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

**Monday, February 6, 2023, 10:00am-12:00pm**

**Hybrid Meeting**

**MINUTES**

**Attendance:**

*council Members Present*: Kate Lipper-Garabedian, Alyndra Canty, Michael Long, Pamela Nourse, Carla Jentz, Ruth Diaz, and Stefanie Krantz

*Invited Guests*: Reece Erlichman, Myrto Flessas, Marguerite M. Mitchell, Alina Kantor Nir, Amy Reichbach, Rebecca Stone, Steven “Archie” Archibald, Leslie Bock, Beth Ross (BSEA); Russell Johnston and Jamie Camacho(DESE).

**Agenda:**

1. Welcome and Agenda Review
2. Member Acknowledgments
3. Public Comment Period
4. Approval of Minutes of October 2022 Meeting
5. Old Business
6. Brief Review of Advisory Council Charge
7. Review BSEA and DESE Presentations and Materials from October 2022 Meeting
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)
12. Member Discussion
    1. Dialogue with BSEA and DESE re presentations
    2. Future meeting components/agendas
13. Next Steps/Closing

**I. Welcome and Agenda Review**

*Co-Chairs Kate Lipper-Garabedian and Alyndra Canty began the meeting at 10:04am.*

**II. MEMBER ACKNOWLEDGLEMENTS**

Members reintroduced themselves noting the organization they represent.

**III. Public Comment PERIOD**

No attendees wishing to provide comments were identified at this time. Later, public comments were provided by an attendee (see below).

**IV. APPROVAL OF MINUTES OF OCTOBER 2022 MEETING**

All members confirmed receiving a copy of the minutes of the October 31, 2022, meeting.

*On a Motion made by Ms. Diaz, seconded by Attorney Long, and so voted unanimously, the October 31, 2022 minutes were approved as drafted.*

**V. OLD BUSINESS**

Co-Chair Lipper-Garabedian first reviewed the agenda for the meeting. She noted that the charge of the Advisory Council is set forth in Massachusetts General Laws c. 71B, § 2A, and reviewed the statutory language with the Council. Co-chair Lipper-Garabedian noted that the Council at its last meeting heard presentations from the BSEA and DESE and reminded members of the content and resources provided. No member had further comments to make regarding Old Business.

**VI.** **BSEA data collection and reporting**

BSEA Director Erlichman introduced all the BSEA staff in attendance at today’s meeting. Discussion then ensued between Director Erlichman and members of the Council as to the types of data collected by the BSEA and data not currently collected but potentially useful. During discussion, concerns were raised relating to collecting demographic data that families may be uncomfortable sharing, the confidentiality associated with collecting certain data, what the intended purpose or use of any new data collected is, whether this data already exists and is reported by or to LEAs or DESE, could existing data legally be shared with the BSEA rather than re-reported anew by families, what disclosures should be made to families about the data that is to be collected or shared with the BSEA, how accurate is self-reported data going to be, and the potential slippery slope that could occur if the BSEA begins to receive data that is already being collected by another entity. Members also noted that our laws recognize the benefits that can come from collecting data; data collection is good to inform policy and practice, so this should be something we try to pursue if legally able to do so.

As part of this discussion, the Council agreed the additional areas of data it recommends the BSEA collect, if legally able to, include race, ethnicity, home language, and socioeconomic status of families, and the disability category(ies) of students. Deputy Commissioner Johnston confirmed that DESE collects all this data from LEAs and advised he will request DESE’s Legal Department opine as to the ability for this information to be shared with the BSEA. The Massachusetts Student Record Laws and FERPA have explicit exceptions to allow for this data to be shared with DESE, so the Council questioned whether an MOU could be created between DESE and the BSEA establishing the BSEA as an authorized agent of DESE to review this data under certain conditions and limitations in how it was to be used and shared. Assistant Director Camacho confirmed that DESE and the BSEA are already working to create amendments to its existing MOU to provide for such information sharing, if legally available. She confirmed that draft MOU language will likely be available by the next quarterly meeting, or at a minimum an update on the status of this draft language could be provided.

During discussion, members also questioned whether data existed on the need for ASL support for a family. Director Erlichman confirmed this need is shared with the BSEA at the time a family needs it, but data is not collected or maintained about specific requests. The BSEA can support ASL needs for families as well as other language interpretation needs.

During further discussion, members sought assurance on behalf of both families and LEAs what this additional data that may be collected would be used for. Director Erlichman noted that if additional data was collected it would be used to inform trainings and to help the BSEA prepare its forms in the languages used by families accessing the BSEA. Members also noted this data could help identify pockets of community members not utilizing the BSEA’s services, thereby informing on the outreach and communication of unmet need. Assistant Director Camacho noted that this data is used by DESE to meet its general supervision obligations under the law so it can better provide technical assistance and support to LEAs and families.

DESE and the BSEA agreed to re-circulate a copy of its most current existing MOU to the Council after the meeting.

The BSEA also reported out updates on the data it currently collects. Regarding mediations, both the number of people accessing mediations and the agreement rate is returning to pre-pandemic levels. During COVID times, this had decreased. Regarding Hearing Requests, however, while the numbers have increased since dropping during COVID, they are still not at pre-pandemic levels. There were 321 Hearing Requests filed in FY21, and 380 in FY22. Usually, this number was in the 400s.

**VII. bsea training and outreach efforts to stakeholders**

Director Erlichman and Ms. Flessas, BSEA Coordinator of Mediation and Facilitation, provided a detailed report on the various training and outreach efforts of the BSEA to those who access the BSEA’s services. It is the goal of the BSEA in these presentations to reach all types of people who use the BSEA’s services, including families, students, parents, advocates, attorneys, law students, and various agencies who support students with special education disabilities. Director Erlichman advised that Hearing Officers typically present approximately 2-4 times per year for the Federation for Children with Special Needs, yearly to SPAN (Special Education Advisory Network) at a “both sides of the table” event, and approximately 1-2 times per year at Harvard Law School’s Special Education Law Seminar course for law students, at MCLE (Massachusetts Continuing Legal Education) seminars generally attended by lawyers, at other law schools including Boston College Law School, Suffolk Law School, and New England School of Law, and at local graduate programs including at Northeastern University Neuropsychology Graduate Program, Children’s Hospital, and Tufts University. Hearing Officers also present regularly at school district staff events organized by collaboratives, such as the ACCEPT Collaborative’s networking program, as well as for special education directors, out of district coordinators, and team chair network groups. Additionally, one of the Hearing Officers provides multiple presentations each year in Spanish typically organized by the Federation of Children with Special Needs or Suffolk Law School at various locations throughout Massachusetts, including Boston (multiple sites), Lawrence, Lowell, Worcester, Sturbridge, Springfield, Holyoke, and Martha’s Vineyard. The BSEA also provides Early Interventions dispute resolution option trainings, as the BSEA, through its ISA with DPH, handles all EI hearings and mediations, which have different timelines.

Ms. Flessas advised that Mediators are also involved in both trainings and outreach efforts continually throughout the year to both explain and destigmatize the various dispute resolution services offered by the BSEA including mediations, facilitated IEP Team meetings, and due process hearings. The intention through this outreach is to reach as many people as possible, particularly marginalized community members who may not otherwise know or understand the support available to families and districts in addressing special education conflicts. Mediators are organized regionally; thus, each Mediator connects with every LEA and SEPAC in their region, annually, as well as any other community organizations they are aware of that support local families. Additionally, Ms. Flessas reaches out to DCF, DMH, and DDS to offer training and information sessions and attends annual trainings presented by the Federation for Children with Special Needs. Written training materials have been translated into Spanish, Portuguese, and Haitian-Creole, and the BSEA is currently working on translations into Chinese and Somali. Additionally, since COVID, Mediators offer quarterly drop-in Zoom sessions for anyone in the state to attend, two of which are more formal presentations and two of which are more informal “chats”. They are offered in the evening and during the day with the day sessions are better attended.

Finally, Mediators present at national events, including at CADRE’s annual trainings. Last year, Mediators participated in approximately 50 presentations, and the same amount is expected by the end of this fiscal year, although Ms. Flessas noted this is “not enough” as most presentations are attended by those who already know about the BSEA’s services, rather than the disenfranchised. Thus, she is continually looking to reach more community members.

After mediations are completed, Ms. Flessas sends participants the survey that was circulated last meeting. The results of this survey are not made public but are used to inform practice so that the mediators can provide better, targeted support to families. She is also working to develop/amend a similar survey for participants of FIEPs (Facilitated IEP Team meetings). Ms. Flessas explained how popular FIEPs have become as they help families and districts get the Team process “back on track” and also helps participants at Team meetings to more appropriately manage their disagreements. All Mediators and Ms. Flessas conduct FIEPs.

During discussion, Council members noted how impressed they were by the outreach that the BSEA engages in. They questioned what online ASL supports exist for outreach to the deaf community. Ms. Flessas advised that video clips have not yet been created, but she is working on that plans to translate them and also ensure they are available to the visual and hearing impaired community when they are completed. She also noted that based on this conversation she intends to make specific outreach efforts to hearing impaired support agencies, such as the SEPAC for the Learning Center for the Deaf.

During discussion, Council members also questioned the hiring of bilingual mediation staff. Ms. Flessas noted the challenge with finding bilingual staff in recent mediator candidate pools but expressed her ongoing work to find a diverse candidate pool with the goal to have the mediator staff reflect the voices of all the families they support, as best as possible. She intends to explore other outreach opportunities she can use in future position postings to meet this goal.

*\*Brief Break from 11:06-11:15 am\**

Upon returning from the break, Co-Chair Lipper-Garabedian noted that she had received an email from a member of the public advising that the public link to this meeting was not working correctly. A corrected link was emailed to this public participant directly, and the Council agreed to offer another public input opportunity before adjourning.

**VIII. access for families**

Director Erlichman and Ms. Flessas advised on the various language supports that the BSEA offers families. Recently, the BSEA was able to secure the services of the Language Line and other deaf and hard of hearing agencies to offer translations “in the moment” to families who call the BSEA for technical assistance, or when participating in Conference Calls or other events. Additionally, the BSEA contracts with Catholic Charities for verbal translation services of larger in-person or virtual events, such as mediations, pre-hearing conferences, and hearings. Further, the agency uses JTG to provide written translations of their materials. All BSEA form packets have been translated into Russian, Chinese, Portuguese, Spanish, and Swahili and translated versions of less common languages are also available upon request. During discussion, members questioned if families have to self-identify needing language assistance. Director Erlichman confirmed that all Hearing Request forms and rejected IEP documents note that unless the form indicates that the home language is other than English, the BSEA will assume it is English.

Director Erlichman and Ms. Flessas also recently met with DESE about a pilot program offering interpreter training. The first tier of the training consists of a 90-minute video that the BSEA plans to have all of its staff be trained on. DESE Deputy Commissioner Johnston confirmed the pilot program begins this spring, and a full launch is anticipated next school year. The BSEA hopes all of its outside language vendors (who are approved state vendors) will be required to have all of their staff participate in this training as part of their state vendor approval status.

Ms. Flessas also explained the various professional development trainings that all BSEA staff members participate in annually related to anti-bias, cultural competency, and the impact of trauma on families, students, and school staff who the BSEA engages with.

Ms. Flessas also explained her efforts to ensure that both language and literacy does not impede any family from accessing mediation or other dispute resolution services. She again emphasized the increased popularity of FIEPs, noting that this fiscal year has seen a 19% increase in the number of people engaging in FIEPs and a 16% increase in the number of FIEP requests. She attributed this to the outreach efforts of the BSEA and its work to demystify the FIEP process. Council members discussed generally that they have also received positive feedback about FIEPs from their constituents. They questioned Ms. Flessas on the need for increased resources to dedicate to FIEPs particularly given the fact that the number of mediations are increasing to pre-pandemic levels. Ms. Flessas agreed more resources will be needed if trends continue.

During discussion, the Council was advised that the turnaround time for performing FIEPs upon request varies throughout the year with an average of 18/19 to 24 days from a request. It was noted that mediations and hearings are performed 12 months a year, which some Council members who represent school district organizations noted is challenging. For mediations, the turnaround time averages 3-6 weeks from when a request is received but can range up to 8 weeks. Mediator Rebecca Stone maintains this data and confirmed that, in FY22, the 80% average wait time for a mediation was 31 calendar days.

During further discussion, Council members commended the BSEA for ensuring its staff is trained in areas of anti-bias, cultural competence, mental health, and trauma and questioned what curriculum and materials are used. The BSEA uses materials produced by Harvard Law Professors Susan Cole and Michael Gregory, information received at CADRE national trainings that are brought back and shared with staff, various professional development books, articles and resources that are shared, and training provided by the Victims Rights Law Center’s sexual assault unit and DCF as well as other agencies. Typically, the BSEA does not consult with local experts so as not to impact the required impartiality of BSEA Hearing Officers and mediators. Council members offered their own resources and supports towards this ongoing training.

**III. Public Comment PERIOD (Continued)**

Co-Chair Lipper-Garabedian called on Sheila Ashton to provide 3 minutes of public comment and also noted her apology for the issues with the public link. Ms. Ashton advised that she is a pro se parent, as well as a teacher for over 20 years, with a master’s degree in education. She is currently before the BSEA in a hearing as a pro se parent on behalf of her son and feels that “to say accessibility is difficult is an understatement”. She has been in conflict with her son’s school district for over 3 and a half years and has concerns with the timeliness of the process. She suggests that parents need help navigating the BSEA procedures in a more streamlined manner, immediately, not years down the road. She recommends a hotline be made available for parents to call with issues, as she does not feel families should simply take what a school district tells them in good faith. She thanked the Council for their work and encouraged them to push for legislative changes as an advisory group. She noted her struggles and inability to get advocacy help due to her family being above the poverty line, resulting in them spending substantial dollars in poor legal counsel and evaluations. She is disappointed that her due process hearing has been postponed four times and has concerns appearing pro se against an attorney at an agency given the record for pro se parents to prevail at hearing. Co-Chair Lipper-Garabedian thanked Ms. Ashton for her comments and reminded her she can submit public comment in writing as well. She also again apologized for the issue with the public link to the meeting.

**IX. bsea decisions and rulings-dese issued guidance**

Ms. Jentz addressed the other Council members and attendees to discuss the concerns that the Massachusetts Adminsitrators for Special Education has regarding the BSEA, in its decisions and rulings not adhering to DESE Guidance that LEAs have followed as LEAs take this guidance seriously and strive always to follow it. She noted this concern that the BSEA will not follow DESE Guidance causes LEAs to be hesitant to go to hearing when they are acting in accordance with DESE Guidance. Mr. Long questioned if this concern pertains to situations where PRS issues a determination that is different from the BSEA on the same issue. Director Erlichman noted, as Ms. Jentz had indicated, that DESE Guidance and Advisories, while shared with the BSEA, are not binding on a BSEA Hearing Officer if the Hearing Officer finds it to be in conflict with the law. She recalled one example many years ago where the BSEA explicitly did not follow DESE Guidance but does not feel that it happens often. Director Erlichman explained that there is regular sharing of information between DESE and the BSEA including sharing of draft Guidance and Advisories and meeting regularly with PRS to discuss issues that both entities have filed before them.

Upon further discussion, DESE Assistant Director Camacho also noted that DESE is actively examining and updating its general supervision responsibility procedures, noting a 2-day training that is planned for next week in which the BSEA will be participating. Deputy Commissioner Johnston noted that DESE is able to discuss specific situations with LEAs, if Ms. Jentz wanted to share them, and then DESE can, in turn, discuss trends and general concerns with the BSEA. He also noted that DESE reads all BSEA decisions and rulings to determine if it agrees with the fair application of the law as it pertains to any guidance DESE has issued and does not recall any concerns about this recently. Director Erlichman also advised that the BSEA is one of the stakeholders who DESE solicits public comment from prior to issuing any Guidance and Advisories, and it provides such public comment as appropriate. Finally, Director Erlichman suggested that an LEA could request joinder of DESE in a matter, which, if allowed, would enable DESE’s lawyers to provide argument and rationale to the Hearing Officer as to the applicability of any Guidance or Advisories to the facts of a particular proceeding.

**X and XI. MEMBER DISCUSSION/NEXT STEPS/CLOSING**

Co-Chair Lipper-Garabedian intends to circulate potential next meeting dates and draft minutes to the members in the upcoming weeks, as well as re-circulating the existing MOU between the BSEA and DESE. She asked members to follow up with her individually as to any topics they would like to discuss at the next meeting. She offered members a chance to share any future topics with the Council at this time, but no topics were so shared out.

*On a Motion made by Attorney Long, seconded by Co-Chair Canty, and so voted unanimously, the meeting adjourned at 11:58am.*