

**DIVISION OF ADMINISTRATIVE LAW APPEALS (DALA)
2021 REPORT TO THE GENERAL COURT PURSUANT TO § 4H OF CHAPTER
7 OF THE GENERAL LAWS**

Pursuant to G.L. c. 7, § 4H, we present this overview of DALA's performance during 2021.

I. EXECUTIVE SUMMARY

In 2021, DALA, which is made up of two independent units: the General Jurisdiction Unit ("GJU") and the Bureau of Special Education Appeals ("BSEA"), continued to provide individuals and state agencies with fair and impartial hearings in the most efficient manner possible. It also protected its staff from COVID-19 and, at the same time, implemented new tools provided by the Legislature to better serve the people of Massachusetts.

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 Disabled Persons Protection Commission, the Board of Registration in Medicine, 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 schedules other types of cases when the parties are ready to proceed.

In 2021, the GJU expended its use of electronic filings. In fact, the agency working with A&F IT began the development of an internet platform to make the electronic filings of appeals more efficient. At the same time, the GJU expanded its use of WebEx to hold virtual hearings. In March 2022, the unit resumed conducting live evidentiary hearings at its Malden headquarters. It plans on resuming in-person evidentiary hearings in Springfield next month. Moving forward, the GJU will continue to provide virtual hearing options in appropriate cases.

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 2021, 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, due process hearings, and settlement conferences. The Bureau also provides 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 conducts 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 continued using remote 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 and 2021.

In Fiscal Year 2021¹, there were approximately 11,331 rejected IEPs received by the BSEA, representing an increase from the 9,442 received in the prior year. During the same period, the BSEA conducted 127 facilitated IEP Team meetings, an increase from the

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

77 conducted during the previous year.² There were 932 requests for mediation received in FY 2021, representing an increase from the 906 requests the prior year. BSEA mediators conducted 519 mediations in FY 2021, a decrease from the 573 conducted during the prior year, with an agreement rate of 79 %. In addition, settlement conferences were held in 53 of the cases that were filed for hearing in FY 2021 (as compared to 68 for the same reporting period in FY 2020). Of these, 49 were settled, with a settlement rate of 90.5%. The BSEA received 320 due process hearing requests during FY 2021, a decrease from the 379 requests received in the prior year.

BSEA hearing officers conducted full hearings resulting in the issuance of 24 decisions (an increase from the 19 decisions issued in the previous year). In addition, 61 substantive written rulings were issued (as compared to 44 in the previous year).³ BSEA staff continued to provide trainings and presentations for constituent groups including Special Education Parent Advisory Councils, parent advocacy groups, school district personnel, non-profit groups, social service agencies, Massachusetts Continuing Legal Education and other interested groups around the Commonwealth. The BSEA's mediation unit also initiated monthly Zoom Informational sessions on mediation and facilitated team meetings. This commitment to increasing the visibility of BSEA's services is on-going.

III. ANALYSIS OF GJU CASES OPENED AND CLOSED IN 2021

A review of the GJU cases filed and closed in 2021 demonstrates that the GJU provided the people relying on its services with quality and efficient service despite the lingering pandemic. In 2021, the GJU's inventory of cases grew by 2%. The increase was

² We note that 29 requests for facilitated IEP Team meetings had to be declined by the BSEA this year owing to staffing limitations.

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

caused by an increase in the number of Rate Setting Cases. Tab 2 contains a list of open GJU cases as of January 1, 2022.⁴ This tab shows that the GJU had 3,696 open cases as of the first of this year, an increase of 75 over the 3,621 cases on its docket as of January 1, 2021. The number of open Retirement Cases on the GJU's docket was 1,161 on January 1, 2021. A year later that number was 1,169. The number of open Rate Setting Cases increased from 2,232 to 2,443 cases, a 9.4% increase.

Tab 3 contains a report of the cases the GJU opened in 2021. 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 report shows that the GJU opened 637 cases in 2021. The unit opened 323 Retirement Cases and 176 Rate Setting Cases. The "Status" column reflects the status of the case on the date that the report was prepared, March 17, 2021. 86 of the cases opened in 2021 have been closed.

Tab 4 is a report of the cases the GJU closed in 2021. It reveals that the GJU closed a total of 484 cases in 2021 – 105 more than in 2020. During that period, DALA closed 320 Retirement Cases, up from 266 the prior year. In 2021, 114 cases were resolved by way of a final decision after an evidentiary hearing. 158 of the closed cases were closed by summary decision, including orders of dismissal. 41 closed cases were settled and 171 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, in 2015, it took the GJU on average 1375 days to

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

close 980 cases.⁵ In 2020, it took the GJU on average 132 days to close 379 cases and in 2021 it took an average of 130 days to close 654 cases.

GJU using new tools

Line 1110-1002 of the FY 21 Budget provided DALA with the authority to use funds the agency collects as filing fees. DALA is exploiting the opportunity generated by these funds to address the inventory of Rate Setting Cases. DALA collects filing fees for Rate Setting Cases, pursuant to 801 CMR 4.02. The regulation reads:

820 Division of Administrative Law Appeals Fee for Appeals of Hospitals and Nursing Homes and/or processing of appeals \$2 per bed.

Using administrative support funded by the filing fees a magistrate is screening the Rate Setting Cases and issuing appropriate orders to begin moving the cases. As it took some time to develop the program, the progress made addressing the Rate Setting cases is not reflected in the 2021 statistics but, as of March 18, 2022, 188 Rate Setting cases were closed as a result of these funds.

In 2021, DALA began developing an online platform to allow the people of Massachusetts and state agencies to file their appeals online. While the platform was not operational at the time this report was filed, DALA with the help of A&F IT made significant progress on this project in 2021.

IV. GJU HEARINGS HELD IN 2021

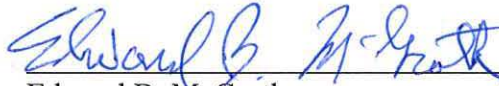
In 2021, the GJU conducted approximately 85 virtual evidentiary hearings. In 2020, the GJU held 39 evidentiary hearings. Please be advised that, after a two-year hiatus, the GJU resumed scheduling in-person hearings in March 2022.

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.

V. CONCLUSION

Thank you for this opportunity to tell you about our work in 2021. 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, 2022