation or regularly decline it. She also targets outreach to all District Special Education directors, and to Collaboratives, who often provide training and professional development groups for their member Districts’ Out of District Coordinators and Special Education directors. She also offers monthly Zoom meetings to the public. She will make extra outreach efforts to Team Chairs and to communities with high numbers of low income or ELL student populations to encourage their attendance at these monthly Zoom meetings. She further noted that District use of the mediation process can be impacted by staff movement as a new administrator may have a different position on using mediation than a prior administrator did. Additionally, individual BSEA mediators provide additional training upon requests to Districts in the form of responding to direct questions or offering 1 to 2 hour sessions with power point presentations relating to mediation myths, when to know you are ready for mediation, who to bring and what to expect at a mediation. Further, recently Ms. Flessas and Assistant Director Camacho have been discussing having a mediator presentation at DESE’s monthly Special Education Leadership meetings.

Regarding due process hearings, Director Erlichman reviewed the various trainings that she and the BSEA Hearing Officers provide regularly that are attended by District staff or representatives, including ACE Collaborative’s annual meetings, the Special Education Leadership Training, ACCEPT Collaborative meetings, presentations to Evaluation Team Leaders, MCLE trainings twice a year, and any other training the BSEA may be invited to attend. Trainings occur both regularly and ad hoc.

Attorney Long advised that he agrees there is substantial outreach and training provided by the BSEA to District staff or representatives and believes the amount of training provided is equal for families and their representatives as it is for Districts and their representatives. The issue for Districts is more about the limited professional development time available in the school calendar for this training to occur. Co-Chair Canty questioned if perhaps Principals or Supervisor meeting time could be used to offer direct staff training. Ms. Flessas advised this was a great idea she would explore more. She also noted that the monthly Zoom meetings offered during the day are better attended than the ones offered in the evenings. She further advised that she often gets requests for “podcast-like” trainings from Districts that would not involve an interactive component. In response to these requests, she is currently working to create short, 5-minute videos to be posted on the BSEA mediation website about mediation topics, as well as a longer “podcast” video with general information on mediations.

**X(b) and XI. member discussion/next steps/closing**

B. future meeting components/agenda

Co-Chair Canty invited members to identify future meeting topics.

Attorney Krantz suggested, based upon the public comment from the February, 2023 meeting, adding agenda items focused on pro-se access to BSEA dispute resolution procedures as well as timeliness of BSEA proceedings being completed. Director Erlichman noted that there is always room for growth in the area of outreach and resources, and she welcomes the discussion from the Council on these topics.

Regarding pro se access, Director Erlichman advised that Hearing Officers walk a fine line between supporting people unfamiliar with the BSEA procedures, so as to ensure that this unfamiliarity does not impact the ultimate decision, and not providing substantive legal assistance. It is often case specific how this is done, but she has not received substantial complaints from Districts about the line being crossed often. Attorney Long confirmed that although sometimes he hears about this, Districts generally understand the difficult position that Hearing Officers are in with ensuring that families who come to the BSEA with a problem are getting what they need out of the process, despite being unfamiliar with it, without crossing the line. Generally, he does not feel that Hearing Officers handle this improperly.

Regarding timeliness, Co-Chair Canty also noted that the BSEA’s compliance with federal timelines is part of the charge for the Council to review and while individual cases may warrant exceptions, hearing about disputes taking multiple years to resolve (even assuming most of that time was not pending at the BSEA) is a future agenda item she supports. Director Erlichman agreed she would want to hear the Council’s feedback on this agenda item. She advised that the BSEA is very mindful of federal timelines. The BSEA constantly reviews its cases, and maintains a scheduled hearing date at all ties as required. Endless postponements are not granted, with Hearing Officers sometimes noting in postponement rulings that no further postponements will be granted absent exigent circumstances. Attorney Krantz advised that she would like to learn more about the reasons for multiple postponements before the BSEA. Attorney Long advised that he agrees Hearing Officers do a better job now than in the past about prompting parties to adhere to timelines. He also suggested considering scheduling multiple hearing dates at the outset of receiving a case, to assist in moving matters forward and for trial preparation purposes.

Attorney Solomon suggested a future agenda item involve discussing language access for non-English speaking constituents.

She informed the Council that she co-directs a group with Attorney Michael Gregory to support multi-lingual families with special education needs. They are planning programming that she is looking to invite the BSEA to participate in relating to translation support and parent’s rights. Director Erlichman welcomes participating in this program and also noted that if the BSEA learns that English is not the home-language, all notices and other materials sent from the BSEA will be translated into the home language. The BSEA also regularly reminds Districts to notify it if English is not a home language, which Districts are doing more frequently.

Co-Chair Canty advised the next meeting date is planned for August and she will email the Council to confirm availability and the date.

*On a Motion made by Attorney Long, seconded by Co-Chair Canty, and so voted unanimously, the meeting adjourned at 11:31am.*