Summary of Public Comments Received on the

Mediation Manual and BSEA Responses

(July 2024)

COMMENT – The Manual is longer than necessary, repetitive, and uses complex language.

BSEA Response: *ACCEPTED*.The Manual was reviewed and adjusted to reduce some repetition and allow for more accessible language.

COMMENT – “…while we appreciate sharing detailed information regarding the structure and operation of BSEA mediation, we recommend prioritizing information salient for families and districts to successfully participate in mediation.  Perhaps other information could be provided in a separate document or an appendix.”

BSEA Response: *PARTIALLY ACCEPTED.* The Manual was adjusted to reduce complexity and length.

COMMENT – Add easily digestible definitions within the document to explain words and context.

BSEA Response: *ACCEPTED.* The Manual was adjusted to include clear definitions of mediation specific words and concepts.

COMMENT – Adjust order of the sections of the Manual to support more immediate access to the “how to” section of the Manual.

BSEA Response: *PARTIALLY ACCEPTED*. Some sections were reordered as the Manual was condensed.

COMMENT – Add statements that clarify that the BSEA will provide a copy of the mediated agreement in the family’s home language.

BSEA Response: *ACCEPTED.* Clarification language was included in multiple sections of the Manual.

COMMENT – Add statement that clarifies that the BSEA will provide Agreement to Mediate forms in the family’s home language.

BSEA Response: *ACCEPTED.* Clarification language was added to the “Requesting a Mediation” Section of the Manual.

COMMENT – Add statements that clarify that the BSEA will provide a written translation of the mediated agreement prior to the family being asked to sign a mediated agreement.

BSEA Response: *PARTIALLY ACCEPTED.* The Manual now highlights that the BSEA provides free interpretation and translation services to families. At mediation, an interpreter will verbally translate the document, word for word, and the parents will be offered the opportunity to wait to sign the agreement until they have received a translated copy or, if the family prefers, they will be permitted to sign at mediation pursuant to verbal translation. If they want to sign after verbal translation but before they are provided with a translated version, they will still be provided a translated version.

COMMENT – Put procedures in place to ensure the entry points to the BSEA are accessible to families as they first interact with the agency, including phone and email options.

BSEA Response: *ACCEPTED.* Clarification language was included in multiple sections of the Manual.

COMMENT – BSEA Data should be shared publicly.

BSEA Response: *NOT ACCEPTED – Already in place.* BSEA Data is already shared publicly. A link to the data is embedded in the Manual.

COMMENT – Add statements that clarify that the BSEA bears the cost of interpretation and translation services.

BSEA Response: *ACCEPTED.* Clarification language was included in multiple sections of the Manual.

COMMENT – List supervision activities for BSEA Mediators

BSEA Response: *NOT ACCEPTED – Already in place.* The Manual currently lists the supervision activities and responsibilities for the Coordinator of Mediation; the Manual also lists the activities and responsibilities of the mediators.

COMMENT – Mediated agreements should be “Be streamlined, consider doing an overview /initial statement, do drop downs or another format for computer and print out references.”

BSEA Response: *NOT ACCEPTED.* Decisions about development of the Mediated Agreement are based upon the mediator’s independent judgment and expertise as well as the agreement of the parties.

COMMENT – List BSEA Mediator professional development in Manual and on website.

BSEA Response: *PARTIALLY ACCEPTED.* The general areas of professional development that are offered to the BSEA Mediators was added, however, the Manual does not list the specific professional development as that information may change year to year and the Manual is meant to describe the professional development program generally.

COMMENT – “The document should include specific qualifications, training requirements, and hiring practices for mediators to ensure competency and transparency.”

BSEA Response: *NOT ACCEPTED – Already in place.* The Manual lists that all mediators and the Coordinator must be trained mediators in accordance with M.G.L. c. 233 §23C. Training requirements and hiring practices are established by the Commonwealth of Massachusetts and the IDEA.

COMMENT – Specific training on diversity and cultural competence should be mandatory for all mediators and that should be clear to any party who engages in mediation as a dispute alternative.

BSEA Response: *PARTIALLY ACCEPTED – Already in place.* The Commonwealth of Massachusetts requires annual anti bias, and diversity training. This compulsory training is completed annually by all mediators and the Coordinator, and this information was added to the Manual.

COMMENT – Request for “PSC” to be defined.

BSEA Response: *NOT ACCEPTED – Already in place.* “PSC” is defined in the Manual as “Early Intervention Procedural Safeguards Coordinator.”

COMMENT – Add translation when referencing interpretation services.

BSEA Response: *ACCEPTED.* Clarification language was included in multiple sections of the Manual.

COMMENT – Clarify that school district must notify the mediator of the family’s home language when making a mediation request

BSEA Response: *NOT ACCEPTED – Already in place.*

COMMENT – Do not require interpretation and translation services to be requested at each step of the process.

BSEA Response: *PARTIALLY* *ACCEPTED – Already in place.* While it is not required to request interpretation and translation services at each step of the process, the Manual clarifies that once the information regarding the family’s home language has been shared with the mediator, the mediator will ensure that interpretation and translation services are provided at every stage of the process and need not be re-requested.

COMMENT – Add new section to encourage school districts to engage and effectively collaborate with families.

BSEA Response: *NOT ACCEPTED – Already in place.* The Manual discusses the mediation mindset for all parties that encourages collaborative problem solving.

COMMENT – Adjust order of Preparing for Mediation section by adding a section called, “Before Signing the Mediated Agreement.”

BSEA Response: *ACCEPTED*. This Section was added under the “Parent Checklist” of the “Preparing for Mediation” Section of the Manual.

COMMENT – Clarify what “family support person” means in the Parties to Mediation section.

BSEA Response: *ACCEPTED.* This explanation was included in the chart for “Optional Participant Examples” of the “Mediation” Section of the Manual.

COMMENT – Having an attorney attend mediation if you want to have the attorney review the mediated agreement prior to signing is financially prohibitive for families.

BSEA Response: *PARTIALLY ACCEPTED – Already in place.* Clarification was made to reflect that Mediation is a collaborative process where parties negotiate a mutually agreeable settlement; if a party would like the input and support of an attorney to develop the terms of an acceptable settlement, the attorney should attend the mediation, which is the settlement conversation, to lend their voice and advice as the agreement is negotiated and developed. However, the Parties may build in extra time for the agreement to be signed as developed so as to allow for consultation with counsel subsequent to the mediation. Sharing information from the mediation and the mediation conversation with an attorney *does not* violate mediation confidentiality. Unless otherwise agreed upon by the parties, typically, no changes would be allowed to the agreement as a result of attorney consultation, but as mediation is voluntary, no one is compelled to enter into an agreement unless they would like to do so.

COMMENT – “Low cost or free legal services information should be provided to all parents/guardians. “

BSEA Response: *ACCEPTED.* A link to the BSEA’s Directory of Free and Low Cost Legal/Advocacy Services document was added to the Manual in the “Attorneys at Mediation” Section of the Manual.

COMMENT – Request that the same instructions are directed to school districts as well as families with respect to the expectations related to bringing attorneys to mediation.

BSEA Response*: PARTIALLY* *ACCEPTED – Already in place.* The Manual more clearly explains that all information and guidance is equally applicable to all parties (including families and school districts).

COMMENT – “We strongly recommend that a final BSEA Guide: …State the BSEA mediators are well- versed in current BSEA decisions and are prepared to address the parties (during the mediation process) by discussing case law about the issues in dispute.”

BSEA Response: *NOT ACCEPTED.* BSEA Mediators do not provide legal guidance or evaluate facts of a case in terms of case or statutory law. Mediators support the parties in reaching a mutually agreeable signed settlement agreement to resolve their dispute.

COMMENT – Clarify that extra time will be provided to ensure quality interpretation services and access in “The Mediation” Section of the Manual.

BSEA Response: *ACCEPTED.* Clarification language was included in this Section.

COMMENT – Clarify if Mediated Agreements have a three (3) day right of recission.

BSEA Response: *NOT ACCEPTED*. This is not accurate. Unlike agreements reached during Resolution Sessions, Mediated Agreements are legally binding from the moment that both parties sign the Agreement and do not have a 3 day right of recission.

COMMENT – State who receives a copy of the Mediated Agreement and for what purposes.

BSEA Response: *NOT ACCEPTED.* The parties determine who gets a copy of the Mediated Agreement. This information could be identified as part of the Mediated Agreement upon agreement of the parties, however.

COMMENT – Information on how Parties may enforce Mediated Agreements or steps to take if a Mediated Agreement is not complied with.

BSEA Response: *NOT ACCEPTED – Already in place.* The “Failure to Implement a Mediated Agreement” Section of the Manual already addresses what steps a party may take to enforce a Mediated Agreement.

COMMENT – Will the BSEA accept jurisdiction over the implementation of Mediated Agreements and enforcement?

BSEA Response: *NOT ACCEPTED.* The BSEA does not have this jurisdiction. The enforcement of Mediated Agreements lies with the state and federal courts. 34 CFR §§300.506(b)(7).

COMMENT – Informational Zoom sessions should be provided in languages other than English.

BSEA Response: *NOT ACCEPTED.* Will take under advisement, but this is an area we are already working towards developing.

COMMENT – Add the collection of data on race, ethnicity, and primary language of parents/students

BSEA RESPONSE: *NOT ACCEPTED.* Will take under advisement.

COMMENT – Define use of BSEA Mediation in PRS Complaints

BSEA Response: *NOT ACCEPTED – Already in place.* The Manual already lays out the ability to use BSEA Mediation to resolve DESE/PRS Complaints.

COMMENT – Add visual chart to help distinguish between facilitation and mediation.

BSEA Response: *ACCEPTED.* A chart to distinguish between mediation and facilitation was added to the “BSEA Facilitated Team Meetings (Remote)” Section of the Manual.

COMMENT – If an interpreter is required for a facilitated team meeting, the BSEA should allot a three (3) hour window for the facilitation to accommodate interpretation time.

BSEA Response: *PARTIALLY ACCEPTED.* Information about working with the parties to provide a longer facilitation window when a family needs an interpreter at the facilitation was added to the Manual.