

**DIVISION OF ADMINISTRATIVE LAW APPEALS (DALA)
2020 REPORT TO THE GENERAL COURT PURSUANT TO § 4H OF CHAPTER
7 OF THE GENERAL LAWS**

We provide this overview of DALA's performance during 2020, pursuant to G.L. c. 7, § 4H. In 2020, like the rest of the world, DALA confronted challenges operating while the COVID-19 pandemic raged. We are pleased to report that DALA was able to develop the tools it needs to provide the people of Massachusetts with their due process protections while protecting the health of its staff and doing its part to slow the spread of COVID-19.

I. EXECUTIVE SUMMARY

DALA is responsible for providing individuals and state agencies with fair and impartial hearings in the most efficient manner possible. The agency is made up of two independent units: the General Jurisdiction Unit ("GJU") and the Bureau of Special Education Appeals ("BSEA"). For a time in 2020, most staff worked exclusively at home and, for health reasons, the agency continues to limit the number of staff that can be present in the office at any one time. In 2020, the GJU and the BSEA successfully developed new tools so that they could continue to operate safely and provide the people of Massachusetts with critical services.

II. DALA AND ITS MISSION

A. General Jurisdiction Unit

The GJU's mission is to provide the due process hearings that are the pre-condition of other state agencies' final actions and, when provided for by statute, to hear *de novo* appeals of other agencies' decisions. GJU cases come to DALA in two ways: (1) by legislation mandating that certain types of cases be heard at DALA; and (2) upon

request of a state agency, subject to the approval of the DALA Chief Administrative Magistrate and the Secretary of Administration and Finance (“A&F”). Currently, the GJU conducts hearings for approximately 22 state agencies, including the Contributory Retirement Appeal Board, the Board of Registration in Medicine, the Department of Public Health, and the Fair Labor Division of the Office of the Attorney General. The most pressing issue confronting the GJU is its large inventory of cases. The inventory is made up of Rate Setting Cases and Retirement Cases. Generally, the GJU is able to schedule other types of cases when the parties are ready to proceed.

The GJU, to operate during the pandemic, modified the manner in which it conducts business. While some of these changes were temporary, others will likely be permanent. When the pandemic struck in March 2020, the GJU began accepting electronic filings. At the same time, it stopped holding in-person evidentiary hearings and in-person prehearing conferences. The unit still is not conducting live evidentiary hearings or conferences at its Malden headquarters.

The GJU now conducts prehearing conferences by phone. It obtained a bridge line that allows magistrates to conduct conferences by phone whether they are working from home or are in the office. The GJU also subscribed to WebEx to allow hearings to be conducted by video conference. Some parties lack the technical capacity to participate in a virtual hearing and there was some reluctance by other parties to forgo a live evidentiary hearing, and thus the GJU conducted fewer evidentiary hearings in 2020 than in recent years. To address this situation, the GJU closely examines whether each case requires an evidentiary hearing and, if it does not, DALA schedules the case to be decided on the papers.

B. Bureau of Special Education Appeals

The BSEA is an independent unit within DALA. It provides a broad range of services applicable to resolution of disputes with respect to eligibility, evaluation, placement, individualized education programs (IEPs), special education services, and procedural protections for students with disabilities. The BSEA is federally funded through a grant managed by the Department of Elementary and Secondary Education ("DESE"). The Bureau was transferred from the DESE to DALA by Chapter 131 of the Acts of 2010 to ensure independence from any educational agency that could be a party to or interested in the proceedings before the Bureau. Pursuant to the transfer legislation, the Bureau and its caseload are managed independently of DALA's other operations.

In 2020, the BSEA, a nationally recognized leader in dispute resolution in the area of special education, provided a broad range of dispute resolution services applicable to disputes concerning eligibility, evaluation, placement, IEPs, special education services, and procedural protections for students with disabilities. BSEA's dispute resolution services include mediations, hearings, and settlement conferences. The Bureau also provided facilitators for IEP Team meetings. Parties to these proceedings include parents, school districts, private schools, the DESE, and other state agencies. The BSEA, through an ISA with the Department of Public Health, also conducted mediations and due process hearings with respect to early intervention.

Mindful of the need to protect the health of staff and the public and, at the same time, continue providing timely dispute resolution opportunities while ensuring that each party's right to due process was not compromised during the pandemic, the BSEA revised some of its practices on an interim basis. Various mechanisms were implemented

to address the challenges posed by the COVID-19 emergency. These mechanisms included: providing staff with necessary technology and support to enable mediations, hearings and settlement conferences to be conducted virtually; changing staffing patterns to comply with state COVID guidelines, coordinating staff's working remotely and in person so as to protect the health of staff while maintaining compliance with federal and state due process mandates and allowing for timely response to the public. These changes required enacting standing orders allowing for virtual proceedings and the use of electronic communication between staff and constituents. These and other responsive measures allowed for a seamless transition to remote BSEA practice during fy 2020.

In Fiscal Year 2020¹, there were approximately 9,442 rejected IEPs received by the BSEA, representing a decrease from the 11,979 received in the prior year. The BSEA conducted 77 facilitated IEP (FIEP) Team meetings, a decrease from the 114 conducted during the previous year.² There were 573 mediations conducted in FY 2020, a decrease from the 714 conducted during the prior year. Mediations resulted in the parties reaching an agreement 83 % of the time. In addition, settlement conferences were held in 68 of the cases that were filed for hearing in FY 2020 (as compared to 76 held in FY 2019 cases). Of these, 62 were settled, representing a settlement rate of approximately 91%.

The BSEA received 379 hearing requests during FY 2020, a decrease from the 483 requests received in the prior year. BSEA hearing officers conducted full hearings resulting in the issuance of 19 decisions (the same number of decisions issued in the previous year). In addition, 44 substantive written rulings were issued (as compared to 48

¹ Pursuant to federal reporting requirements, the BSEA keeps statistics by fiscal year.

² We note that 8 requests for FIEP meetings could not be accommodated owing to staffing limitations.

in the previous year). Tab 1 contains a multi-year summary of the BSEA's annual statistics.³

BSEA staff continued to provide trainings and presentations this year for constituent groups including Special Education Parent Advisory Councils, parent advocacy groups, school district personnel, non-profit groups, Massachusetts Continuing Legal Education and other interested groups around the Commonwealth. This commitment to increasing the visibility of BSEA's services will continue.

III. ANALYSIS OF GJU CASES OPENED AND CLOSED IN 2020

A review of the GJU cases filed and those resolved in 2020 provides insight into the impact the COVID-19 pandemic had on the unit's operation. In 2020, the GJU's inventory of cases grew by 8.5%. The increase was caused by a reduction in the number of evidentiary hearings the GJU scheduled and a sharp increase in the number of Rate Setting Cases filed at the end of 2020. Tab 2 contains a list of open GJU cases as of January 1, 2021.⁴ This tab shows that the GJU had 3,621 open cases as of the first of this year, an increase of 285 over the 3,336 cases on its docket as of January 1, 2020. The number of open Retirement Cases on the GJU's docket was 1,143 on January 1, 2020. A year later that number was 1,161, an increase of 1.6%. The number of open Rate Setting Cases increased from 2,038 to 2,232 cases. This 9.5% increase was driven by the fact that 192 Rate Setting cases were filed at the end of 2020.

³ We believe that the across the board decrease in the number of rejected IEPS, FIEPs, mediations, hearing requests and settlement conferences during FY 2020 is attributable to the COVID-19 pandemic.

⁴ Tab 2A is a list of the GJU open cases with multiple parties and identifying the additional parties.

Tab 3 contains a report of the cases the GJU opened in 2020. The report shows that the GJU opened 636 cases in 2020. The unit opened 283 Retirement Cases and 192 Rate Setting Cases in 2020. Tab 3 identifies each case opened by name and docket number. The type of case is described in the prefix of the file number. For example, “CR” is Contributory Retirement, “RM” is Registration in Medicine, and “RS” is Rate Setting. The “Status” column reflects the status of the case on the date that the report was prepared, March 25, 2021. 86 of the cases opened in 2020 have been closed.

Tab 4 is a report of the cases the GJU closed in 2020. It reveals that the GJU closed 379 cases in 2020. This total includes 266 Retirement Cases. Based upon the data available at the time this report was prepared: 79 cases were resolved by way of a final decision after an evidentiary hearing. 57 of the closed cases were dismissed without an evidentiary hearing. 7 closed cases were settled and 17 were withdrawn. Tab 5 illustrates the progress that the GJU has had in reducing the length of time it takes to close its cases. For example, it took the GJU on average 1375 days to close 980 cases filed in 2015.⁵ In 2020, it took the GJU on average 132 days to close the 86 cases filed in 2020 that it has closed. Although, because of the large inventory of older cases too many cases are not closed in a timely manner; progress is being made.

IV. GJU HEARINGS HELD IN 2020

In 2020, the GJU conducted approximately 39 evidentiary hearings. This figure includes 14 live hearings conducted before the pandemic started and 25 virtual hearings conducted after the outbreak. In comparison, the GJU held 120 evidentiary hearings in 2019. The frequency of virtual hearings is increasing. DALA has been more aggressively

⁵ In 2015, the GJU confronted a large influx of cases because of the Employee Retirement Incentive Program and many of the cases were disposed of without an evidentiary hearing.

marketing the virtual hearing option in appropriate cases. As the pandemic drags on, parties are becoming more receptive to proceeding with virtual hearings.

V. CONCLUSION

Thank you for this opportunity to tell you about our work in 2020. The independent “central panel” approach to the review of state agency actions is the fairest, most efficient and cost effective one available. Our magistrates, hearing officers, mediators and staff are proud of their work and we look forward to continuing our service. We look forward to working with you as we continue to improve the quality of the service that DALA provides to the people of Massachusetts and its agencies.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Edward B. McGrath
Chief Administrative Magistrate

Dated: April 1, 2021