

**DIVISION OF ADMINISTRATIVE LAW APPEALS (DALA)
2022 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 2022, 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. Some of its internal processes have changed in response to COVID-19 and, to the extent they appear to have continued utility (such as offering parties the option of remote hearings), those processes have been retained 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, although, as you will see, the agency made a concerted effort in 2022 to resolve rate setting appeals. Generally, the GJU schedules other types of cases when the parties are ready to proceed.

Over the last few years, the GJU expended its use of electronic filings. An email drop box has been created to allow for the electronic filing of pleadings. The agency has been working with A&F IT to develop an internet platform to make the electronic filings of appeals themselves. This option may go live by the time this report is filed. During the pandemic, GJU held its hearings exclusively via WebEx. In March 2022, the unit resumed conducting live evidentiary hearings at its Malden headquarters, but has continued to give parties the option of holding hearings virtually. The agency has also resumed in-person evidentiary hearings in Springfield, if requested by the parties.

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 2022, 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, students, 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 used 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.

During FY 2022, the BSEA continued to offer remote options, while also reinstating the opportunity for in-person proceedings as/if requested.

This year saw the formation of the BSEA Advisory Council, a council co-chaired by 2 legislative designees, comprising representatives of multiple groups with an interest in special education. As of this writing, two meetings have already been held, with a third scheduled for May 1, 2023.

In Fiscal Year 2022¹, there were approximately 11,830 rejected IEPs received by the BSEA, representing an increase from the 11,331 received in the prior year. During this period the BSEA conducted 186 facilitated IEP Team meetings, an increase from the 127 conducted during the previous year.² There were 1091 requests for mediation received in FY 2022, representing an increase from the 932 requests the prior year. BSEA mediators conducted 588 mediations during this time period, an increase from the 519 conducted during the prior year, with an agreement rate of 82 %.

The BSEA received 381 hearing requests during FY 2022, an increase from the 320 requests received in the prior year. Hearing Officers conducted full hearings resulting in the issuance of 14 decisions (a decrease from the 24 decisions issued in the previous year). In addition, 57 substantive written rulings were issued (as compared to 61 in FY 2021). Also during this period, settlement conferences were held in 48 of the cases that were filed for hearing in FY 2022 (as compared to 53 held in FY 2021 cases). Of these 48 cases, 41 were settled.³

BSEA staff continued to provide trainings and presentations for constituent groups including Special Education Parent Advisory Councils, parent advocacy groups, school

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

² Note that 16 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.

district personnel, non-profit groups, social service agencies, 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 2022 demonstrates that the GJU provided the people relying on its services with quality and efficient service despite the lingering pandemic. In 2022, the GJU's inventory of cases decreased by 39%. The decrease was caused mainly by the resolution of over 1,000 rate setting appeals. Tab 2 contains a list of open GJU cases as of January 1, 2023.⁴ This tab shows that the GJU had 2,270 open cases as of the first of this year, a decrease of 1,426 cases over the 3,696 cases on its docket as of January 1, 2022. The number of open retirement cases on the GJU's docket was 1,169 on January 1, 2022. A year later that number was 1,075. The number of open Rate Setting Cases decreased from 2,443 to 1,281 cases, a 47% decrease.

Tab 3 contains a report of the cases the GJU opened in 2022. 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 614 cases in 2022. The unit opened 352 retirement cases and 58 rate setting cases. The "Status" column reflects the status of the case on the date that the report was prepared, March 20, 2023. 125 of the cases opened in 2022 have been closed.

⁴ Tab 6 is a list of the GJU open cases with multiple parties and identifying the additional parties.

Tab 4 is a report of the cases the GJU closed in 2022. It reveals that the GJU closed a total of 1,971 cases in 2022 – 1, 487 more than in 2020. During that period, DALA closed 398 retirement cases, up from 320 the prior year. The major difference was the 1,404 rate setting appeals DALA closed in 2022. In 2022, 129 cases were resolved by way of a final decision after an evidentiary hearing. 82 of the closed cases were closed by a decision on the papers or by summary decision. 674 cases were closed by orders of dismissal. 106 closed cases were settled and 909 were withdrawn.

Tab 5 illustrates the length of time it takes to close cases. That number has fluctuated wildly over time. In 2021, it took an average of 130 days to close 654 cases. In 2022, it took on average 4,441 days to close 1,979 cases. The dramatic difference is attributable to the large number of quite old rate setting cases that were closed.

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 has 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. This year, the agency made substantial progress in resolving the rate setting cases. As noted above, the number of open rate setting Cases decreased in 2022 from 2,443 to 1,281 cases, a 47% decrease

DALA has been working with IT to develop an online platform to allow the people of Massachusetts to file their appeals online. The platform is on the verge of being operational at the time this report was drafted. DALA also has installed video monitors in its hearing rooms and conference rooms to allow some witnesses at a live hearing to testify remotely.

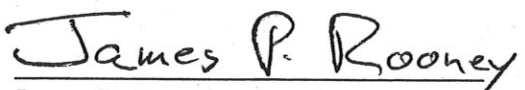
IV. GJU HEARINGS HELD IN 2022

After a two-year hiatus, the GJU resumed scheduling in-person hearings in March 2022. In 2022, the GJU conducted approximately 160 evidentiary hearings. Some were in person and others were virtual. .

V. CONCLUSION

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


James P. Rooney
Acting Chief Administrative Magistrate

Dated: April 6, 2023