

G. ATTORNEY'S FEES (34 CFR §300.517)

1. General

In any action or proceeding brought under Part B of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs:

- a. To you if you are considered the prevailing party.
- b. To a prevailing State Educational Agency or LEA, to be paid by your attorney, if the attorney: (a) filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; or (b) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation;
- c. To a prevailing State Educational Agency or LEA, to be paid by you or your attorney, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to unnecessarily increase the cost of the action or proceeding.

2. Reasonable Fees

A court awards reasonable attorneys' fees consistent with the following:

- a. Fees must be based on rates prevailing in the community in which the action or hearing arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
- b. Fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of the IDEA for services performed after a written offer of settlement to you if: 1) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing or State-level review, at any time more than 10 calendar days before the proceeding begins;
2) The offer is not accepted within 10 calendar days; **and**
3) The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.
4) Notwithstanding these restrictions, an award of attorneys' fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer.
- c. Fees may NOT be awarded relating to any meeting of the IEP Team unless the meeting is held as a result of an administrative proceeding or court action. A resolution meeting, as described under the heading **Resolution meeting**, is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.
- d. Fees also may not be awarded for a mediation as described under the heading Mediation.

3. Reduction in Fees

The court reduces, as appropriate, the amount of the attorneys' fees awarded under Part B of the IDEA if the court finds that:

- a. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
- b. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
- c. The time spent and legal services furnished were excessive considered the nature of the action or proceeding; **or**
- d. The attorney representing you did not provide to the LEA the appropriate information in the due process request notice as described under the heading *Due Process Complaint*.

However, the court may not reduce fees if the court finds that the State or LEA unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of Part B of the IDEA.