Summary of Public Comments Received on the

Revised Documents and BSEA Responses

(July 2024)

1. Comments related to Proposed Changes
2. ***Hearing Rules*:**
   1. COMMENT – Disagreement with proposed revision to Rule I(F) providing the option to request a Hearing Officer to dismiss a matter if a Parent does not participate in the Resolution Session.

BSEA Response: This revision reflects the requirements of the IDEA. 34 CFR §300.510(b)(4). The BSEA is not making any further changes in response to the comment.

* 1. COMMENT – Concern (i.e., districts will not have adequate time to put the documents together much less prepare for such hearings on an expedited basis) and support was received with regard to the proposed revision to Rule II relating to increasing the number of days prior to a Hearing that exhibits and witness lists are due in expedited hearings.

BSEA Response: This revision reflects the requirements of the IDEA. **34 CFR 512(a)(3); 34 CFR 532(c)(4); see** [71 Federal Register, August 14, 2006,](https://www.govinfo.gov/content/pkg/FR-2006-08-14/pdf/06-6656.pdf) pg. 46725-46726. The BSEA is not making any further changes in response to the comment.

* 1. COMMENT – Add “email” as a method by which the Hearing Request was sent to the other party in *Hearing Rule I(B)*.

BSEA Response: Adopted this suggestion. This option is also being added to the *Hearing Request Form*.

* 1. COMMENT – Add additional language to Rule I(F) pertaining to waiver of/lack of settlement at the Resolution Session, as well as indicating the BSEA will translate notices of the requirement to participate in a resolution session.

BSEA Response: The suggestions are stylistic and not required by the IDEA, are already are included in the original *Hearing Rules*, or address general obligations of the BSEA (i.e., translation of BSEA issued written materials) not specific to resolution sessions. The BSEA is not making any revisions in response to the comment.

* 1. COMMENT – Include a statement of BSEA jurisdiction in the *Hearing Rules*, including jurisdiction over COVID issues impacting students with disabilities.

BSEA Response: The “Scope of the Rules” preamble to the *Hearing Rules* already indicates the jurisdiction of the BSEA under both Federal and State special education laws and regulations. Specifically, it states:

“The BSEA has jurisdiction over disputes among parents, school districts, private schools, and state agencies involving any matter concerning the provision of a free appropriate public education to a student with special needs. The BSEA is not making any further changes in response to the comment.

The BSEA has the authority to resolve educational disputes pursuant to Massachusetts state law M.G.L. c. 71B (popularly known as Chapter 766), and its implementing regulations, 603 CMR 28.00. The BSEA has jurisdiction to resolve educational disputes under federal law as well, in accordance with 20 U.S.C. 1401 *et seq*. (the Individuals with Disabilities Education Act, “IDEA”), 29 U.S.C. 794 (Section 504 of the Rehabilitation Act of 1973) and the regulations promulgated thereunder, 34 C.F.R. Part 300 and 34 C.F.R. Part 104 respectively.”

The BSEA is not making any revisions in response to the comment.

1. ***Hearing Request Form***:
   1. COMMENT – revise Section VIII of the *Hearing Request Form* to reflect the IDEA language with respect to identifying the “Proposed Resolution of the Problem” as being “to the extent known and available to you at this time”.

BSEA Response: Although this comment does not relate to any of the proposed substantive revisions to the *Hearing Request Form*, it does address the intended goals for the revision of these documents - i.e., consistency with the IDEA’s specific language. As we agree a revision that more accurately reflects the IDEA's language is appropriate in this section, we adopted this suggestion and also made a corresponding revision to the *Pro Se Litigant Guide*, under Section III (“Conference Call”). 20 USC 1415(b)(7)(A)(ii)(IV);34 CFR §300.508(b)(6).

* 1. COMMENT – Revise the *Hearing Request Form* to provide an option for people to request a reasonable accommodation.

BSEA Response:Adopted this suggestion. A hyperlink to the BSEA’s pre-existing website regarding how to request an ADA accommodation has been added to footnote 1 of the *Hearing Request Form*.

* 1. COMMENT – Revise footnote 1 on the *Hearing Request Form* to indicate that the *Hearing Request Form* may be completed in the primary language of the home and that the BSEA will interpret it at no cost to the party.

BSEA Response: Adopted this suggestion.

* 1. COMMENT – add “email” as one of the methods of delivery of the *Hearing Request Form* to the opposing party.

BSEA Response: Although this comment does not relate to a proposed substantive revision to the *Hearing Request Form* in this section, to be consistent with our earlier substantive revision to include email addresses of parties and representatives, we adopted this suggestion and also made a corresponding revision to *Hearing Rule I(B)*.

* 1. COMMENT – provide an option on the *Hearing Request Form* to identify if a party has limited English proficiency.

BSEA Response: The original *Hearing Request Form* already provided for this information to be shared by a Party, however, as we agree a revision that more accurately reflects the IDEA's language is appropriate in this section, we adopted this suggestion and noted that responding to this section is “optional”. See 20 USC 1415(b)(7)(A)(ii);34 CFR §300.508(b). Further, it has been and will remain the practice of the BSEA to translate and send any BSEA generated documents to parties who indicate that English is not the primary language of the home on the *Hearing Request Form*, or otherwise advise during the course of the proceedings.

1. ***Pro Se Litigant Guide***:
   1. COMMENT – Include reference to the Free and Low Cost Legal Services list that is published by the BSEA.

BSEA Response: Adopted this suggestion. Included this reference with the edits to Section I(6) of the *Pro Se Litigant Guide*.

* 1. COMMENT – Include additional references indicating that the BSEA will translate documents, including the Hearing Request, and provide interpreter support at no cost to a party, if the party’s preferred language is not English.

BSEA Response: Adopted these suggestions. Revised the language in Sections II(A) and III(“Pre-Hearing”) of the *Pro Se Litigant Guide*.

* 1. COMMENT – Provide an explanation of the living situations that fall under the McKinney-Vento Act.

BSEA Response: Adopted this suggestion. Footnote added to Section II(A)(4).

* 1. COMMENT – For Section II(A)(1) listing additional information for a party to provide on the *Hearing Request Form*, add “if any” to “Individual with whom the child lives and who is acting in the place of the parent” to be consistent with the wording of the other options above.

BSEA Response: Adopted this suggestion. Reworded Section II(A)(1) as well as Rule I(B)(1) of the *Hearing Rules*.

* 1. COMMENT – For Section II(A)(5) the primary language of the home should be included in the list of additional information for a party to provide on the *Hearing Request Form*.

BSEA Response: Adopted this suggestion. Reworded Section II(A)(5) as well as Rule I(B)(5) of the *Hearing Rules*.

* 1. COMMENT – Reword Section II(B)(2) and (3) to require that the original *Hearing Request* be sent to the BSEA with a copy to the other party.

BSEA Response: This suggestion does not relate to any of the substantive changes proposed to the *Pro Se Litigant Guide* and is also contrary to the IDEA. 20 USC 1415(b)(7)(A)(i); 34 CFR 300.508(a). The BSEA is not making any further changes in response to the comment.

* 1. COMMENT – In the definition of “Pre-Hearing” under Section III, clarify who will be providing technical assistance at the Pre-Hearing Conferences.

BSEA Response: Adopted this suggestion.

* 1. COMMENT – Add language about the right to engage in rebuttal questioning of witnesses to Section IV(4).

BSEA Response: Adopted this suggestion.

* 1. COMMENT – Reword the definition of “Least Restrictive Environment (LRE)” in Section VI to reflect the “maximum extent appropriate” wording of the IDEA.

BSEA Response: Although this comment does not relate to any of the proposed substantive revisions to the *Pro Se Litigant Guide*, it addresses the intended goal behind revising the document - i.e., consistency with the IDEA’s specific language. As we agree a revision that more accurately reflects the IDEA's language is appropriate in this section, we adopted this suggestion. 20 USC §1412(a)(5)(A); 34 CFR §300.114(a)(2)(i).

* 1. COMMENT – Revise the new proposed definition of “Summary Judgment” in Section VI to reference partial summary judgement.

BSEA Response: Adopted this suggestion as well as changed the definition of “Summary Judgment” in the “Glossary of Terms” section of the *BSEA Reference Manual*.

* 1. COMMENT – Reflect party-neutral language on page 6, in the section about expected behaviors, and consider utilizing the term “rules of engagement”.

BSEA Response:Adopted this suggestion in-part. Further grammatical revisions to Section V of the *Pro Se Litigant Guide* to make the section party neutral have been made, consistent with overall grammatical edits that were originally proposed to all the documents. The heading of this section was also reworded to be “Conduct Expectations (Decorum)” as this language is consistent with the “decorum” and “conduct” terminology used in the *BSEA Reference Manual* and the *Hearing Rules*, and further consistent with the language used in the regulations promulgated pursuant to the Massachusetts Administrative Procedure Act (801 CMR 1.01(10)(d) – Conduct of Hearing: 1. Decorum and 2. Duties of Presiding Officer). The use of the term “rules of engagement” was not adopted.

* 1. COMMENT – The proposed timeline revisions favor Districts.

BSEA Response: All timelines in all documents for which public comment was sought reflect the requirements of the IDEA. The BSEA is not making any further changes in response to the comment.

1. ***BSEA Reference Manual*:**
   1. COMMENT – Reword the proposed revisions to the final paragraph under Section I “Purpose and Summary” and revise “Summary” to “Overview of Dispute Resolution Processes”.

BSEA Response: Adopted these suggestions. Reworded the revisions to more accurately summarize what is contained in the *BSEA Reference Manual* document as a whole.

* 1. COMMENT – Include a hyperlink to the new *BSEA Mediation Manual* and the new *PRS Manual*.

BSEA Response: Adopted this suggestion. It is consistent with our overall formatting edits that were originally proposed to this document that, in part, included adding hyperlinks to other published and public documents or websites.

* 1. COMMENT – Revise the formatting of the document to provide an overview of the process and include drop downs for sections/categories for computer and print out referencing.

BSEA Response: Format revisions are already proposed that allow the user to directly access sections in this document from the Table of Contents list or alternatively to change the Heading views to be drop down options. Additionally, Part I, that provides a summary of the information contained in the *BSEA Reference Manual* and the *Pro Se Litigant Guide,* could be reviewed for a more streamlined summary of the BSEA procedures. The BSEA is not making any further changes in response to the comment.

* 1. COMMENT – Revise page 6 of the *BSEA Reference Manual* to more clearly reflect the process for requesting a reasonable accommodation.

BSEA Response:Adopted this suggestion. A hyperlink to the BSEA’s pre-existing website regarding how to request an ADA accommodation has been added to page 6 of the *BSEA Reference Manual* as well as added as a footer to the cover page of the *Hearing Rules*.

1. Comments Related to Proposed Changes in Multiple Documents
2. COMMENT – Decision issuance dates should be consistent for Parent and School District and have a specific number of days noted in the *Hearing Rules*.

BSEA Response: No substantive changes were made to decision issuance timelines as part of any of the proposed revisions, however, the language relating to decision issuance dates in the *Hearing Rules*, the *Pro Se Litigant Guide*, and the *BSEA Reference Manual* was revised non-substantively to provide better clarity and consistency with the requirements of the IDEA. 34 CFR §300.515(a); see 34 CFR §300.510. The revision to *Hearing Rule IX(E)* is explicitly explained in the *BSEA Reference Manual* revisions to Section XII, and *Pro Se Litigant Guide* revision to Section IV(5). 34 CFR §300.515(a); 34 CFR §300.532(c)(2). The BSEA is not making any further changes in response to the comment.

1. COMMENT – Include the definition of “summary judgment”.

BSEA Response: Inclusion of this definition in the *BSEA Reference Guide* and the *Pro Se Litigant Guide* was already one of the proposed revisions to these documents. The BSEA is not making any further changes in response to the comment.

1. COMMENT – the definition of “venue” should indicate if it is in person or virtual and the process for determining which option if there is no agreement.

BSEA Response: Having virtual hearings as an available venue option “upon request” was already one of the proposed revisions to the *BSEA Reference Guide* and the *Pro Se Litigant Guide*. This determination is made on a case by case basis. The BSEA is not making any further changes in response to the comment.

1. Comments Outside the Scope of Proposed Changes

We received numerous comments on the *Hearing Rules*, *Hearing Request Form*, *Pro Se Litigant Guide,* and the *BSEA Reference Manual* (many of which are duplicative) that were either general in nature (i.e., did not reference the specific section of the document they were intended to apply to) and/or not related to areas proposed for revision and are discussed with particularity below.

BSEA General Response: As these comments do not relate to any of the substantive changes that were made to the documents, they will be taken under advisement for future revisions/updates.

1. We received several comments generally recommending that we revise all the documents to ensure greater readability and language-accessibility; translation and interpretation support for all constituents who may be using them; simplifying the documents; revising the language used in the glossaries; renaming the “Pro Se Litigant Guide”; and inserting flowcharts, checklists and links to videos that are easy to follow and will enable access to more people, including those who have language access needs. Several commenters also noted that after reading the *Pro Se Litigant Guide* they still did not feel they understood how they could represent themselves at a Hearing. Some of the comments further specified that they did not find the *Pro Se Litigant Guide* to contain a list of possible Motions that could be filed during a proceeding.

BSEA Response: The *Pro Se Litigant Guide* includes information under Section I(2) related to obtaining “Technical Assistance” from the BSEA - specifically, it states: “The BSEA can give you ‘technical assistance’. You can call and ask for help finding a form or regulation, for help understanding appropriate responses or procedures, or for information about special education law in general. You can ask to speak to a Mediator, the Director of the BSEA, or a Hearing Officer other than the one assigned to your hearing.” Further, Part III of the *Pro Se Litigant Guide* indicates that any request of a Hearing Officer is deemed a “Motion”. While it is not feasible to list all possible Motions that a Hearing Officer could receive, Part III of the *Pro Se Litigant Guide* also includes a list of typical Motions that could be filed, and Section VIII of the *BSEA Reference Manual* was updated to provide a more detailed list of typically filed Motions. Finally, “Technical Assistance” support is available should a pro se party question how to respond to a Motion at any time. Further, the BSEA translates all documents it issues and provides interpreters at all proceedings at no cost upon request/notification of this need. As these comments do not relate to any of the substantive changes that were made to the documents, they will be taken under advisement for future revisions/updates.

1. We received several comments suggesting that a chart be created to distinguish among the dispute resolution options of Due Process Hearings, Mediations and PRS Complaints.

BSEA Response: As these comments do not relate to any of the substantive changes that were made to the documents, they will be taken under advisement for future revisions/updates.

1. We received a comment suggesting the BSEA screen out cases for which there is an obvious lack of jurisdiction.

BSEA Response: As a general practice, the BSEA does not screen out any *Hearing Requests* that are filed. Rather, parties must pursue dismissal with the individual Hearing Officer. As this comment does not relate to any of the substantive changes that were made to the documents, it will be taken under advisement for future revisions/updates.

1. We received a comment suggesting that BSEA timelines should not begin to run until any party with limited English proficiency is served in their native language. BSEA Response: As this comment does not relate to any of the substantive changes that were made to the documents, it will be taken under advisement for future revisions/updates.
2. We received a comment to include the definitions of “interrogatories” and “depositions” in the proposed revisions.

BSEA Response: The *BSEA Reference Manual* already contains definitions of all these discovery tools under Section X. As this comment does not relate to any of the substantive changes that were made to the documents, it will be taken under advisement for future revisions/updates.

1. We received a comment asking that the *Hearing Rules* be revised to clarify that private, approved, special education schools are included amongst parties who have standing before the BSEA.

BSEA Response: BSEA Standing Order 20-1, entitled, *Entities Receiving Public Funds to Provide Special Education: Standing”*, provides that private approved special education schools do have explicit standing before the BSEA. Specifically, it states that: “Consistent with 603 CMR 28.08 (3), private schools and agencies which receive public funding to provide special education services to a student are included within Hearing Rule I(A)(4), and as such may initiate a hearing before the BSEA.” As this comment does not relate to any substantive changes made to the *Hearing Rules*, it will be taken under advisement for future revisions/updates.

1. We received a comment to revise *Hearing Rule IX(B)* to include, under Hearing Officer Duties and Powers, that there will be non-discrimination on the basis of race, ethnicity, national origin, disability or other protected status.

BSEA Response: The BSEA does not discriminate on the basis of race, ethnicity, national origin, disability or other protected status, and as the current *Hearing Rule* *IX(B)* language indicates, it ensures the rights of "all" parties are protected. As this comment does not relate to any substantive changes made to the *Hearing Rules*, it will be taken under advisement for future revisions/updates.

1. We received a comment that the *Hearing Request Form* should include the date and time the Hearing Request is sent to the opposing party and to the BSEA.

BSEA Response: The delivery attestation already indicates, by its terms, that the Hearing Request is being sent to the BSEA and the opposing party “at the same time”. Further, any party that does not receive the Hearing Request on the date it is filed with the BSEA can seek a recalculation of the Hearing Notice timelines in individual cases.As this comment does not relate to any of the substantive changes that were made to the *Hearing Request Form*, it will be taken under advisement for future revisions/updates.

1. We received a comment to not include the definition of “pull out” from Section VI of the *Pro Se Litigant Guide* as it is not a legal term.

BSEA Response: The title of Section VI of the *Pro Se Litigant Guide* was already proposed to be revised to indicate the Section also includes “special education jargon”. As this comment does not relate to any of the substantive changes that were made to the *Pro Se Litigant Guide*, it will be taken under advisement for future revisions/updates.

1. We received a comment asking that the *BSEA Reference Manual* contain contact information for participants to speak directly to a BSEA representative prior to the start of the BSEA process.

BSEA Response: The suggested information is already included in the *BSEA* *Reference Manual* under Part XIV “Assistance”. As this comment does not relate to any of the substantive changes that were made to the *BSEA Reference Manual*, it will be taken under advisement for future revisions/updates.

1. We received several comments relating to the Settlement Conference section of the *BSEA Reference Manual* and an additional general comment pertaining to Settlement Conferences.

BSEA Response: No substantive changes were made to the Settlement Conference section of the *BSEA Reference Manual* or to Settlement Conferences, generally. These comments will be taken under advisement for future revisions/updates.

1. We received a comment asking that the *BSEA Reference Manual* address the impact of a BSEA case on a pending PRS complaint.

BSEA Response: The suggested information is already contained under Part II, in response to the question: “*What if I am also filing a complaint with the Department of Elementary and Secondary Education’s Problem Resolution System (PRS)?”* Other than adding a hyperlink to the PRS Manual, as noted above, as this comment does not relate to any of the substantive changes that were made to the *BSEA Reference Manual*, it will be taken under advisement for future revisions/updates.