

Appeals and Civil Actions

Regulations: 511 IAC 7-30-4

You or we may appeal an IHO's final decision by filing a petition for impartial review with the State Board of Special Education Appeals (the Board). The deadline for filing an appeal is 30 calendar days from the date the IHO's written decision was received. The petition must:

- be in writing;
- give the reasons for the objections to the IHO's decision, identifying those portions of the finding(s), conclusion(s) and order(s) with which you disagree;
- be mailed, delivered or faxed in time to meet the deadline, to IDOE's General Counsel at Room 229, State House, Indianapolis, IN 46204-2798; FAX: 317_232_0744; and
- be sent at the same time to us or our attorney (whose name and address will appear on the papers filed in the due process hearing if we are represented by an attorney).

In order to prepare your petition (or your reply to our petition) and legal briefs, you may wish to obtain a copy of the transcript of the due process hearing. One copy of the transcript is available, free of charge, from IDOE/DSE, Room 229, State House, Indianapolis, IN 46204-2798 or call 317/232-0570 or 1-877-851-4106.

The Board will look at the entire record of the hearing to ensure the procedures of the hearing were consistent with the requirements of special education due process procedures. We are each entitled to submit written arguments for the Board's consideration. In addition, the Board may permit oral arguments and, if so, conduct the argument at a time and place reasonably convenient to you, your child, and us. The Board will not overturn the IHO's decision merely because of a disagreement about the facts. The Board's decision must be mailed within 30 calendar days from the date the petition for review was first received by the IDOE. However, a longer period of time is allowed if the Board has granted your's or our request for an extension of time. You may choose a written decision or an electronic decision (on diskette) either of which is free of charge.

If you or we disagree with the final decision of the Board you or we may file a civil action in a state or a federal district court. An appeal to court must be filed within 30 days of the date the decision of the Board was received. The record of the administrative proceedings are to be forwarded to the Court, and the Court may hear additional evidence, upon your request or ours. A decision of a court may be appealed to a higher court.

You may be entitled to file a lawsuit under other state or federal laws. However, if you are seeking a remedy that is also available under the IDEA or Article 7 you must first go through a due process hearing and administrative appeal before going to court.

Attorneys' Fees

Regulations: 511 IAC 7-30-4(p), 7-30-6

If you are represented by legal counsel during a due process hearing (including an appeal and subsequent civil action), you are entitled to reimbursement for reasonable legal fees if you ultimately prevail. We will negotiate with you or your attorney regarding the amount of reimbursement and, if necessary, about who prevailed. If agreement is not reached through these negotiations, either you or we may proceed to state or federal court for resolution of the disagreement. Mediation is not available to resolve a disagreement on legal fees.

An action for attorneys' fees must be filed in a state or federal court within 30 calendar days after a final decision that is not appealed. Awards may be reduced or denied in the following circumstances:

- Services were performed after we made a timely written settlement offer to you, and the relief you finally obtained is not more favorable to you than our settlement offer (unless you were justified in rejecting our settlement offer).
- Your attorney cannot bill us for services relating to a meeting of the CCC, unless the meeting was convened as a result of an administrative proceeding or judicial action.
- You or your attorney unreasonably protracted the final resolution of the controversy.
- The fees unreasonably exceed the hourly rate prevailing in the community for similar services by attorneys of comparable skills, reputation, and experience.
- The time spent and legal services furnished were excessive, considering the nature of the action or proceeding.
- Your attorney or you did not provide us with appropriate information in the due process hearing request.