Bureau of Special Education Appeals (BSEA) Advisory Council

Monday, January 27, 2025, 1:00 pm - 2:30 pm

Virtual Meeting

MINUTES

# **Attendance:**

*council Members Present*: Kate Lipper-Garabedian, Co-Chair; Karen Adelman-Foster, Co-Chair; Ruth Diaz, representing the Federation for Children with Special Needs; Attorney Diana Santiago, Legal Director for the Massachusetts Advocates for Children; Attorney Stefanie Krantz, Senior Attorney for the Disability Law Center; and Attorney Michael Long, Counsel for the Massachusetts Association of School Superintendents; Pamela Nourse, representing the Massachusetts Association of School Committees; Carla Jentz, Executive Director of the Massachusetts Administrators of Special Education joined the meeting after it started.

*Council Members Absent*: None.

*Invited Guests/Panelists*: Reece Erlichman, Director (BSEA); Myrto Flessas, Coordinator of Mediation and Facilitation (BSEA); Marguerite M. Mitchell, Hearing Officer (BSEA); Rebecca Stone, Mediator (BSEA); Natalie S. Monroe, Chief Administrative Magistrate (DALA); Iraida J. Alvarez, Acting Deputy Commissioner (DESE). Additionally, Jo Wakelin, Esquire, Attorney with the Legal Office with DESE joined the meeting after it started.

*Public Input Participants*: Attorney Collins Fay-Martin; State Representative Steven J. Ouellete

# **Agenda:**

1. Welcome and Agenda Review
2. Member Acknowledgments
3. Public Comment Period
4. Approval of Minutes of May 2024 Minutes
5. Old Business
6. Review of Advisory Council Charge
7. Review of 2024 Meetings re U.S. Department of Education, Office of Special Education (OSEP) Monitoring Review and BSEA Policies
8. BSEA Updates on OSEP Monitoring Review and Presentation of Final Policies
9. Discussion: Requiring Representation for Participation in Settlement Conferences
10. Member Updates
11. Next Steps/Closing

## **I. WELCOME AND AGENDA REVIEW**

*Co-Chair Kate Lipper-Garabedian began the meeting at approximately 1:04 pm.* Co-Chair Lipper-Garabedian introduced herself and advised that she was the House Speaker Ronald Mariano’s designee on the Council.

*In light of a technical glitch, Co-Chair Lipper-Garabedian restarted the meeting at approximately 1:06 pm*. Co-Chair Lipper Garabedian reintroduced herself and restated that she was the House Speaker’s designee on the Council. She then introduced Co-Chair Karen Adelman-Foster. Co-Chair Adelman-Foster then provided some information about herself noting that she was the Senate President, Karen Spilka’s designee and advised that she had worked in the Senate President’s Office as the Director of Community Engagement and Municipal Policy until she retired last September. She has also served on the School Committee of Natick and the Board of Selectmen in Natick. She is excited about the work that she will be doing as Co-Chair of the Council.

Co-Chair Lipper-Garabedian then reviewed the meeting agenda, noting that it was also posted on line.

## **II. MEMBER ACKNOWLEDGEMENTS**

Members reintroduced themselves, noting the agencies they represented (set forth above). Additionally, the attendees from the BSEA, DALA and DESE introduced themselves and noted the work they do for their respective agencies (set forth above).

**III. PUBLIC COMMENT PERIOD**

Attorney Collins Fay-Martin spoke noting that while she was attending to hear the update on the OSEP Monitoring visit, she wanted to make the Council aware of a hot topic that Council Member Attorney Stephanie Krantz is involved with and will be on the DESE/Board of Elementary and Secondary Education (BESE) agenda tomorrow relating to time out rooms. She believed the meeting was from 9-1 (Attorney Krantz and Acting Deputy Commissioner Iraida J. Alvarez confirmed). While the BSEA may not have dealt with time-out room related issues yet, she thinks this may be coming their way and suggested it would be worthwhile for the BSEA to listen to this meeting tomorrow.

State Representative Steven J. Ouellete also spoke to advise that he is the State Representative of the 8th Bristol District and wanted to note his attendance.

# IV. APPROVAL OF MINUTES OF MAY 2024 MINUTES

*A Motion was made by Attorney Michael Long, seconded by Attorney Krantz to approve the May 6, 2024, minutes as drafted. All voted in favor of the Motion with Co-Chair Adelman-Foster and Attorney Diana Santiago abstaining from the vote as they were not in attendance at that meeting.*

## **V. OLD BUSINESS**

Co-Chair Lipper-Garabedian reviewed the statutory charge of the Council under M.G.L. c. 71B §2A. Co-Chair Lipper-Garabedian then reviewed the work done by the Council at its last two meetings in 2024 which were primarily focused on reviewing documents that the BSEA were preparing and revising in preparation for the US Department of Education Monitoring Review. She noted that there was one meeting in March for public comments to be made about the proposed revised and new documents. Thereafter written comments were also able to be submitted, and then the Council met again in May for members to provide their own feedback separately from that their agency may have given. Today, the intention is to hear about how that feedback and the public comments received were incorporated and addressed in the final documents the BSEA issued.

**VI. BSEA UPDATES**

Director Erlichman advised that BSEA reviewed all verbal and written comments received from the public and the Council Members prior to finalizing the documents. At the same time the finalized documents were issued, the BSEA also issued a document summarizing all comments received and explaining the BSEA’s response to them. This document remains posted on the BSEA’s website. In addition to publishing all the documents in their final English form, the BSEA also published all of them in Spanish, Portuguese, Haitian Creole and Simplified Chinese. All language versions are posted on the BSEA website too.

Director Erlichman noted that, overall, the BSEA received a lot of really helpful comments, and as a result further revisions to the proposed documents were made prior to finalizing them. There were also many helpful comments received that were beyond the scope of the proposed revisions and the BSEA noted that it will take these comments under advisement for future revisions.

Co-Chair Lipper-Garabedian asked how many comments were received and asked to have a summary of any significant changes made based on the feedback received. Ms. Flessas advised that with regard to the new Mediation Manual, most of the comments involved suggestions about simplifying it. Thus, in finalizing this document, she revised it further with that in mind and also with the aim of keeping it at a 5th Grade Reading Level. Additionally, revisions were made to clarify the information pertaining to the involvement of an attorney at mediation as comments were received noting confusion with that. She also explained that while she received many comments about what people wished were in place, the Mediation Manual was drafted to reflect the requirements of the IDEA. Director Erlichman then explained that it was difficult to provide a high-level overview of the revisions made to other documents because many of the changes made were done to meet the technical requirements of the IDEA such as adding an asterisk to certain parts of the Hearing Request Form that indicated they were not required to be provided by the IDEA. She offered to review specifically all edits that were made.

Co-Chair Lipper-Garabedian then asked what the BSEA’s response was to the Council’s comments relating to improving language access to BSEA services by non-English speaking families and using more charts and visuals. Ms. Flessas noted that based on other excellent feedback she had received about access for people with visual impairments and blindness that indicated that utilizing charts in published materials can be challenging, she ultimately limited the use of charts and visuals in the Mediation Manual. Overall, it was her desire that the Mediation Manual, as an entire package, be as accessible and available to as many people as possible.

Director Erlichman then advised that the BSEA has undertaken other work since the Council last met, to address recommendations that they received that did not relate to any of the proposed revisions to the documents. First, the packet of materials that the BSEA sends to families upon receipt of a rejected IEP or a Hearing Request, now contains a “Babel Notice” that advises in multiple languages that the information in the packet is important and to contact the BSEA if they need a translated version.

Second, with regard to the comments that there should be a brochure or chart created to explain the 3 primary dispute resolution processes – State Complaints, Mediations and Due Process Hearings, Director Erlichman and Ms. Flessas are working with Attorney Kelsey LoDuca, Director of DESE’s Problem Resolution System (PRS), to develop this.

Third, Ms. Flessas has again further revised the cover letter that will be sent with the packet of information that is provided to families upon the BSEA’s receipt of a rejected IEP. Ms. Flessas noted that this cover letter is almost finalized and that the further revisions were made based upon the ongoing feedback that the current packet remains intimidating to receive, particularly, based upon constituent feedback, a form that includes the student’s name and case number at the outset is intimidating. She advised that she also researched what other states use as cover letters with these materials. It is the BSEA’s intention to finalize it in the next few weeks, upload it to the BSEA’s database and begin using it. Ms. Flessas also explained that although a colored version was going to be shown, when printed, it would be in black and white. Finally, she noted that this document will also be individualized with the specific mediator contact information provided for the region where the family lives.

Ms. Flessas then shared (attached) the current draft noting that while it contains all the required information, what people want to know is that they have options. Further, BSEA Contact information is now at the bottom of the form rather than the top.

Member Ruth Diaz questioned why the State Complaint process through PRS was not noted on this form. Ms. Flessas explained that this dispute resolution option was never included in the packet before. This is why the work to create a chart with Attorney LoDuca is being undertaken. Ms. Diaz agreed the form does not appear litigious anymore.

*Acting Deputy Commissioner Alvarez then left the meeting and Attorney Jo Wakelin of the Legal Office with DESE then joined the meeting at 1:35 p.m. and introduced herself.*

Co-Chair Adelman-Foster questioned if sending this form in black and white would be an issue. Ms. Flessas changed the view to show what a black and white version of the document would look like and also noted that sending it without color accounted for people who had color blindness. Attorney Santiago questioned if the Free and Low Cost Legal Resources information was still going to be provided in the packet and Director Erlichman confirmed that it would be. It is also posted on the website and can be translated upon request. Attorney Krantz asked if the chart being developed with PRS could be included in the packet once it was finalized. Director Erlichman advised that she would consider doing that, however she is mindful of the need to maintain a firewall between the BSEA and DESE, and does not want to confuse families that they are the same entity or services. Currently, the packet does include non-BSEA services, specifically information about accessing the Sped-Ex program, however she agrees that the new chart could be helpful to include. Co-Chair Lipper-Garabedian then provided a suggested typographical edit, and Ms. Flessas advised that she may actually have already made that change in the version she is finalizing. She reminded the Council that what she was sharing is still a working draft.

With the Council’s permission, Director Erlichman then reviewed the BSEA’s “*Summary of Public Comments Received on the Revised Documents and BSEA Responses*” of July 2024 (attached). Reference is made to that document for details presented. In addition to reviewing the information in that document, Director Erlichman noted that as to item number 11 under the Pro-Se Litigant Guide, the reason the use of the term “rules of engagement” was not utilized as suggested, is that the BSEA felt that term was too charged, thus language that reflected the spirit of the comment, and that was also used in other BSEA publications or its governing regulations, was chosen instead. As to item 2 under “Comments Outside the Scope of Proposed Changes”, while at the time the BSEA took this comment under advisement, this pertains to the chart that was already discussed earlier that the BSEA is working to develop with Attorney LoDuca. As to item 3 also under “Comments Outside the Scope of Proposed Changes”, while at the time the BSEA also took this comment under advisement, it is actively being considered in an ongoing way to see how practices can be improved in accordance with IDEA requirements. Finally, as to item 11 under “Comments Outside the Scope of Proposed Changes”, again while this was taken under advisement, it is related to an upcoming agenda item for the Council to discuss later today.

*Co-Chair Lipper-Garabedian then advised that the meeting was scheduled to end at 2:30 p.m. and she would need to leave a little early for an appointment.*

With the Council’s permission, Ms. Flessas then reviewed the BSEA’s “*Summary of Public Comments Received on the Mediation Manual and BSEA Responses*” of July 2024 (attached). Reference is made to that document for details presented. Overall, she noted how pleased she was to receive all the comments, as it is obvious that people read the materials and care about what is being published.

In addition to reviewing the information in that document, Ms. Flessas noted that as to the comments about being provided with a written translation of the mediated agreement, while this is always done and while a verbal translation is also always made at the mediation by the interpreter, families have the option to wait to sign until the written translated version is received or to sign the English version based on the verbal translation. In Ms. Flessas’ experience, many families do not want to wait as they want to ensure the agreement is implemented immediately, so waiting is only an option not a requirement. As to the comment about having a “streamlined” mediation agreement, this was not adopted as mediation agreements are developed by the parties, and the discussions at mediation guide what each agreement looks like, so all mediation agreements are different from each other. As to the comment that the school district must notify the mediator of the family’s home language when making a mediation request, this was not accepted as it is already in place and mediators ask this question for every mediation request they receive. As to the comment that it is financially prohibitive for families that want attorneys to review a mediated agreement prior to signing to also have to bring the attorney to the mediation, in addition to further explaining the BSEA’s response to this comment, it was noted that it is very uncommon for attorneys to attend mediations, but if attorney involvement is a component of a family’s agreement to participate in mediation it is recommended that families state this at the outset. As to the comment that Mediators be well-versed in current BSEA decisions and prepared to address the parties by discussing case law, it was emphasized that in addition to not accepting this comment as mediators do not give legal guidance, all mediators are knowledgeable and well versed in special education rules and regulations. Finally, as to the comment about collecting data on race, ethnicity and primary language of parents/students, which was taken under advisement, it was noted that while this data would be useful the BSEA does not want collection of this information to have a chilling effect on people deciding to participate in mediation.

*Co-Chair Lipper-Garabedian left the meeting at 2:15 p.m.*

Director Erlichman commented that although she agrees that the Mediation Manual is repetitive in many places, Ms. Flessas informed her this was done on purpose to ensure that people who may only choose to read one or two sections have all necessary information. The decision was made to err on the side of someone reading something twice rather than missing critical information.

Attorney Santiago then commented that at a recent meeting she attended for parents and advocates, the two main barriers to people choosing to participate in mediation involve parents being surprised at the conclusion of a mediation that they are asked to sign waivers or other boilerplate language, and the time pressure parents feel they are under to sign agreements at the end of a mediation. As to the first point, while Attorney Santiago understands Ms. Flessas’ explanation that template or streamlined mediation agreements are not available, she feels every district requires a waiver as part of the final language, so suggested that perhaps that could be provided ahead of time. As to the second point, Attorney Santiago explained that feels that pressuring statements at the end of mediations implying offers are “off the table” if not agreed to at the end of the mediation are off-putting and chilling to Parents.

Discussion occurred about postponing further discussion on these points for the next topic. However, Ms. Flessas noted that these are not new comments, and the BSEA takes and considers them seriously. To that end, mediators spend a lot of time previewing expectations of the process with both parties and must balance the needs of both parties. While families may have more time or all day to give to a mediation, district staff usually only have a few hours.

Attorney Long then commented that as part of the next steps and on the point made about mediators managing expectations in mediations, he notes that if mediations do not have a deadline, agreements would not get reached. Further, if a mediator is not clear about the strengths and weaknesses of a case with each party, agreements are much less likely. While he appreciates the hesitancy for mediators to be stronger with pro se parties, it is a necessary approach to get something agreed to. Ms. Flessas noted that mediators do a lot of reality testing in mediations.

**VII.** **DISCUSSION**

Time did not allow for this agenda item to be reached so it will be added to the Council’s agenda for its next meeting.

**VIII. MEMBER UPDATES**

None.

**IX. NEXT STEPS/CLOSING**

Co-Chair Adelman-Foster inquired about the next steps for the OSEP Monitoring. Director Erlichman advised that while updating its documents was necessary for the BSEA regardless, it was done in parallel with the preparation for OSEP’s Monitoring visit, which date is set nationally by the cohort to which each state is assigned. For Massachusetts, the visit date is currently scheduled for December 2025, with submission of documents due approximately 6 months before that timeframe.

*Co-Chair Adelman-Foster called for an adjournment and the meeting closed at 2:33 PM.*