

**DIVISION OF ADMINISTRATIVE LAW APPEALS
2019 REPORT TO THE GENERAL COURT PURSUANT TO § 4H OF
CHAPTER 7 OF THE GENERAL LAWS**

As the Division of Administrative Law Appeals (“DALA”) prepares to deal with the challenges posed by its expanded jurisdiction, pursuant to c. 19 of the Acts of 2020, we are pleased to report that DALA continues to improve the quality of its service to the people of Massachusetts. As required by § 4H of Chapter 7 of the General Laws, we provide this overview of DALA’s performance and the progress it made in 2019.

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 2019, 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

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 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. In addition, pursuant to c. 19 of the Acts of 2020, starting in 2021 the GJU will begin to hear appeals concerning the decisions of the Disabled Persons Protection Commission.

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.

In 2019, the GJU decreased the number of open cases on its docket. On January 1, 2019, there were 3,854 open cases on the GJU’s docket. Tab 1 contains a list of open GJU cases as of January 1, 2020. This tab shows that the GJU had 3,336 open cases as of the first of this year, a reduction of 518.

The number of open Retirement Cases stayed about the same as the GJU closed 14 more Retirement Cases than it opened in 2019. The number of open Retirement Cases was 1,126¹ on January 1, 2020. In 2019, DALA reduced the number of pending Rate Setting Cases on its docket from 2,586 to 1,981. DALA prioritizes Retirement Cases, because they typically require more intervention

¹ In our 2018 report, this figure was stated as 1,080. The inconsistency was caused by a number of cases filed concerning the Teachers Retirement System’s RetirementPlus program. About 80 of these cases were not docketed when received in 2017 and 2018, because of missing information when they were filed. These cases were docketed in 2019 and 2020 and may be identified by comparing the year beginning the docket number with the year of the filing date.

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 2019, 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, 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.

In Fiscal Year 2019², there were 11,979 rejected IEPs received by the BSEA, an increase from the 11,900 received in 2018. In FY 2019, the BSEA facilitated 114 IEP Team meetings, a decrease from 142 the previous year.³ There were 714 mediations conducted in FY 2019, an increase from the 699 conducted during the prior year. We note that the number of mediations requested increased from 1,059 in 2018 to 1,084 in 2019. In FY 2019, mediations resulted in the parties reaching an agreement 83% of the time. The BSEA also conducted 76 settlement conferences and 67 of those cases settled, a success rate of 88%.

The BSEA received 483 hearing requests during FY 2019, as compared to 481 hearing requests received in the prior year. BSEA hearing officers conducted full evidentiary hearings resulting in the issuance of 19 decisions, an increase from the 13 decisions issued in the previous year. In addition, 48 substantive written rulings were issued in FY 2019 as compared to 35 during the previous year. Tab 2 contains a multi-year summary of the BSEA's annual statistics.

² The BSEA keeps statistics by federal fiscal year.

³ We note that 29 requests for FIEP meetings could not be accommodated because of staffing issues.

In FY 2019, 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, 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 2019

As required by § 4H of Chapter 7 of the General Laws, we now focus on the GJU cases received in 2019 and their disposition. Tab 3 contains a report of the cases opened in 2019. The report shows that DALA's GJU opened 663 cases in 2019. The GJU opened 401 Retirement Cases and 55 Rate Setting Cases in 2019. Tab 3 identifies each case 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 5, 2020. 128 of the cases opened in 2019 have been closed.

Tab 4 is a report of the cases closed in 2019. The GJU closed 1,328 cases in 2019. This total includes the 415 Retirement Cases, 729 Rate Setting Cases and the other types of cases that were closed in 2019. This figure includes all cases disposed of by a magistrate's order and settlement. The closed cases are listed by the case name and file number beginning with case code. Also provided is the closed date in the column labeled "Closed dt."

IV. GJU HEARINGS HELD AND DECISIONS ISSUED

In 2019, the GJU conducted approximately 120 hearings, an increase from the 73 evidentiary hearings scheduled in 2018. The increase in the number of scheduled hearings is a return to the usual pattern after DALA completed its move in 2018. Because of the uncertainty surrounding DALA's move to Malden it scheduled fewer hearings in 2018.

The number of dispositive orders (final decisions and dismissals) issued in 2019 by the GJU magistrates was 331.

V. CONCLUSION

DALA's work provides a vital service to the Commonwealth and its citizens. 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 meeting the challenges addressed in this report.

Thank you for 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 1, 2020