



Massachusetts Department of Elementary and Secondary Education

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Mitchell D. Chester, Ed.D.
Commissioner

MEMORANDUM

To: Superintendents, Charter School Leaders and Special Education Directors
From: Mitchell D. Chester, Ed.D., Commissioner
Date: January 22, 2009
Subject: U.S. Department of Education Ruling on Bureau of Special Education Appeals

In October 2008, after becoming Commissioner and reviewing the operations of the Department of Elementary and Secondary Education, I had questions about the structure for special education hearings and mediations in Massachusetts. My questions were based on my experience and knowledge of how these procedures are conducted in other states. I wrote to the United States Department of Education (USED) and asked them to evaluate our current structure in relation to the requirements of the Individuals with Disabilities Education Act (IDEA). The Office of Special Education and Rehabilitative Services of the USED responded last week and informed me that the structure for the Bureau of Special Education Appeals (BSEA) is not consistent with the IDEA and its regulations.

The letter we received from the USED, dated January 15, 2009, states that the IDEA unambiguously requires that hearing officers and mediators not be employees of the state education agency. Currently, the 18 members of the BSEA staff are all employees of the state education agency, the Department of Elementary and Secondary Education.

To be clear, the finding challenges our current structure, but does not call into question the impartiality or integrity of any of the decisions the BSEA has made. Our system for due process hearings and mediations has been and is operating in an impartial manner. No one in this Department, outside of the BSEA staff, reviews or tries to influence decisions of individual hearing officers or mediators in ongoing cases.

The USED has given us 90 days from the date of their letter to respond with a plan that will bring us into full compliance with the IDEA. We are determined to develop a seamless transition plan for the BSEA so that the resolution of special education matters is not disrupted and the needs of students, parents, and the special education community continue to be met.

Over the next three months we will gather information about how this work is done in other states, seek input from key constituent and stakeholder groups, consider our options, and present a plan to USED. Until a final decision is made, the BSEA will continue to operate as it has, issuing valid and impartial hearing decisions and assisting parties in resolving their disputes.

If you have any questions, please contact Associate Commissioner Jeffrey Wulfson at 781-338-6500