Bureau of Special Education Appeals (BSEA) Advisory Council

Monday, January 29, 2024, 10:30 am - 12:30 pm

Hybrid Meeting

MINUTES

# **Attendance:**

*council Members Present*: Kate Lipper-Garabedian, Co-Chair; Alyndra Canty, Co-Chair; Attorney Janine Solomon, Managing Attorney for the Massachusetts Advocates for Children; Carla Jentz, Executive Director of the Massachusetts Administrators of Special Education; 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*: 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); Russell Johnston, Deputy Commissioner (DESE); Natalie S. Monroe, Chief Administrative Magistrate (DALA).

*Public Input Participants*: Attorney Collins Fay-Martin; Kelly LaRoe; Jennie Dunkley; and Andrea MacGovern.

# **Agenda:**

1. Welcome and Agenda Review
2. Member Acknowledgments
3. Public Comment Period
4. Approval of Minutes of May 2023 and September 2023 Meetings
5. Old Business
6. Brief Review of Advisory Council Charge
7. Review of September meeting, including CADRE presentation
8. New Business: OSEP Monitoring Review and BSEA Advisory Council Role
9. Parent Resources and Supports
10. Advisory Council Members; Best Practices, Recommendations
11. BSEA Example of Document Resources for Families

*Short Break*

1. Four Main Functions of BSEA: Focus on Mediation
2. Next Steps/Closing

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

*Co-Chairs Kate Lipper-Garabedian and Alyndra Canty began the meeting at approximately 10:39 am.*

## **II. MEMBER ACKNOWLEDGEMENTS**

Members reintroduced themselves noting the agencies they represent. Additionally, the BSEA and DESE participants introduced themselves. Ms. Monroe was introduced and welcomed as she was recently appointed to the position of Chief Administrative Magistrate for DALA. Ms. Monroe then provided a brief background about herself.

## **III. PUBLIC COMMENT PERIOD**

Attorney Collins Fay Martin spoke about concerns she had that unrepresented parents do not have the same access rights to mediations and settlement conferences at the BSEA, but instead are required to have their cases heard only by the assigned Hearing Officer.

Kelly LaRoe spoke about concerns she had relating to her son.

Jennie Dunkley spoke about concerns that the packet of information sent by the BSEA to parents who reject IEPs makes them scared still, and her concern that there is no representation on the Council for pro se parents or people who do not have parents. Co-Chair Lipper-Garabedian advised that while there is no obligation for the Council to respond to any public comment in real time, she wanted to clarify that the Council membership is set by statue, which will be discussed shortly.

Andrea MacGovern spoke about concerns she has that advocates and pro se parents who come before the BSEA are treated differently than attorneys and are also disregarded by attorneys who practice before the BSEA too.

At the conclusion of the public comment period, Co-Chairs Lipper-Garabedian and Canty encouraged any member of the public who wished to do so to put their concerns in writing by email. The email address for the Council was provided and they explained any emails received would be shared with all the members, further stating that is a good way to balance out the 3 minutes of time allotted for each comment, and a way to provide more detail on any of the comments given.

# IV. APPROVAL OF MINUTES OF MAY 2023 AND SEPTEMBER 2023 MEETINGS

*On a Motion made by Attorney Long, seconded by Attorney Solomon, and so voted unanimously, the May 21, 2023, minutes were approved as drafted.*

With regard to the September 11, 2023, minutes, in response to a question from the Council, Co-Chair Lipper-Garabedian explained that because there was no quorum, no official action could be taken at that meeting, however in the spirit of posting everything the Council does for the public she recommends approving the minutes as drafted as they acknowledge who was absent in the minutes.

*On a Motion made by Co-Chair Lipper-Garabedian, seconded by Attorney Krantz, and so voted unanimously, the September 11, 2023, minutes were approved as drafted.*

# V. OLD BUSINESS

### A. and B. BRIEF REVIEW OF ADVISORY COUNCIL CHARGE AND REVIEW OF ADVISORY COUNCIL’S SEPTEMBER MEETING AND CADRE’S PRESENTATION

Co-Chair Canty briefly reviewed the Council’s charge and Co-Chair Lipper-Garabedian briefly reviewed the statutory language establishing the Council. Co-Chair Lipper-Garabedian then reviewed the September meeting and the CADRE presentation and requested that the presentation and power-point used be placed on the Council’s website. She explained that it was a robust presentation that covered both a national view of dispute resolution procedures and practices as well as Massachusetts’s own data. One of CADRE’s goals is to increase the use of mediation in special education disputes and it was noted that Massachusetts’s data in this area is impressive, and “off the charts” as compared to the national use of mediation.

# VI. NEW BUSINESS: OSEP MONITORING REVIEW AND BSEA ADVISORY COUNCIL ROLE

Co-Chair Lipper-Garabedian noted that the BSEA will be undergoing a regularly scheduled monitoring review from our federal partners at the conclusion of 2025. In preparation for this review the BSEA has revised some of its existing public documents and also is proposing to issue a Mediation guide document for which it is seeking to have public comment before adopting them as final documents. There are a total of 5 documents involved. They are the *Hearing Rules for Special Education Appeals*; the *Hearing Request Form*; the *BSEA Reference Manual*; the *Pro Se Litigant Guide*; and a new *BSEA Mediation Manual*. The BSEA has requested to present a proposal to this Council to use its second meeting of the year as a listening session and discussion as part of this public comment process.

Director Erlichman then explained that as noted this was a regularly scheduled process being undertaken by OSEP. OSEP is making its way across the states to engage in this monitoring, and Massachusetts is scheduled for the visit and review in December 2025. As a result, the BSEA undertook a review of its current documents and made some tweaks to them as part of its ongoing review so as to have all its “ducks in a row” so to say and to be able to start implementing work using the revised document and new guidance in enough time to have evidence to show OSEP by the time of their visit.

Deputy Commissioner Johnston then explained that OSEP is reviewing all states to determine if they are meeting their federal requirements relating to general supervision of dispute resolution procedures, as well as 3 other areas – data collection, monitoring of districts and fiscal oversight. All areas interrelate and it is necessary that there be good communication and collaboration between various state departments within DESE such as PRS and its monitoring agency and the BSEA so that the state remains well informed about trends that have similar requirements and in turn can leverage its systems together, so they work in concert to deliver similar messages. As a result, the state is also updating all of its procedures close to simultaneously and is working closely with the BSEA on early drafts of revised DESE procedures as well as reviewing the early drafts of the BSEA revisions and new mediation guidance. Now, for the sake of full transparency it is time to share these revised/new documents for public comment. While the OSEP visit is a motivator this is work that needs to be done regardless especially as the US DOE recently clarified its guidance on states’ responsibilities for general supervision and monitoring. So, just as was done with the recent DESE documents issued for public comment, the BSEA is seeking the input of the Council and the public as to its revised/new documents.

Director Erlichman noted that attached to today’s agenda is the current versions of the *Pro Se Litigant Guide* and the *BSEA Reference Manual*. These are not the revised versions as the public comment period has not yet happened. She also noted the proposed revisions were made as part of the BSEA’s ongoing internal review and introspection and were done with substantial input from Technical Assistance advisors who the State has been working with to prepare for OSEP’s visit. The revisions are not large changes, but more of dotting I’s and crossing T’s. They reflect the federal monitoring findings that have already been issued in other States by OSEP as it is undertaking its current national review of all states, for example, the IDEA has specific language about what must be included in hearing requests. The BSEA’s Hearing Rules also have a list of requirements based on what is needed to efficiently and effectively administratively address hearing requests, however OSEP has been clear only the IDEA requirements can be mandated. Thus, we are revising our Rules and related revisions are being made to the Hearing Request Form and the Pro Se Litigant Guide and the BSEA Reference Manual to be clear which are optional required pieces of information to provide, and which are IDEA-required. Further, while the Reference Manual currently has substantial information on the mediation process, in light of the creation of a separate Mediation Manual, which is very robust and thorough, the Reference Manual sections on mediation can be substantially reduced.

Finally, Director Erlichman noted that the BSEA can certainly pursue a different path for obtaining public comment, but for efficiency reasons it is asking this Council to use its platform because it is a resource group to the BSEA anyway and has the technological set up in place to meet this need. She sought approval from the Co-Chairs who correctly noted it is not their decision alone and suggested that she present it to the Council to approve.

Discussion and deliberation ensued with the Council starting with discussing that the timeline for this public comment period needs to be sooner rather than later in order to provide sufficient time to adopt the documents and then utilize them in the BSEA’s work before OSEP’s visit. Ideally, the goal is to complete the public comment review period and adopt the revisions by end of this school year (June, 2024). Upon questioning by the Council members, the BSEA confirmed the public comment period will include an opportunity for written comments in addition to verbal public comments at the Council meeting. Council members questioned how information would be delivered to families who did not speak English as their first language; whether or not there was a conflict if a member of the Council wanted to also provide public comment as a member of the group(s) the Council member worked with/represented; whether there would be a vote taken by the Council to approve the proposed documents; whether the Council would receive and could reflect on input received before voting on the documents; whether using the Council for public comment was a good idea or if it was better to pursue the public comment at a separate meeting from a Council meeting; and what services and supports would be provided to support families who needed interpreter and translation support.

Director Erlichman confirmed the public comment process would be similar to what was done the last time the Rules were revised – there would be information on the BSEA website with the revised documents, in multiple languages; the documents would be sent to stakeholders as well; written and oral public comments received would be summarized and shared; and the documents would also be posted on the Council website if it agreed to host the public comment meeting at its next meeting.

Director Erlichman withdrew her request to utilize the Advisory Council as a platform for public comment. The Council did not act on this request. Co-Chair Lipper-Garabedian suggested the Council complete the deliberations on the original request. Co-Chair Lipper-Garabedian then clarified her understanding of the proposal to be that at a meeting to be held in March or April, the Council will dedicate a large portion of time (up to 2 hours) for public comment. Members could provide comment underscoring and emphasizing any public comments if time allotted. A subsequent meeting could be used for Council members to provide their own comments, all to happen before the OSEP review. It was clarified that the request was presented because the thought was all members of the Council would likely provide comment anyway and if they felt doing this at a time, they all were gathered, the BSEA wanted to offer that option. Ms. Nourse and Co-Chair Canty concurred that having “one touch point” to review all of this would be helpful if there was time set aside after the public comment for the Council members to comment. It was agreed that having the public comments before the Council commented would be helpful and there being a space between the public comment and Council comment. It was further agreed two meetings would be scheduled – one in March/April and one by June, and that the BSEA would be requested to offer translation support at the public comment meeting to support those who needed that service, that the meeting have closed captioning activated and it occur in a hybrid manner (i.e. in a physical place and also virtually).

*On a Motion made by Attorney Krantz, seconded by Ms. Diaz, and so voted unanimously, it was agreed that the Council would use its second meeting of the year to host a hybrid open meeting with an extended public comment period of up to 2 hours, with members to emphasize anything presented if time allowed. This meeting would take place in March or early April. The third meeting of the year, to be held by the end of June, would provide time for the members to make their own comments. The BSEA will ensure that translator support and closed captioning services were available for the March/April meeting.*

*\*At the conclusion of this vote a short break occurred from 11:41- approximately 11:50 am\**

Upon return from the break, Co-Chair Lipper-Garabedian advised that in response to some questions she saw in the Q&A on the webinar Zoom page, she wanted to confirm that the revised documents are not yet released. The Council will be posting its meeting notice and draft agenda ASAP once a date is identified, just as it did with this meeting which was posted over a month and a half ago, although this is well before the timeframe required by the Open Meeting Law.

# VII. PARENT RESOURCES AND SUPPORTS

### ADVISORY COUNCIL MEMBERS; BEST PRACTICES, RECOMMENDATIONS

Discussion ensued as to how agencies that the Council members work for provide parent resources and support. Attorney Solomon noted that MAC has resources she shared for the meeting on its website consisting of a series of template letters parents can use to in communicating with school districts about special education requests. These templates are in 5 language – she used Vietnamese as the sample. Parents can essentially “fill in” the blanks to reflect the specific circumstances for their child. She also provided a link to a series MAC has created to help families understand their basic rights to special education. This is also presented in 5 languages – Spanish was the sample. They intend to produce it in more languages as funding allows. Further MAC has a help line, as she has noted previously, that is in multiple languages. The greeting is issued in multiple languages and parents select their language and leave a message. This is similar to what the Federation for Children does. They use Globo Interpreter services to call families back if there is not a native speaker on staff. They also use LSI for translating documents who offers to do it pro bono for some portion of the year and then for cost. MAC has seen a 35 % increase in callers in different languages – they track this statistic for their grant reports. MAC is also undertaking a process of considering “plain language” for all their flyers because meaning behind words is important, so it is critical to think carefully when creating documents. All translated documents receive a second read by a native speaker and MAC is always looking to increase its linguistic and cultural diversity of its staff.

Attorney Krantz noted the Disability Law Center takes both a reactive and proactive approach to multiple language needs of its consumers. Reactive approaches include the use of language lines, in person meetings with interpreters and ASL supports, and translating forms. Proactive approaches involve doing a deeper dive this year to give access to 9 focus communities throughout the state including providing trainings in the native language of these communities, to build up their website to have ASL with closed captioning videos on the site, to develop a vlog so that there is universal access to the services DLC offers. With regard to the 9-community focus groups they are identified underserved communities who are targeted for receiving more information about DLC services and how to access them. They traverse counties in the state and include Hispanic, Asian, immigrant and veteran populations.

Ms. Diaz noted the Federation for Children has many languages spoken by its staff including various dialects of Chinese, Vietnamese, Korean, Haitian Creole, and Spanish. They offer YouTube videos that can be translated about rights and services, they have a language line to support native Russian speakers and a person whose job focuses on supporting consumers who don’t speak English as a first language. Trainings are translated into multiple languages including Vietnamese, Portuguese, Spanish and English. Resources cover BSEA due process procedures, bullying and other educational areas. They are also reaching out to the native American population. Director Erlichman and Ms. Flessas noted the multiple trainings they have attended at the Federation over the years that are targeting multiple cultures. Ms. Nourse agreed and noted that the Federations’ mantra is how to provide enough options so people can access regardless of their preferred method. So, they focus on summaries, video series, quick access. They use professional interpreters and trainers, and their bi-lingual staff also offers trainings although they are not professional. They also use AI Interpretation services like Wordly. They want to focus on involving families at the start – so they co-design services so the family voice is always involved not just the staff.

Director Erlichman noted how she loved the idea of videos. The BSEA uses Language Line for in the moment interpreters and JTG for written translations as well as supports from the MA Commission on Deaf and Hard of Hearing and the MA Commission of the Blind. There are also multiple people on staff fluent in another language, although they are not used as interpreters.

### BSEA EXAMPLES OF FAMILY RESOURCES

Director Erlichman began by noting they had provided examples of the existing *BSEA Reference Manual* and *Pro Se Litigant Guide* as noted earlier. She then advised that Ms. Diaz had commented previously, but it was tabled for now, that in reviewing the *BSEA Reference Manual* she felt it was very dense and difficult for families to navigate. Ms. Diaz suggested that a flow chart of the process be developed and included. Director Erlichman noted she thought that was a good idea and the BSEA would look into adding that in the future.

Discussion then ensued pertaining to the amount of information presented in the documents provided as examples by the BSEA, its organization and its current inclusion of the mediation component. Members agreed generally that visuals and a chart would be helpful. There were a lot of written words in each section. Director Erlichman asked if the comments were being addressed to the *Reference Manual* or to the *Pro Se Litigant Guide* as the intention of the *Guide* was for it to be more broken down and easier for Parents to understand. The *Manual* was intended to be more comprehensive guidance about appearing before the BSEA for all constituents to use. It was noted the comments were more about the *Manual*. Co-Chair Canty noted that wordy, heavy and dense is part of this area of knowledge and procedure, but providing support in navigating it so people can get to the heart of the information provided would be helpful. Ms. Nourse advised that she feels having a detailed version is helpful and she does not want to have that eliminated, but rather perhaps there could be a companion piece with visuals and charts – it is an “and” request not an “exchange”. Discussion also ensued regarding the desire to have video templates about what appearing at a BSEA hearing would look like as they are usually private so practitioners cannot observe as they would in other legal areas or courtrooms. These types of templates would assist all parties appearing before the BSEA.

Ms. Flessas agreed with the approach of “humanizing” the BSEA process for parties and noted a great way to do that is to continually talk about the process – especially if the people doing the talking are the ones who will be hearing the matters. She is planning to have short, digestible videos to go along with each section of the mediation manual. She is thinking about making sure to present this information in the various ways people learn – visually, verbally, auditorily, etc.

Director Erlichman then raised one of the issues presented during public comment today, pertaining to the mediation packet that the BSEA sends out to parents when they receive rejected IEPs “scaring” parents. She noted this was feedback that had been previously received and in response the BSEA had revised and revamped that packet of material to make it more parent friendly. Ms. Flessas noted she is a parent of a child with a disability and understands innately how stressful that can be – there is a balance that needs to be struck between ensuring people know their rights and not worry they are in trouble when they receive that information. She is also reviewing what other states do to present this information. Mediation is about trying to work things out – it should not feel like there is a desire to escalate issues, thus the BSEA has been looking at how to visually package their information, so it feels more accessible. While some revisions have been made, this work is ongoing and if someone has a suggestion Director Erlichman or Ms. Flessas would welcome an email. She noted the revised version seems to be better received but there is still work to do.

One suggestion to make people not think they are being “sued” when they receive the document came from Ms. Diaz who suggested the packet start off saying “this is not a hearing notice”. It was agreed that having a page with a lot of white and a message like that would be helpful – similar to the page added prior to the Hearing Request Form that says “For Hearings Only” – this helps people know when it was to be used. Having something like this for the mediation materials will be taken under consideration.

# VIII. FOUR MAIN FUNCTIONS OF BSEA: FOCUS ON MEDIATION

Discussion of this was not able to happen in the time allotted for the meeting. This will be added to the June agenda.

# NEXT STEPS/CLOSING

Attorney Solomon then raised an issue for a future meeting that she wanted to explain but table – it has to do with translating mediation agreements prior to having them signed. She provided 2 examples she was aware of where families were either read the agreement orally, but it was not interpreted or translated, or were told at the outset that the agreement would not be able to be translated before the proceeding concluded. She was concerned because it is her understanding that despite families being told it would be translated and provided in the future that had not happened. Ms. Flessas noted she was aware of the situations and that the 2 examples show the pivoting the BSEA is doing in response to the concern. She noted the challenges with real-time translation versus real-time interpretation with the latter being easier to undertake and thus made available to parties. However, this is also an area of ongoing work. Director Erlichman noted that there are logistical aspects to this issue that make the process not be as seamless as the suggestion would want it to be, however the first example is an outlier from her position and knowledge.

Co-Chair Lipper-Garabedian also noted that in addition to tabling the mediation discussion until the June meeting, she would also like to have an update from DESE and the BSEA on the status of the updated MOU.

She then concluded the meeting advising that she and Co-Chair Canty will be following up individually with members on the next meeting date.

*The meeting adjourned at approximately 12:30 pm.*