



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

14 SUMMER STREET, 4TH FLOOR

MALDEN, MA 02148

EDWARD B. McGRATH

CHIEF ADMINISTRATIVE MAGISTRATE

TEL: 781-397-4700

FAX: 781-397-4720

www.mass.gov/dala

April 3, 2019

Michael D. Hurley
Senate Clerk
Office of the Clerk of the Senate
24 Beacon Street
Room 335, State House
Boston, MA 02133

Re.: Division of Administrative Law Appeals Annual Report Pursuant to
M.G. L. c. 7, § 4H

Dear Mr. Hurley:

Enclosed please find the Division of Administrative Law Appeals' 2018 Annual Report
as required by M.G.L. c. 7, § 4H.

Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Edward B. McGrath".

Edward B. McGrath
Chief Administrative Magistrate

Enclosure

**DIVISION OF ADMINISTRATIVE LAW APPEALS
2018 REPORT TO THE GENERAL COURT PURSUANT TO § 4H OF
CHAPTER 7 OF THE GENERAL LAWS**

We are pleased to submit this report, pursuant to § 4H of Chapter 7 of the General Laws. It is our intention to provide an overview of the operation of the Division of Administrative Law Appeals ("DALA") and the results it achieved in 2018. In 2018, DALA continued to improve the quality of the service it provides to the people and state agencies of Massachusetts.

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"). In 2018, the GJU continued to reduce its inventory of cases and the BSEA continued to provide the children, parents and school districts of Massachusetts with an efficient, impartial avenue to resolve their disputes. At the same time, DALA personnel worked closely with staff of the Division of Capital Asset Management and Maintenance ("DCAMM") to locate affordable office space that would allow DALA to continue its service to the people of Massachusetts.

On January 14, 2019, DALA began operating at 14 Summer Street, Malden. The move was required because DALA's lease was ending in June, 2019 and the increase in rental costs made remaining in Downtown Boston impractical. With DCAMM's assistance, DALA found suitable office space and moved to its new location six months early. By moving early, DALA saved taxpayers

\$421,865 in moving expenses resulting in an 11.55 % discount in DALA's 10 year rental rate.

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 agencies' final agency 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 an 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 20 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 decreased the number of open cases on its docket in 2018. On January 1, 2018, there were 4,815 open cases on the GJU docket. Tab 1 contains a list of open GJU cases as of January 1, 2019. This tab shows that the GJU had 3,854 open cases as of the first of the year. The number of open Retirement Cases was 1,480 on January 1, 2018. That number dropped to 1,080 on January 1, 2019. In 2018, DALA reduced the number of pending Rate

Setting Cases on its docket from 3,171 to 2,586. DALA prioritizes Retirement Cases, because they typically require more intervention from a magistrate, including a hearing, and the parties to the Rate Setting cases work to settle them.

While the GJU's success reducing the inventory of its cases has resulted in a reduction in the length of time litigants wait to have their cases reached for hearing, the length of time parties are waiting for a written decision is increasing. Generally, newer cases require more attention from a magistrate and, therefore, it takes longer to dispose of them. We will continue to review and modify the GJU's practices and procedures as appropriate to address the ongoing challenges it confronts.

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 2018, 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 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 Mental Health, also conducts mediations and due process hearings with respect to early intervention.

In Fiscal Year 2018¹, there were 11,900 rejected IEPs received by the BSEA, an increase from the 11,400 received in 2017. In FY 2018, the BSEA facilitated 142 IEP Team meetings, an increase from 118 the previous year. There were 699 mediations conducted in FY 2018, a decrease from the 742 conducted during the prior year. We note that the number of mediations requested fell from 1,132 in 2017 to 1059 in 2018. In 2018, mediations resulted in the parties reaching an agreement 85% of the time. The BSEA also conducted 78 settlement conferences. 72 of those conferences resulted in a settlement, a success rate of 92%.

The BSEA received 481 hearing requests during FY 2018, a decrease from the 495 hearing requests received in the prior year. BSEA hearing officers conducted full hearings resulting in the issuance of 13 decisions, a decrease from the 22 decisions issued during the previous year. In addition, 35 substantive

¹ The BSEA keeps statistics by federal fiscal year.

written rulings were issued in FY 2018 as compared to 50 during the previous year. Tab 2 contains a multi-year summary of the BSEA's annual statistics.

In FY 2018, BSEA staff also provided numerous trainings and presentations for constituent groups, including Special Education Parent Advisory Councils, parent advocacy groups, school district personnel, non-profit groups, Massachusetts Continuing Legal Education presentations 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 2018

As required by § 4H of Chapter 7 of the General Laws, we now focus on the GJU cases received in 2018 and their disposition. Tab 3 contains a report of the cases opened in 2018. The report shows DALA opened 558 cases in 2018 and identifies the case by name of parties and docket number. The type of case is described in the "Code" column. 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, January 3, 2019. 132 of the cases opened in 2018 were closed in 2018.

The GJU closed 1,650 cases in 2018. This figure includes all cases disposed of by a magistrate's order and settlement. Tab 4 is a report of the cases closed in 2018. The closed cases are listed by File Number beginning with case code. Also provided is the "Closed date." A "Y" in the "Closed" column confirms that the case is closed.

IV. GJU HEARINGS HELD AND DECISIONS ISSUED

In 2018, the GJU conducted 73 full evidentiary hearings, a decrease from the 178 evidentiary hearings scheduled in 2017. The decrease in the number of scheduled hearings was caused by two factors: As older cases are closed, newer cases are being reached for hearing and the newer cases are more likely to go forward and require a full evidentiary hearing. Therefore, as magistrates spend more time in each hearing and more time writing each decision they are not available to preside at evidentiary hearings as often. In addition, uncertainty about the date of DALA's move resulted in fewer hearings being scheduled in October, November and December. While the number of evidentiary hearings decreased, the number of dispositive orders issued by the GJU increased to 991 from 960 in 2017. The difference between the number of full evidentiary hearings and the number of orders issued is caused by the fact that the GJU aggressively manages its docket to ensure that those cases that require a full evidentiary hearing get them as quickly as possible, while those matters that can be decided on the papers are.

V. CONCLUSION

DALA's work provides a vital service to the Commonwealth and its citizens. Our magistrates, hearing officers, mediators and staff are proud of their work and we look forward to meeting the challenges addressed in this report. We are convinced that the independent "central panel" approach to review of state agency actions is the fairest, most efficient and cost effective one available.

We appreciate this opportunity to tell you about our progress and we look forward to working with you to continue improving the quality of the service DALA provides to the people of Massachusetts and its agencies.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Edward B. McGrath
Chief Administrative Magistrate

Dated: April 3, 2019