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

**Monday, September 11, 2023, 10:00am-12:00pm**

**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.

*Council Members Absent*: 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. **As a result of these absences, no quorum was present and thus no votes were able to be taken at this meeting.**

*DESE Commissioner Designee:* Jamie Camacho, Assistant Director Special Education Policy and Planning (DESE)

*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); Dr. Melanie J. Reese, Director of CADRE.

*Public Input Participants*: None.

**Agenda:**

1. Welcome and Agenda Review
2. Member Acknowledgments
3. Public Comment Period
4. Approval of Minutes of May 2023 Meeting
5. Old Business
6. Brief Review of Advisory Council Charge
7. Review of Advisory Council’s First Three Meetings
8. Parent Resources and Supports

*Short Break*

1. (11:00 AM) Presentation by Melanie J. Reese, Ph.D., Director of CADRE and Member Discussion
2. Next Steps/Closing

**I. Welcome and Agenda Review**

*Co-Chairs Kate Lipper-Garabedian and Alyndra Canty began the meeting at 10:09 am.*

**II. MEMBER ACKNOWLEDGLEMENTS**

Members reintroduced themselves noting the agencies they represent. Additionally, the BSEA and DESE participants introduced themselves.

**III. Public Comment PERIOD**

None.

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

As a result of member absences, no quorum was present and thus no votes were able to be taken on the May 2023 minutes at this meeting.

**V. OLD BUSINESS**

1. and B. BRIEF REVIEW OF ADVISORY COUNCIL CHARGE AND REVIEW OF ADVISORY COUNCIL’S FIRST THREE MEETINGS

Co-Chair Lipper-Garabedian explained that this Council has been meeting quarterly for over a year as a statutorily created body for the purpose of providing feedback and advice to the BSEA in several areas. This is the fourth meeting of the Council. Prior topics were reviewed, and it was noted that robust minutes are being posted on the Council’s website. At the last meeting, held in May 2023, the information and data presented at the prior 3 meetings was reviewed, and the Council discussed what the BSEA does and how the data it issues informs its strategies. The 4 core functions of the BSEA were also reviewed and over the course of the next few meetings they plan to break up each of these functions for a more detailed discussion.

Discussion then ensued regarding the BSEA’s MOU with DESE which is one of the statutory areas of oversight responsibilities of the Council. Assistant Director Camacho explained that there is an existing MOU, but the BSEA and DESE are also in the process of updating it to reflect data sharing and other policy related items, including requirements from the Federal Department of Education (USDOE), as this will allow both agencies to prepare for the on-site monitoring by the Office of Special Education Programs (OSEP) that will take place in the next few years. The BSEA and DESE have been meeting regularly, including earlier this day, in preparation for this monitoring visit. Director Erlichman agreed noting that the plan is for both agencies to continue to meet regularly to discuss the data that the BSEA maintains and is able to share generically with DESE to support its general supervision obligations, while ensuring that confidentiality can be maintained so as not to compromise privacy concerns. Director Erlichman acknowledged the interest that the Council also has in this data. Co-Chair Canty advised that she is happy to hear DESE and the BSEA are moving forward and spending time discussing data sharing, and also stressed the importance of ensuring the privacy of constituents, particularly marginalized populations is protected in all data collected and shared.

Attorney Solomon also agrees and also wonders how both agencies monitor trends based on the data shared, particularly with respect to more complex or high-topic areas. Director Erlichman and Ms. Flessas both advised that the BSEA shares with DESE information about mediation requests once they are closed relating to if the matter was mediated or not and if there was a resolution or not on a weekly basis. This allows DESE’s Problem Resolution Services (PRS) Department to cross-reference any open state complaints in their records. With respect to due process hearing requests, all substantive rulings and decisions are sent to DESE (Deputy Commissioner Johnston, Assistant Director Camacho, Legal Department and PRS), and occasionally Hearing Officers refer systemic issues to PRS for follow-up, should, during the course of a hearing, the Hearing Officer flag such an issue. Ms. Flessas stressed that the BSEA is very sensitive to issues about confidentiality with regard to mediations. Director Erlichman advised the hearing officers are as well. She noted that all Rulings and Decisions sent to DESE are redacted of student information, although the District is typically noted.

Co-Chair Lipper-Garabedian discussed that PRS, as it processes more state complaints than the number of decisions and rulings issued by the BSEA each year, sees larger trends. The BSEA is smaller and more comprehensive in its review. She noted the Council stands ready to look at the updated MOU when it is available and to provide feedback on a draft. This may be able to happen for the next meeting.

**VI. PARENT RESOURCES AND SUPPORTS**

Discussion ensued as to how the BSEA can improve access for and outreach to *pro se* parents and non-English speaking constituents with Attorney Solomon and Director Jentz presenting the best practices that their agencies followed.

Attorney Soloman advised that Massachusetts Advocates for Children (MAC) has translated many of their written materials into the 5 most prevalant languages and intends to expand translation into other languages as resources allow. These materials include template letters and resources. MAC also uses a multi-lingual voicemail for its Helpline, thus, while it would love to have someone on staff who can translate any language that a caller uses, if there is a language need for which there is not an available staff member who can translate, the caller can leave a message on the voicemail and MAC will obtain an interpreter and call them back. Upon question by Ms. Flessas, Attorney Solomon explained that emails are translated in a variety of ways. Template-like emails are translated ahead of time, but if the email is short, MAC uses google translate with a second reader to edit for errors. Otherwise, they also can send an email to a translation contractor who will translate it at a fee based on word count with an estimated return time provided. MAC also has been targeting its outreach in the cities of Lawrence and Boston to connect with community groups and organizations in these and other communities, but Attorney Solomon recognizes the best way to perform outreach is to physically get into the communities. She noted that MAC is a small agency, with a small staff that fields over 2,000 calls to its helpline per year involving inquiries and questions from parents and other agencies about a child’s special education needs. Approximately 40% of those calls are from non-English speaking callers, thus MAC is always looking to hire more multi-lingual and multi-cultural staff.

Director Erlichman advised that the BSEA is also proceeding with translating its published and distributed materials into the 5 most prevalant languages. While previously this had been proceeding on an ad hoc basis, they are now making translations for all 5 languages regardless of request. Currently, translation of materials into Portuguese is being completed. The BSEA also uses LanguageLine that allows interpretation and translation services to occur in real time for any caller to the BSEA’s technical assistance line. This is used by support staff as well as hearing officers and mediators. With regard to outreach, as hearing officers cannot have *ex parte* communications, support and technical assistance, but not legal advice, is provided by Director Erlichman or another hearing officer who is not the assigned hearing officer for the matter. If it is an unassigned matter, the caller cannot have any hearing officer who provided them with technical assistance assigned in the future. Additionally, hearing officers present at legal seminars. One is scheduled soon that will be done in Spanish with the Federation for Children.

For mediations, Ms. Flessas advised that they use BSEA contracted vendors to provide translation and interpretation services. For facilitation of team meetings, however, they rely on the underlying District/LEA to provide the translator or interpreter. She finds language translation needs during phone calls are generally well supported through the BSEA’s contracted vendor. As for emails, there are some templates that are translated or in the process of being translated, however the BSEA also uses Google Translate with a disclaimer that it was used both in English and the translated language. They also send the message in English as well as the translated language in case someone in the home is English-speaking and can translate the email if requested. As for documents, translation of all forms into the top 6 or 7 languages is occurring and mediation agreements are translated in real time. Presentations by the mediators are being videoed and prepared in simplified Chinese, Portuguese, Spanish and for the Deaf and Hard of Hearing. While historically the BSEA has not hired interpreters present with them at their Zoom presentations, Ms. Flessas is exploring that for this year too. The goal is to make the BSEA procedures, BSEA materials and the mediators, themselves, accessible.

Director Jentz advised that there is a meeting with the Board of the Massachusetts Administrators of Special Education (ASE) on September 21st and she intends to add this issue to the agenda and will be able to share the discussion at the next meeting. She is aware that there is a struggle for districts to locate resources to provided interpretation support. Director Erlichman echoed this struggle noting it is not just about availability but also about quality, and that is why the BSEA has begun working in conjunction with DESE to provide a standard, thoughtful training for interpreters and translators and the people who work with them.

Co-Chair Lipper-Garabedian advised the Council can continue this conversation at the next meeting and pondered as to how advancements in artificial intelligence may provide support in this area in the future, particularly with regard to an agency that is dealing with the public on an emotional topic – concerns about their children.

Attorney Solomon also noted that one of her concerns is the need to translate in “plain language” given the technical legal and educational language that exists in this field. Director Erlichman agreed and noted that when the BSEA was developing its Reference Manual and *Pro Se* Guide, then-Hearing Officer Lindsay Byrne rewrote the first iteration because she wanted to ensure it was understandable to the general public. Co-Chair Canty agreed noting that language directly impacts accessibility. She posited that providing information occurs in tiers as there are appropriate times to use each level of tiered information, but it is important to consider each tier at each stage of the proceedings. Director Jentz advised that it was important to ensure that every agency’s information issued about the law and procedural requirements in this area should align with each other. She suggested the need for each agency to have common language it uses in the materials it produces. This is especially important for information each agency provides about parent and student rights. Co-Chair Lipper-Garabedian suggested polling the Council members for a possible future agenda item wherein the BSEA takes a few of the initial English versions of their resources for members to compare to their own communication documents.

Co-Chair Lipper Garabedian then summarized what she believes will be “next steps”. 1. Update on the MOU; 2. A deeper dive into data sharing considerations; 3. Further discussion about language access – this will involve individual emails to members (so as to not engage in deliberation) by the co-chairs on a possible agenda topic relating to comparing the resources that the member organizations use.

*\*Brief Break from 10:50-11:00 am\**

Upon returning from break, Co-Chair Lipper-Garabedian introduced Dr. Melanie J. Reese, Director of the Center for Appropriate Resolution in Special Education (CADRE), who had agreed to be a guest presenter for the Council on the topic of national trends and best practices that the BSEA and others are engaging in. Dr. Reese has served in this role since 2017; previously, she was the Dispute Resolution Coordinator at the Idaho Department of Education, overseeing the state’s IDEA mediation, state complaint, and due process hearing systems. Council members also introduced themselves.

1. **PRESENTATION BY DR. MELANIE J. REESE, DIRECTOR OF CADRE AND MEMBER DISCUSSION**

Dr. Reese began her presentation thanking the Council for inviting her and advising that she had prepared a Powerpoint presentation (attached) entitled “IDEA Dispute Resolution: Trends & Considerations”. She briefly reviewed the agenda for her discussion which opened with a summary of what CADRE is. CADRE (The Center for Appropriate Dispute Resolution in Special Education) was founded in 1998 and is the national technical assistance center under OSEP serving all early education centers, state centers and parent centers for all states and territories of the U.S. It provides resources and technical assistance which can be found on its website www.cadreworks.org while also providing support and maintaining dispute resolution data for the states and territories, focusing on mediation, state complaints and due process complaints pertaining to special education matters. It actively promotes and supports early and preventative dispute resolution approaches, such as facilitation and mediation. It was recently reauthorized in this role and re-funded for the next 5 years through 2028.

Dr. Reese presented CADRE’s interactive continuum model of dispute resolution practices, consisting of what CADRE refers to as the “piano keys”. There is a link embedded into each “key” that sets forth the noted dispute resolution programs associated with that “key” that exist in the various states, such as states using “ombudspersons” or “facilitated resolution meetings”. This model, therefore, provides a national view of the special education dispute resolution options available. Co-Chair Libber-Garabedian questioned the information on the model that was below the “piano keys” and Dr. Reese explained that this information shows the various levels of resolution options available to parties in a dispute – from informal to formal practices.

Dr. Reese then discussed generally the IDEA Dispute Resolution Data that CADRE collects and reports on. This data is taken from each state’s annual 618 reports submitted to OSEP. CADRE has been compiling this data in one holding center for all states since 2004, and thus maintains the only national longitudinal database for this information. Data is presented both in terms of raw total numbers and on a per 10,000 child count basis, so as not to exclude smaller states and territories. Data is current through the 2020-2021 fiscal year, and they anticipate they will have the 2021-2022 school year data by October, 2023. CADRE is currently working on creating an online interactive comparative database to compare individual state information with the national longitudinal dispute resolution database.

Dr. Reese next discussed the quality and limitations associated with the data it collects and stores. To ensure quality, CADRE reviews all the data it gathers for mathematically impossible or highly improbable reported values and follows up with the individual states if needed. Data is revised accordingly to reflect accurate information. This is a closer review of the data than OSEP engages in. While any data amendments are also provided to OSEP, the adjustment period to the OSEP national database is often much longer than to CADRE’s database. Regarding limitations to the data, Dr. Reese advised that OSEP’s reporting restrictions limit the information shared by states to the reporting year of the period being reported on. Further, while the quality of the data is reviewed there is always room for improvement. Finally, Dr. Reese noted that some data elements hide as much as they reveal – for instance information is not ever known on pending due process hearings that last beyond the reporting timeframe.

Director Erlichman echoed this concern noting that she has often discussed the limitations with the catchment period of the 618 reported data being for only those cases opened and closed in the current fiscal year. She suggests this may lead to distorted results and is not sure why this is the way data is required to be reported by OSEP. Dr. Reese posited that it may have something to do with OSEP needing to establish a start and end date, so that there is some place to mark time. Since data needs to be concrete, it needs to have boundaries. She noted that there are some other resources, such as the information maintained by Dr. Perry Zirkel, that establishes a longer end time than the close of the fiscal year, so that more information is captured.

Director Erlichman, Ms. Stone and Ms. Flessas explained that in addition to filing the 618 report to OSEP the BSEA also files a state report that covers all cases with a fiscal year prefix, thus capturing some of this missing OSEP data in the state report, such as mediations that are requested in June but performed in July. Deputy Commissioner Johnston suggested that CADRE’s data should be considered directional but not directive, then. Both DESE and the BSEA participants agreed, however, that there is a benefit to having all states reporting the national/618 data consistently. Dr. Reese noted her admiration for states, like MA, that track the data on matters that close after the reporting period, but explained that since not all states do this, it cannot be tracked on the national level.

Dr. Reese then discussed further the data that is maintained on a per 10,000 child count basis. Tracking the data this way enables CADRE to determine how many of a particular dispute resolution (DR) events (such as state complaints) are there for every 10,000 students in special education. The formula is the number of DR events divided by the Child Count for the state or territory, multiplied by 10,000. This helps in the comparison of larger and smaller states, except those states or territories like Guam that have less than 10,000 students in their Child Count.

Dr. Reese next presented and discussed CADRE’s data on the National DR Activity by State per 10,000 Child Count for 2020-21 (this was noted to be the first Pandemic Year). This data includes Written State Complaints, Mediations and Due Process Complaints. Next she presented and discussed CADRE’s data on the National DR Trends for all DR Activity (Written State Complaints, Mediations and Due Process Complaints): per 10,000 Child Count for 2016-17, 2017-18, 2018-19, 2019-20, and 2020-21. This was also broken out and presented individually for State Complaints, Mediation and Due Process Complaints over this 5-year period. Further, data on due process complaints for the 10 years before the Pandemic Year (2020-21) as compared to the Pandemic Year was presented and discussed.

Ms. Flessas questioned if CADRE viewed increases in the mediation numbers as positives or negatives, and Dr. Reese explained that CADRE views this as a positive as it evidences the collaborative resolution of conflicts which are overall better for the long-term outcomes for children and relationship development. She also noted that one of CADRE’s charges in its reauthorized funding is to increase support for mediations.

Dr. Reese then presented data on the National Relative Use of Dispute Resolution Options for the 4 years prior to the Pandemic Year. This data shows a decrease in the use of written state complaints and mediations, but an increase in the number of due process complaints filed. She noted that CADRE prefers to see both numbers increase, as both DR options are less expensive than due process hearing proceedings, and usually result in a faster resolution of disputes.

Dr. Reese then presented the Massachusetts data during this 5-year window (2016-17 through 2020-21). The data showed that MA state complaints generally were on the rise prior to the Pandemic Year but decreased during the Pandemic Year; Mediations decreased prior to the Pandemic Year but slightly increased in the Pandemic Year and Due Process Complaints decreased prior to and during the Pandemic Year. Dr. Reece also explained that she understands the MA 2021-22 data involves an increase of state complaints and mediations, but a continued decrease in the number of due process complaints which are still not at pre-pandemic levels.

Dr. Reese then presented a comparison of Massachusetts’ Dispute Resolution Activity to the National trends noting there are some really great things happening in Massachusetts. While the state complaint trends are similar, there are more mediations in Massachusetts over this 5-year window and substantially less due process complaints. Massachusetts is, thus, “bucking the trend” for due process complaints. Attorney Solomon noted based on her observation and the calls coming into MAC, the issues families are dealing with becoming more complex. There is a greater intersection between race and disabilities. Families are more comfortable filing a state complaint as they find it more accessible although she feels that access to mediations and due process hearing procedures are getting better. Dr. Reese agreed noting that CADRE hosts a learning community with state agencies which reports that state complaints are being filed with more issues and more complexity, or with systemic concerns, although the timelines to respond are not changing (remaining a 60-day timeline). CADRE also hosts learning communities for early intervention and parent center agencies and across the board she is hearing the frustration and interpersonal conflict that has increased since the pandemic for families. People are tired. It is not so much anger she is seeing, but frustration making people quicker to escalate their disputes. The Council discussed and agreed this is a general trend they all are seeing – more complex issues with less grace offered than pre-pandemic.

Dr. Reese then presented and discussed the data for MA State Complaints over this 5-year window, and the comparison of this data to the national data. The same was done for Mediations and for Due Process Complaints. She then presented and discussed the Relative Use of DR Options in MA again evidencing the general increase in the number of state complaints, the overall decrease in the number of due process complaints and the overall increase in the number of mediations in MA for the 5-year reporting period. She noted that this data reflected the good work, outreach and effort that has been done with communicating the value of mediation, and advertising and promoting it. A comparison data slide was shown and discussed for the Relative Use of MA numbers compared to the National Data, and Dr. Reese again complimented Massachusetts on its work. She questioned how this was done.

Ms. Flessas discussed the very robust outreach by the mediators to over 40 agencies annually, their work with the Federation for Children, and the individual outreach by the mediators yearly to every school district and parent group (ie. SEPACs) within their communities they serve, for both mediation and facilitation services. Also starting last year and continuing forward, the individual mediators have been targeting outreach to historically marginalized groups in their communities. Ms. Flessas also noted the model in Massachusetts of employing full time mediators who are dedicated to mediating special education disputes. This allows them to develop incredible relationships with districts, families, and communities, to provide needed technical assistance, and to make mediation seem more approachable and a legitimate dispute resolution option. It also helps to build a sense of trustworthiness and reliability of the mediators. Director Erlichman agreed noting that the full-time hiring of mediators is not tied to who is employed in a district’s administration, either. Further she explained that for every rejected IEP that is received, a packet of information is sent out to the family that includes information inviting the use of mediation, describing it and explaining how it compares to other dispute resolution options. Dr. Reese noted that CADRE intends to follow up with MA to share its model nationally and celebrate the good work that is being done.

Dr. Reese then presented and discussed CARDRE’s Approach to Improving Dispute Resolution Systems, identifying the 5 elements CADRE contends establishes a health dispute resolution structure consisting of 1) systemwide oversight, infrastructure and organization; 2) program access and delivery; 3) standards and professional development; 4) public awareness and outreach activity; and 5) evaluation and continuous quality improvement. She also noted that CADRE had recently developed a Cultural and Linguistic Competence Self-Assessment that states can undertake for their dispute resolution systems.

Finally, Dr. Reese presented the Cost Comparison template CADRE had developed for dispute resolution activities. She noted this could be used by states to assist in creating charts and data to support funding requests from the government as they pursue dispute resolution work.

At the conclusion of her presentation, Dr. Reese confirmed the data presented was taken from the 618 data reported by the states to OSEP. She also agreed she would share the power point.

Co-Chair Canty then offered kudos to the BSEA noting that the previous Council meetings had focused only on the data issued by the BSEA, but today’s presentation highlighted the work the BSEA does. Dr. Reese agreed and again stated her intention to highlight MA on a national level.

1. **next steps/closing**

Co-Chair Lipper-Garabedian then concluded the meeting advising that she and Co-Chair Canty will be following up individually with members on next steps and will be circulating the minutes.

*The meeting adjourned at 11:57 am.*