

## YES DUE PROCESS PROTOCOL

### AUTHORITATIVE GUIDANCE FOR DUE PROCESS REQUIREMENTS OF STATE FAIR HEARING SYSTEM<sup>1</sup> WITHIN THE CONTEXT OF YES

#### SOURCES OF AUTHORITY & EXPLANATION OF DUE PROCESS PROTOCOL:

*Goldberg v. Kelly*, 397 U.S. 254 (1970) and Medicaid Federal Regulations (42 CFR section 431 Subpart E and 42 CFR section 438, applying to PAHP's and MCOs) provide for mandatory due process procedural protections and rights that may not be explicitly stated in the Department's Administrative Rules related to contested case hearings (IDAPA 16.05.03). In order to ensure that class members are notified of all of their due process rights and are afforded these procedural safeguards and rights in state administrative appeals and fair hearings, the parties have developed and agreed upon this authoritative Due Process Protocol that outlines the due process procedural requirements for state fair hearings. In some instances, the agreed upon language in this Protocol may include additional safeguards from what is stated in Federal Regulations and State Rules, because the authoritative document also includes provisions ordered by the Court in the *Jeff D.* Settlement Agreement and Implementation Plans and standards of practice. In all instances, however, the Due Process Protocol is intended to be consistent with (or more expansive than) the Federal Regulations that govern Medicaid and Managed Care Organizations. Consistent with the 2022 Implementation Assurance Plan, this Due Process Protocol will be controlling and will be reviewed and monitored by counsel annually throughout the implementation period for updates.

In developing the Authoritative Due Process Protocol, counsel considered the due process standards articulated in federal and state law, the Medicaid Act and Regulations, United States Supreme Court and Idaho Supreme Court decisions, the Idaho Administrative Procedures Act and IDAPA rules, as well as the Settlement Agreement in this matter.

- Federal Law
  - Section 1902(a)(3) of the Social Security Act: A State plan must provide an opportunity for a fair hearing to any person whose claim for assistance is denied or not acted upon promptly. 42 U.S.C. § 1396a(a)(3).
  - 42 CFR § 431, Subpart E – fair hearings for Applicants and Beneficiaries
  - 42 CFR §§ 438, Subpart F – grievance and appeal system for MCOs

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<sup>1</sup> The Idaho Behavioral Health Plan (IBHP) currently provides outpatient behavioral health coverage for Medicaid-eligible children. IDAPA 16.03.09.011.02. The IBHP is a prepaid ambulatory health plan (PAHP), as defined in 42 CFR 438.2. IDAPA 16.03.09.012.07. And thus is subject to the due process requirements for MCOs and PHAPs described in 42 CFR 438, Part F. The state of Idaho is currently involved in procuring a more expansive Idaho Behavioral Health Plan that will include Medicaid and Non-Medicaid services (procurement is ongoing as of the date this document was approved, 3/31/2022). Although this protocol addresses state fair hearings, references to the "Grievance and Appeal System" in 42 CFR 438, Part F are included where appropriate, as a prerequisite to a state fair hearing. See IDAPA 16.03.09.711.

- State Law
  - Children’s Mental Health Services Act, Idaho Code 16-2406 *et seq.*
  - State Public Assistance and Welfare, Idaho Code 56-201 *et. seq.*; 56-254(2)(i).
  - Idaho Administrative Procedure Act – Idaho Code 67-5201 *et seq.*
  - Eligibility for Health Care Assistance for Families and Children - IDAPA 16.03.01
    - Youth Empowerment Services (YES) Program Children – section .540
  - Eligibility for Aid to the Aged, Blind, and Disabled (AABD) – IDAPA 16.03.05.
  - Medicaid Basic Plan Benefits – IDAPA 16.03.09
    - Behavioral Health Services - sections .700 - .719
    - EPSDT Services – sections .880 - .889
  - Medicaid Enhanced Plan Benefits – IDAPA 16.03.10
    - YES Home and Community-Based Services (HCBS) State Plan Option – sections .635 - .638
  - Children’s Mental Health Services -- IDAPA 16.07.37
  - Rules Governing Contested Case Proceedings and Declaratory Rulings -- IDAPA 16.05.03
    - Youth Empowerment Services – sections .750 - .751
    - Definition of YES Participant – section 010.14
  
- Particularly relevant appellate case law
  - *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed. 2d 287 (1970).
  - *K.W. ex rel. D.W. v. Armstrong*, 789 F.3d 962 (9th Cir. 2015).
  - *Tappen v. State Dept. of H&W*, 98 Idaho 576 (1977).
  
- [Jeff D. Settlement Agreement](#),  
 filed June 12, 2015 (approved by court order June 18, 2015)
  - Paragraphs 44-47
  
- [Jeff D. Implementation Plan](#),  
 filed April 29, 2016 (approved by court order May 17, 2016)
  - Objective 5
  
- [Jeff D. Implementation Assurance Plan](#),  
 filed January 11, 2022 (approved by court order January 25, 2022)
  - Objective E

Counsel has created a chart for each of the criteria listed below.

Each chart contains the following categories:

- State Law: This column contains quotations of and citations to applicable state law including, where applicable, Idaho Code, IDAPA, and any relevant state case law.
- Federal Law: This column contains quotations of and citations to applicable federal law including, where applicable, US Code, Federal Regulations, and any relevant federal case law.
- Settlement Agreement and Implementation Plans: This box contains quotations of and citations to applicable portions of the 2015 *Jeff D.* Settlement Agreement, which is controlling, and references to the 2016 Implementation Plan and 2022 Implementation Assurance Plan, where those documents provide additional guidance.
- Agreed Upon Standard: Because this authoritative document includes provisions ordered by the Court in the *Jeff D.* Settlement Agreement and Implementation Plans, because the state rules and federal regulations have to be read in concert and are not always perfectly aligned, and because this document incorporates standards of practice, the language in the “agreed upon standard” reflects which of the factors in the other sources (State Law, Federal Law, Settlement Agreement & Implementation Plans boxes) summarizes the legal standards that counsel for the plaintiffs and defendants in the *Jeff D.* litigation agree should be applied.

SPECIFIC CRITERIA ADDRESSED BELOW:

*use links for easy access to each item (ctrl+click)*

1. <a href="#">Contents of notice of the <i>availability</i> of the right to a fair hearing</a>
2. <a href="#">Timing of notice of the <i>availability</i> of the right to a fair hearing</a>
3. <a href="#">When an individual can request a fair hearing</a>
4. <a href="#">Time for providing notice of action, notice of denial (or for the IBHP, an ABD)</a>
5. <a href="#">Contents of notice of action, notice of denial (or for an MCO, an ABD)</a>
6. <a href="#">Time for appeal</a>
7. <a href="#">Where appealed</a>
8. <a href="#">Request for hearing</a>
9. <a href="#">Denial or Dismissal of Request for Hearing</a>
10. <a href="#">Right to Expedited Hearing</a>
11. <a href="#">Continuation and Reinstatement of Benefits while Appeal is Pending</a>
12. <a href="#">Notice of the Fair Hearing</a>
13. <a href="#">Hearing Officer</a>
14. <a href="#">Procedural Rights at the Fair Hearing</a>
15. <a href="#">Information available to Hearings Officer</a>
16. <a href="#">Matters to be Considered at the Fair Hearing</a>
17. <a href="#">Opportunity for External Medical Review</a>
18. <a href="#">Decision and Order</a>

1. CRITERIA	Contents of notice of the <i>availability</i> of the right to a fair hearing.	
AUTHORITATIVE SOURCES	STATE LAW	FEDERAL LAW
	<p>The right to a fair hearing <i>IDAPA 16.03.01.100; 16.03.01.620; IDAPA 16.07.37.110; IDAPA 16.05.03.100</i></p> <p>The right to request an expedited fair hearing <i>IDAPA 16.05.03.204.03; 16.05.03.302; 16.05.03.751.04</i></p> <p>Method for obtaining a hearing <i>IDAPA 16.03.01.100</i></p> <p>Right to be represented <i>IDAPA 16.05.03.100; see also IDAPA 16.05.03.123</i> (Any party in a contested case proceeding may be represented by legal counsel, at the party's own expense. An individual in an appeal involving benefits may also be represented by a non-attorney).</p>	<p>Notice of the right to a fair hearing must be provided to applicants and beneficiaries in plain language and accessible to individuals who are limited English proficient and to individuals with disabilities. <i>42 CFR 431.206(e); 42 CFR 905(b)</i> (at a minimum, through providing taglines in non-English languages indicating the availability of language services). Notice may be provided electronically.</p> <p>Written notice must include:</p> <ul style="list-style-type: none"> <li>- The right to a fair hearing</li> <li>- The right to request an expedited fair hearing</li> <li>- The method to request a fair hearing</li> <li>- That the individual may represent himself, use legal counsel, a relative, a friend or other spokesman</li> <li>- The time the agency has to take final action under <i>42 CFR 431.244(f)</i> (ninety (90) days from date of appeal or request for fair hearing). <i>42 CFR 431.206(b)(1)-(4)</i></li> </ul>
	<p><b>SETTLEMENT AGREEMENT &amp; IMPLEMENTATION PLANS:</b> Defendants and their contractors must inform class members through informational materials and on websites about circumstances in which potential class members have a right to receive a notice of action and request a fair hearing. <i>Settlement Agreement, ¶ 46; 2016 Implementation Plan, 5.A.4.</i></p>	
AGREED UPON STANDARD	<p>All the notices provided to <i>Jeff D</i> class members must include all procedural safeguards and rights required by the State Rules and Federal Regulations and be in an accessible format. The notices and informational materials, including the YES Practice Manual will describe the right to receive a notice of action and request a fair hearing, the method for appealing, the right to be represented on appeal, and the time period for filing an appeal or requesting a fair hearing as required by State Rules and Federal Regulations. Informational materials and the YES website must also inform class members of the circumstances in which they have a right to receive a notice of action and to request a fair hearing. The Department will require state contractors to comply with this standard and this Due Process Protocol. The Due Process work group will ensure that all notices comply with this Due Process Protocol.</p>	

2. CRITERIA	Timing of notice of the <i>availability</i> of the right to a fair hearing	
AUTHORITATIVE SOURCES	STATE LAW	FEDERAL LAW
	<p>At time apply for Medicaid <i>IDAPA 16.03.01.100</i></p> <p>At time of denial of eligibility, benefits or services, or changes in eligibility <i>IDAPA 16.03.01.620</i> (changes in eligibility)</p> <p><i>IDAPA 16.07.37.110</i> (thirty (30) calendar days from receipt of signed application for CMH services to make determination; five (5) working days from date of determination to provide notice)</p>	<p>The state agency must issue and publicize the hearing procedures. <i>42 CFR 431.206(a)</i></p> <p>The agency must inform applicants in writing at time of application for Medicaid (<i>42 CFR 431.206(c)(1)</i>) and after a denial of eligibility, benefits or services or whenever a hearing is required in accordance with <i>42 CFR 431.206(c)(2)</i>.</p> <p>The IBHP must comply with Notice Requirements of <i>42 CFR 438.404</i> for Adverse Benefit Determinations. An IBHP enrollee may request a State fair hearing after receiving notice under <i>42 CFR 438.408</i> that the adverse benefit determination is upheld.</p>
	<p><b>SETTLEMENT AGREEMENT &amp; IMPLEMENTATION PLAN</b></p> <p>Defendants and their contractors must inform class members through informational materials and on websites about circumstances in which potential class members have a right to receive a notice of action and request a fair hearing. <i>Settlement Agreement, ¶ 46; 2016 Implementation Plan, 5.A.4.</i> Defendants shall provide these informational materials with the decision and on their respective websites. <i>Settlement Agreement ¶ 46.</i> The Implementation Assurance Plan requires the Due Process work group to review informational materials and notices to ensure compliance with this Protocol. <i>Implementation Assurance Plan E.2, 4.</i></p>	
<p><b>AGREED UPON STANDARD</b></p>	<p>Informational materials must be provided on the YES website. In addition, links to the informational materials will be included with notices of action/denial/adverse benefit decisions (along with all the required notice provisions addressed in Criteria 5). The notices and informational materials, including the YES Practice Manual will describe the right to receive a notice of action and request a fair hearing, the method for appealing, the right to be represented on appeal, and the time period for filing an appeal or requesting a fair hearing as required by State Rules and Federal Regulations and will require state contractors comply with these requirements.</p>	

3. CRITERIA	When an individual can request a fair hearing	
AUTHORITATIVE SOURC	STATE LAW	FEDERAL LAW
	<p>Eligibility decisions</p> <ul style="list-style-type: none"> <li>- IDAPA 16.03.01.620 (changes in eligibility, Health Care Assistance for Families and Children)</li> <li>- IDAPA 16.07.37.110 (eligibility for children’s mental health services)</li> <li>- IDAPA 16.03.09.880-882 (eligibility for EPSDT Services)</li> </ul>	<p>The State agency must grant an opportunity for a hearing to any individual who requests it because he or she believes the agency has taken an <i>action</i> (defined below) erroneously, denied his or her claim for eligibility or for covered benefits or services, or issued a determination of an individual’s liability, or has not acted upon the claim with reasonable promptness.</p> <p>42 CFR 431.220</p> <p>A State Agency <i>Action</i> includes:</p> <ul style="list-style-type: none"> <li>- termination, suspension of, or reduction in covered benefits or services;</li> <li>- termination, suspensions of, or reductions in Medicaid eligibility or an increase in beneficiary liability;</li> <li>- determination of greater spending requirement to establish income eligibility;</li> <li>- subject to an increase in premiums or cost-sharing charges.</li> </ul> <p>42 CFR 431.201</p> <p>An individual may appeal to the IBHP when the IBHP makes an <i>Adverse Benefit Determination (ABD)</i> which includes:</p> <ul style="list-style-type: none"> <li>- Denial or limited authorization of requested service (level of service, medical necessity, appropriateness, setting or effectiveness of covered benefit).</li> <li>- Reduction/suspension of previously authorized service.</li> <li>- Denial of payment for service.</li> <li>- Failure to provide timely service.</li> <li>- MCO failure to timely respond to grievance or appeal.</li> <li>- Denial of a rural member’s request to obtain services outside of the network</li> <li>- Denial of request to dispute financial liability.</li> </ul> <p>42 CFR 438.400(b)</p>

	<p><b>SETTLEMENT AGREEMENT &amp; IMPLEMENTATION PLANS</b></p> <p>The Settlement Agreement states that defendants shall provide written notice of action to class members in the circumstances listed below, when defendants take the action, which implies that each of the circumstances listed below would give rise to the right to a fair hearing:</p> <ul style="list-style-type: none"> <li>- determination that the individual is not a Class Member<sup>2</sup> following an assessment;</li> <li>- denial or limitation of requested service(s);</li> <li>- reduction, suspension, or termination of a currently authorized service;</li> <li>- denial, in whole or in part, of payment for a service.</li> </ul> <p><i>Settlement Agreement, ¶ 44.</i> The Implementation Plan adds that an agency action should also include:</p> <ul style="list-style-type: none"> <li>- substitution of an alternative service for a prescribed service; and</li> <li>- termination, suspension, or delay of services</li> </ul> <p><i>Implementation Plan 5.A.3.</i></p>
<p><b>AGREED UPON STANDARD</b></p>	<p>All actions as required by the Federal Regulations as stated in the Federal Law column are appealable. An individual may also appeal a determination, after assessment, that they do not qualify as a <i>Jeff D</i> class member or that the state failed to provide a CANS assessment. Class members may also assert, on appeal, that the state failed to provide a requested service to which the member is entitled under the Settlement Agreement, Services and Supports Crosswalk, or Principles of Care and the Practice Model. The Department will require contractors to comply with these requirements. Adverse Benefit Decisions are appealable through the IBHP as required by Federal Regulations. If the IBHP upholds an ABD, the individual may request a state fair hearing.</p>

<sup>2</sup> Class Members are Idaho residents with a Serious Emotional Disturbance who are eligible under this Agreement for services and supports provided or arranged by Defendants and:

- a. Are under the age of eighteen (18);
- b. Have a Diagnostic and Statistical Manual of Mental Disorders (DSM) diagnosable mental health condition or would have a diagnosable mental health condition if evaluated by a practitioner of the healing arts operating within the scope of his/her practice as defined by Idaho state law; and
- c. Have a substantial functional impairment that is measured by and documented through the use of a standardized instrument conducted or supervised by a qualified clinician or would have been measured and documented had an assessment been conducted.

*Settlement Agreement ¶ 2.* Note that the definition of Youth Empowerment Services (YES) Program Participant in *IDAPA 16.05.03.010.14* includes the same criteria.

4. CRITERIA	Time for providing notice of action, notice of denial (or for the IBHP, an ABD)	
AUTHORITATIVE SOURCES	STATE LAW	FEDERAL LAW
	<p>The Department must notify the participant at least ten (10) calendar days before the effective date of when a reported change results in Health Care Assistance closure. The effective date must allow for a five (5) day mailing period for any notice. <i>IDAPA 16.03.01.622</i></p> <p>IDAPA 16.07.37.110 CMH: within thirty (30) calendar days of application and within five (5) working days of the determination</p> <p><i>Eligibility only</i></p>	<p>For a state agency action, notice must be provided 10 days prior to termination, suspension, or reduction of previously authorized service. <i>42 CFR 431.211</i></p> <p>The ten-day-prior notice requirement applies except in certain conditions, including a change in level of care, instances where the action will occur in less than ten (10) days, the beneficiary indicates he no longer wants services, receives services from another Medicaid agency, and cases of probable fraud. <i>42 CFR 431.213 &amp; .214</i></p> <p>FOR the IBHP:</p> <ul style="list-style-type: none"> <li>- The general 10-day-prior notice provision, and its exceptions, also apply to the IBHP. <i>42 CFR 38.404(c)(1)</i>. For an MCO, denial of payment = time of action that led to denial. <i>42 CFR 438.404(c)(2)</i>. Standard authorization decisions = fourteen (14) days following request for service (fourteen (14) day extension allowed but requires additional notice) <i>42 CFR 438.210(d)(1)</i></li> <li>- Expedited authorization decisions = expeditiously up to seventy-two (72) hours after request (fourteen (14) day extension allowed). <i>42 CFR 438.210(d)(2)</i></li> </ul>



	<p><b>SETTLEMENT AGREEMENT &amp; IMPLEMENTATION PLANS</b></p> <p>Settlement Agreement states that Defendants shall provide written notice of action to a Class Member at the following times:</p> <ul style="list-style-type: none"> <li>- When Defendants determine that an individual is not a Class Member, following an assessment; or</li> <li>- When Defendants deny or limit a requested service; or</li> <li>- When Defendants reduce, suspend, or terminate a currently authorized service; or</li> <li>- When Defendants deny, in whole or in part, payment for a service.</li> </ul> <p><i>Settlement Agreement ¶44.</i> The Implementation Plan adds that an agency action should also include:</p> <ul style="list-style-type: none"> <li>- substitution of an alternative service for a prescribed service; and</li> <li>- termination, suspension, or delay of services</li> </ul> <p><i>Implementation Plan 5.A.3.</i> The Implementation Assurance Plan requires compliance with federal and state law. <i>Implementation Assurance Plan E.1.</i></p>
<p>AGREED UPON STANDARD</p>	<p>The Department will provide notice as required by State Rules and Federal Regulations, in the instances specified the Settlement Agreement and the Implementation Plan, and will require contractors to comply with these requirements.</p>

5. CRITERIA	Contents of notice of action, notice of denial (or for an MCO, an ABD)	
AUTHORITATIVE SOURCES	STATE LAW	FEDERAL LAW
	<p>Contested Case Proceedings Rules: <i>IDAPA 16.05.03.100</i>: When a Department decision is appealable, the Department will advise the individual in writing of the right and method to appeal and the right to be represented.</p> <p>Medicaid/Health Care Assistance <i>IDAPA 16.03.01.620</i></p> <ul style="list-style-type: none"> <li>- Effective date of change</li> <li>- Reason for the action</li> <li>- Rule that supports action</li> <li>- Appeal rights</li> </ul> <p>CMH Rules: <i>IDAPA 16.07.37.110.01</i></p> <ul style="list-style-type: none"> <li>- Name</li> <li>- Statement of decision</li> <li>- Concise statement of reason for decision Process for pursuing an administrative appeal</li> </ul>	<p>The Contents of a notice of an action must include:</p> <ul style="list-style-type: none"> <li>- A statement of what action the agency intends to take and effective date.</li> <li>- A clear statement of the specific reasons supporting the intended action.</li> <li>- Specific regulations that support the action.</li> <li>- An explanation of the right to request a fair hearing that complies with the requirements listed below;</li> <li>- An explanation of the circumstances of the right to continuation of Medicaid if a fair hearing is requested.</li> </ul> <p><i>42 CFR 431.210(a)-(e)</i>. The notice of the right to a fair hearing (referenced above) must be in plain language and accessible to individuals who are limited English proficient and to individuals with disabilities.</p> <p><i>42 CFR 431.206(e); 42 CFR 905(b)</i> (at a minimum, through providing taglines in non-English languages indicating the availability of language services). The notice must include:</p> <ul style="list-style-type: none"> <li>- The right to a fair hearing</li> <li>- The right to request an expedited fair hearing</li> <li>- The method to request a fair hearing</li> <li>- That the individual may represent himself, use legal counsel, a relative, a friend or other spokesman</li> <li>- The time the agency has to take final action under <i>42 CFR 431.244(f)</i> (ninety (90) days from date of appeal or request for fair hearing).</li> </ul>

		<p>In addition to the above, when the IBHP issues an ABD, it must include:</p> <ul style="list-style-type: none"> <li>- Right to access all documents, records, info relevant to ABD, including medical necessity criteria, and any processes, strategies, or evidentiary standards used in setting coverage limits</li> <li>- Right to request appeal (both through the IBHP and State FHU)</li> <li>- Procedures for appeal</li> <li>- Procedures for expedited appeal</li> <li>- Right to have benefits continue pending resolution of the appeal, how to request that benefits be continued, and the circumstances, consistent with state policy, under which the enrollee may be required to pay the costs of these services.<sup>42</sup> <i>CFR 438.404(b)</i></li> </ul>
	<p><b>SETTLEMENT AGREEMENT &amp; IMPLEMENTATION PLANS</b></p>	
	<ul style="list-style-type: none"> <li>- The action Defendants have taken/intend to take &amp; legal authority for the action;</li> <li>- The rationale for the action including the written documentation consulted and relied upon which supports the action;</li> <li>- The right to file a request for a fair hearing;</li> <li>- The specific timeline and procedure for applying for a fair hearing;</li> <li>- A summary of the fair hearing procedures and the citation to the rules governing fair hearing and the web address link to those procedures;</li> <li>- The right to have assistance with an appeal and contact information for family advocacy organizations;</li> <li>- When an expedited resolution is available and how to request an expedited resolution;</li> <li>- The right to have benefits continue, pending resolution of the appeal, how to request benefits continue, and the circumstances under which the Class Member's family may be required to pay for the continued services; and</li> <li>- The option to engage in the YES complaint process, and a description of the complaint process, including how to make a complaint.</li> </ul> <p><i>Settlement Agreement, ¶ 45.</i></p>	
<p>AGREED UPON STANDARD</p>	<p>The Department will provide notice as required by State Rules, Federal Regulations, and the <i>Jeff D</i> Settlement Agreement and Implementation Plans, and will require state contractors to comply with these requirements. Thus, the notice must include a concise statement of the specific reasons supporting the intended action, the rules or regulations that support the action, and a notice that the individual can represent himself, use legal counsel, a relative, a friend or other spokesman. The notice will provide contact information for available resources, including the Department and family advocacy organizations, to assist in the appeal.</p>	

6. CRITERIA	Time for appeal	
AUTHORITATIVE SOURCES	STATE LAW	FEDERAL LAW
	<p>Unless otherwise provided by statute or these rules, individuals who are aggrieved by a Department decision have twenty-eight (28) days from the date the decision is mailed to file an appeal. An appeal is considered filed when it is received by the Department or postmarked within the time limits provided in the decision notice, or in these rules. <i>IDAPA 16.05.03.101.02</i></p> <p>A determination that an individual is not eligible for Medicaid issued by the Department's Division of Welfare, is appealable within thirty (30) days from the date the decision is mailed. <i>IDAPA 16.05.03.201</i></p>	<p>FOR DEPARTMENT DECISIONS: The state agency must have procedures to allow a reasonable time, not exceeding ninety (90) days from date of notice to request a hearing. <i>42 CFR 431.221(a)(1)(d)</i></p> <p>FOR IBHP DECISIONS: The member has sixty (60) days from the date of an IBHP ABD to appeal to the IBHP. <i>42 CFR 438.402(c)(2); 438.408(f)</i></p> <p>The IBHP must generally resolve the appeal within thirty (30) days. <i>42 CFR 438.408(b)(2)</i>.</p> <p>Then, only if the individual receives notice that the IBHP is upholding the ABD (or if the MCO failed to comply with timelines), the federal regulations allow ninety to one hundred twenty (90 – 120) calendar days to request a State fair hearing. <i>42 CFR 438.408(f)</i></p>
	<p>SETTLEMENT AGREEMENT &amp; IMPLEMENTATION PLANS</p> <p>Settlement Agreement is silent on timing; Implementation Plan and Implementation Assurance Plan require compliance with federal and state law. <i>Implementation Plan 5.A.3; Implementation Assurance Plan E.1.</i></p>	
AGREED UPON STANDARD	<p>Department and the MCO must have procedures to assist in submission of requests for a fair hearing via a website, telephone, and other electronic methods.</p> <ul style="list-style-type: none"> <li>- An appellant has twenty-eight (28) days from the date a Department decision (for example an EPSDT determination) is mailed to request a fair hearing.</li> <li>- An appellant has sixty (60) days from the date of an ABD by the IBHP to appeal the decision to the IBHP. If the IBHP upholds the ABD, the appellant has ninety to one hundred twenty (90 – 120) days to request a state fair hearing.</li> </ul>	

7. CRITERIA	Where appealed	
AUTHORITATIVE SOURCES	STATE LAW	FEDERAL LAW
	<p>Department decisions are appealed to Fair Hearing Unit, <i>IDAPA 16.05.03.302.01</i>, unless resolved without a hearing per Criteria 9 below.</p> <p>For services delivered by MCO/MCE – first utilize the complaint, grievance, appeal process provided by MCO <i>IDAPA 16.05.03.302.02; IDAPA 16.03.09.711</i></p>	<p>First level of appeal to MCO, then to state FHU <i>42 CFR 438.402 through 438.408</i></p>
	<p><b>SETTLEMENT AGREEMENT &amp; IMPLEMENTATION PLANS</b></p> <p>Settlement Agreement does not specifically address. Implementation plan requires an arrangement with the Idaho Attorney General’s Office or private hearing officers as applicable to process administrative hearing requests related to YES services and supports. <i>Implementation Plan, 5.A.3.f.</i></p>	
AGREED UPON STANDARD	<p>Decisions made by an MCO (e.g., the IBHP) must first be appealed to the MCO. Department decisions and upheld MCO ABDs are appealed to the Department and fair hearings are held within the Fair Hearings Unit of the Office of the Attorney General.</p>	

8. CRITERIA	Request for hearing	
AUTHORITATIVE SOURCES	<p><b>STATE LAW</b></p> <p>Appeals of Department decisions must be filed in writing and state the appellant's name, address, and phone number, and the remedy requested, unless otherwise provided in these rules. Appeals should be accompanied by a copy of the decision notice that is the subject of the appeal and state the reason for disagreement with the Department's action. * * * An appeal is filed when it is received by the Department or postmarked within the time limits provided in the decision notice, or in these rules. <i>IDAPA 16.05.03.101.02</i></p> <p>For Medicaid eligibility decisions made by the Division of Welfare (for YES class members this would include a decision regarding Medicaid eligibility under <i>IDAPA 16.03.01.100.02</i>) see timelines set out in <i>IDAPA 16.05.03.201</i> (thirty (30) days from date the decision was mailed and methods for filing appeal at <i>IDAPA 16.05.03.200.02</i> (via website, telephone, mail, in person and other electronic means).</p>	<p><b>FEDERAL LAW</b></p> <p>The agency must have procedures to request for a fair hearing by website, telephone, mail, in person, or through other commonly available electronic means. <i>42 CFR 431.221(a)(1); 42 CFR 435.907(a)</i></p> <p>The agency may not limit or interfere with the individual's ability to request a hearing and may assist the applicant or beneficiary in submitting and processing his request <i>42 CFR 431.221(b), (c)</i></p>
	<b>SETTLEMENT AGREEMENT &amp; IMPLEMENTATION PLANS</b>	
	Settlement Agreement is silent; Implementation Plan and Implementation Assurance Plan require compliance with federal and state law. <i>Implementation Plan 5.A.3; Implementation Assurance Plan E.1.</i>	
AGREED UPON STANDARD	<p>Appeals of Medicaid decisions (including eligibility) may be requested by telephone, internet website, mail, in person, and other commonly available electronic means, such as fax or email.</p> <p>Rules do not require submission of supporting documentation when an appeal is filed.</p> <p>A copy of notice of denial/ABD is not necessary to preserve the appeal.</p>	

9. CRITERIA		Denial or Dismissal of Request for Hearing	
AUTHORITATIVE SOURCES	STATE LAW	FEDERAL LAW	
	<p>Resolved without a hearing by stipulation, settlement, motion to dismiss, summary judgment, default, withdrawal, or for lack of jurisdiction. <i>IDAPA 16.05.03.105</i>  Medicaid sometimes attempts to settle appeals prior to sending them to the Fair Hearings Unit for hearing; this is usually referred to as an “informal review” and can lead to dismissal of the appeal with the agreement of the participant appellant.</p> <p>Dismissal for failure to timely file appeal. <i>IDAPA 16.05.03.105</i></p> <p>Default for failure to appear at a scheduled hearing. <i>IDAPA 16.05.03.106</i></p> <ul style="list-style-type: none"> <li>- Except that, for Medicaid or Division of Welfare cases (which would include Medicaid eligibility determinations for YES class members), a prehearing conference is optional, and a default order cannot be entered for failure to appear. <i>IDAPA 16.05.03.103.02</i></li> <li>-</li> </ul> <p>The Hearing Officer must set aside the default if, within fourteen (14) days of the date of mailing, the party in default submits a written explanation for not appearing, which the hearing officer finds substantial and reasonable. <i>IDAPA 16.05.03.106</i></p>	<p>The applicant or beneficiary withdraws the request; or</p> <p>The applicant fails to appear at a scheduled hearing without good cause.  <i>42 CFR 431.223(a) &amp; (b)</i></p>	
	SETTLEMENT AGREEMENT & IMPLEMENTATION PLANS	Silent on this issue.	
AGREED UPON STANDARD	<p>A fair hearing will not occur if the Department and the appellant stipulate or settle the dispute, or if the appellant withdraws the appeal. The Hearings Officer may also dismiss an appeal if it finds there is no issue of material fact after a motion for summary judgment, if the FHU lacks jurisdiction. If either the appellant or the Department fails to appear at an evidentiary hearing the Hearings Officer will find the non-appearing party in default. The defaulted party will need to contact the Fair Hearings Unit to explain why they missed the hearing. The concept of “good” or “substantial or reasonable” cause should be explained in a way that lay persons understand in order to meet the requirement.</p>		

10. CRITERIA	Right to Expedited Hearing	
AUTHORITATIVE SOURCES	STATE LAW	FEDERAL LAW
	<p>Medicaid recipients, <i>IDAPA 16.05.03.302.03</i>, and non-Medicaid eligible YES individuals, <i>IDAPA 16.05.03.751.04</i> can request expedited fair hearing in accordance with the procedures in <i>42 CFR 431 and 438</i>.</p>	<p>The Department must establish an expedited fair hearing process for appeals if the standard appeal period for a hearing could “jeopardize the individual’s life, health or ability to attain, maintain, or regain maximum function.” <i>42 CFR 431.224(a)(1)</i></p> <p>The Department must take final administrative action within ninety (90) days from the receipt of the request for appeal. <i>42 CFR 431.224(a)(2); 42 CFR 431.244(f)(1)</i></p> <p>The Department must notify the individual, orally or through electronic means, if the expedited request is granted or denied as soon as possible. An oral notification must be followed by written notice which may be through electronic means. <i>42 CFR 431.224(b)</i></p> <p>In the MCO context the risk of jeopardy must be “serious”). <i>42 CFR 438.410(a)</i></p>
AGREED UPON STANDARD	<p><b>SETTLEMENT AGREEMENT &amp; IMPLEMENTATION PLANS</b> Written notice must include information about when an expedited resolution is available and how to request an expedited resolution. <i>Settlement Agreement ¶ 45</i>. Implementation Plan and Implementation Assurance Plan require compliance with state and federal law and the Settlement Agreement. <i>Implementation Plan 5.A.3.b.; Implementation Assurance Plan, E.1.b.</i></p> <p>The Department will comply with the requirements for expedited appeals in the federal Regulations under the Federal Law column.</p>	



11. CRITERIA	Continuation and Reinstatement of Benefits while Appeal is Pending	
AUTHORITATIVE SOURCES	STATE LAW	FEDERAL LAW
	<p><i>IDAPA 16.03.01.100.03. Right to Request Reinstatement of Benefits.</i> Any participant has the right to request reinstatement of benefits until a hearing decision is made if the request for the reinstatement is made before the effective date of the action taken on the notice of decision.</p> <p>Reinstatement pending a hearing decision is not provided in the case of an application denied because an individual did not provide citizenship or identity documentation during a reasonable opportunity period allowed by the Department.</p>	<p>If an individual requests a fair hearing before the date of action, the agency may not terminate or reduce services until a decision is rendered unless the sole issue is Federal or State law or policy or if the agency informs the individual in writing that services are to be terminated or reduced pending the hearing decision.</p> <p><i>42 CFR 431.230(a)(1)(2)</i></p> <p>The Department may reinstate benefits if a request for hearing is made not more than ten (10) days after the date of action.</p> <p><i>42 CFR 431.231(a)</i></p> <p>The reinstatement will continue until a decision is rendered unless the sole issue is one of Federal or State law or policy.</p> <p><i>42 CFR 431.231(b)</i></p> <p>The Department must reinstate and continue services until a decision is made after a hearing if:</p> <p>(1) Action is taken without advanced notice under <i>42 CFR 431.211 or 214.</i></p> <p>(2) A request for a hearing is made within ten (10) days from the date the individual receives the notice of action.</p> <p><i>42 CFR 431.231(c)</i></p> <p>If the mailed notice of action is returned and unforwardable, any discontinued service must be reinstated if the whereabouts become known during the time of eligibility for services.</p> <p><i>42 CFR 431.231(d)</i></p>

		<p>A similar process is allowed if an MCO is providing the service so long as the enrollee files a timely request for an appeal; the appeal involves the termination, suspension, or reduction of previously authorized services that were ordered by an authorized provider; the period covered by the original authorization has not expired, and the enrollee timely files for continuation of benefits.  <i>42 CFR 438.420(b)</i></p> <p>If the resolution of the appeal is adverse to the individual, continued benefits may be recovered by the agency or MCO.  <i>42 CFR 431.230(b); 42 CFR 438.420(d)</i></p>
	<p><b>SETTLEMENT AGREEMENT &amp; IMPLEMENTATION PLANS</b></p>	
	<p>Written notice must include an explanation of the right to have benefits continue, pending resolution of the appeal, how to request benefits continue, and the circumstances under which the Class Member's family may be required to pay for the continued services.</p> <p><i>Settlement Agreement ¶45(h). Implementation Plan and Implementation Assurance Plan require compliance with state and federal law and the Settlement Agreement. Implementation Plan 5.A.3.b.; Implementation Assurance Plan, E.1.b.</i></p>	
<p>AGREED UPON STANDARD</p>	<p>All <i>Jeff D</i> class members have the right to request continuation of benefits during the pendency of an appeal. All <i>Jeff D</i> class members have a right to request reinstatement of benefits until a hearing decision is made if the request for the reinstatement is made before the effective date of the action taken or if the mail notice was returned as provided under Federal Law. If the resolution of the appeal is adverse to the class member, the cost of continued benefits may be recovered by the agency or MCO.</p>	

12. CRITERIA	Notice of the Fair Hearing	
AUTHORITATIVE SOURCES	<p><b>STATE LAW</b></p> <p>Notice of hearing must be provided at least ten (10) days in advance of hearing. Notice must provide:</p> <ul style="list-style-type: none"> <li>- Time, place and nature of the hearing</li> <li>- Statement of legal authority for the hearing</li> <li>- Particular sections of any applicable statutes or rules involved</li> <li>- Issues involved</li> <li>- The right to be represented by an attorney or non-attorney.</li> <li>- How and when documents for the hearing will be provided to all parties</li> </ul> <p><i>IDAPA 16.05.03.102; 16.05.03.123</i></p> <p>The notice also includes the right to request a pre-hearing conference.</p>	<p><b>FEDERAL LAW</b></p> <p>All hearings shall be conducted:</p> <ul style="list-style-type: none"> <li>- At a reasonable time, date, and place;</li> <li>- After adequate notice of the hearing;</li> </ul> <p><i>42 CFR 431.240(a)(1) &amp; (2)</i></p>
	<p><b>SETTLEMENT AGREEMENT &amp; IMPLEMENTATION PLANS</b></p> <p>Settlement Agreement does not specifically address the notice of hearing after the appeal has been filed, but requires inclusion, in the original notice, of a summary of the fair hearing procedures, citation to the rules governing fair hearing, and the web address link to those procedures. <i>Settlement Agreement ¶145(e)</i>. Implementation Plan and Implementation Assurance Plan require compliance with state and federal law and the Settlement Agreement. <i>Implementation Plan 5.A.3.b.; Implementation Assurance Plan, E.1.b.</i></p>	
AGREED UPON STANDARD	<p>The notice of hearing shall provide all the required information under State Law, including references to State Rules and applicable Federal Regulations. The notice shall provide that the individual can request to continue the hearing to a later date if needed.</p>	

13. CRITERIA	Hearing Officer	
AUTHORITATIVE SOURCES	<b>STATE LAW</b>	<b>FEDERAL LAW</b>
	DAG through the Office of the Attorney General's Fair Hearings Unit (FHU)	An impartial official (or officials) not directly involved in the determination of that action in question. <i>42 CFR 431.240(a)(3)</i> . The hearing officer must have access to agency information necessary to issue a proper hearing decision, including information concerning State policies and regulations. <i>42 CFR 431.240(c)</i>
	<b>SETTLEMENT AGREEMENT &amp; IMPLEMENTATION PLANS</b> Settlement Agreement is silent on this point. Implementation Plan requires defendants to develop a sufficient amount of contractual or other necessary arrangements with the Idaho Attorney General's Office (or private hearing officers as applicable), to allow processing of additional administrative hearing requests related to services/supports. <i>Implementation Plan 5.A.3.f</i> . Implementation Assurance Plan states explicitly that Appeals of agency actions are handled by the Fair Hearings Unit (FHU) of the Idaho Office of the Attorney General which is charged with operating a standardized administrative hearing system for IDHW and clarifies that this Protocol sets out requirements for providing Class Members with due process rights leading up to, during, and after state fair hearings. The IAP also requires the Department to provide a copy of this Protocol to the FHU of the OAG. <i>Implementation Assurance Plan E.3</i> .	
AGREED UPON STANDARD	Fair hearings shall be conducted by a Deputy Attorney General within the Fair Hearings Unit of the Idaho Office of the Attorney General. The hearing officer must have access to all necessary information concerning State policies and regulations. The Department will provide finalized copy of this Due Process Protocol to the OAG FHU.	

14. CRITERIA	Procedural Rights at the Fair Hearing	
AUTHORITATIVE SOURC	STATE LAW	FEDERAL LAW
	<p>Appellants have a right to:</p> <ul style="list-style-type: none"> <li>- Call witnesses</li> <li>- Request discovery</li> </ul> <p><i>IDAPA 16.05.03.120</i> –names of witnesses and copies of documents the opposing party intends to offer as exhibits. Hearing officer may order production and may issue other orders as needed for the orderly conduct of the proceeding.</p> <p><i>IDAPA 16.05.03.122</i> requires all documents at the time they are filed with hearing officer to be sent to every party.</p> <p><i>IDAPA 16.05.03.104</i> provides that the hearing officer may issue subpoenas for witnesses and documents. Such subpoenas are subject to limitations found in <i>IDAPA 16.05.03.120</i> (Discovery) and <i>IDAPA 16.05.03.134</i> (Evidence).</p> <ul style="list-style-type: none"> <li>- Representation by counsel or a non-attorney. <i>IDAPA 16.05.03.123</i></li> <li>- An interpreter. <i>IDAPA 16.05.03.125</i></li> <li>- A recorded hearing. <i>IDAPA 16.05.03.137</i></li> <li>- A transcript may be requested at the party’s request and produced at their cost. <i>IDAPA 16.05.03.137</i></li> </ul> <p>Burden of Proof: the evidentiary standard is proof by a preponderance of evidence. <i>IDAPA 16.05.03.134</i></p> <ul style="list-style-type: none"> <li>- Department: if action being appealed is to limit, reduce or terminate services or benefits; establish an overpayment or disqualification.</li> <li>- Appellant: bears burden on all other issues including establishing eligibility for a program or service <i>IDAPA 16.05.03.132</i></li> </ul> <p><i>See also Tappen v. State Dep’t of Health and Welfare, 98 Idaho 576 (1977).</i></p>	<p>The hearing system must meet the due process standards set forth in <i>Goldberg v. Kelly, 397 U.S. 254 (1970)</i> and comply with the United States Constitution, the Social Security Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and section 1557 of the Affordable Care Act and implementing regulations. <i>42 CFR 431.205(d) &amp; (f)</i></p> <p>The individual must be given a reasonable opportunity to:</p> <ul style="list-style-type: none"> <li>- Examine content of case file and electronic account,</li> <li>- Examine all documents and records to be used by the state at a reasonable time before the date of the hearing and during the hearing;</li> <li>- Bring witnesses</li> <li>- Establish all pertinent facts and circumstances</li> <li>- Present an argument without undue interference</li> <li>- Question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses</li> <li>- Request an expedited fair hearing <i>42 CFR 431.242(a)-(f)</i></li> </ul> <p>The individual has the right to:</p> <ul style="list-style-type: none"> <li>- Represent themselves, use legal counsel, a relative, a friend or other spokesman.</li> <li>- An accessible hearing, especially if the individual is limited English proficient or has a disability <i>42 CFR 431.206</i></li> </ul> <p>Burden of Proof: Federal regulations are silent</p>

	SETTLEMENT AGREEMENT & IMPLEMENTATION PLAN
	<p>The Class Members and their families will be accorded a meaningful opportunity to be heard which includes a hearing, the right to present evidence and confront and cross-examine witnesses, prehearing disclosure of the evidence on which any decision was based, the right to have the assistance of an advocate or legal counsel to represent them and a timely decision. <i>Implementation Plan 5. A. 3. c.</i> Implementation Assurance Plan require compliance with state and federal law and the Settlement Agreement. <i>Implementation Assurance Plan, E. 1.b.</i></p>
<p>AGREED UPON STANDARD</p>	<p>All notices shall include availability for interpretive services.</p> <p>The Department will provide a copy of this Due Process Protocol to the Fair Hearing Unit. Individual appellants are entitled to due process procedural safeguards and rights required by <i>Goldberg v. Kelly</i> and the Federal Regulations.</p> <p>In addition to the requirements listed in State rules, Medicaid applicants and beneficiaries have the right to examine the content the Medicaid case file and electronic account, and to examine all documents and records to be used by the state at a reasonable time before the date of the hearing and during the hearing. Access to these records is available upon written request, at no cost to the Medicaid applicant or beneficiary. Verification of identity may be required.</p> <p>Informational materials, including the Practice Manual will clarify these access rights for Class Members. Department contractors will be required to comply with these standards and this Due Process Protocol.</p> <p>YES class members are entitled to access to records, to bring witnesses, and to request Department employees to appear as witnesses without a subpoena. This may include persons with knowledge of the decision (not just to the persons the Department plans to call as witnesses). Informational materials should clarify what questions can be asked of the Department. Appellants should have access to all records consulted in making the decision, whether or not the Department relied upon those documents. These documents and records need to be made available sufficiently in advance of the hearing so the individual appealing the decision has adequate time to prepare.</p>

15. CRITERIA	Information available to Hearings Officer	
AUTHORITATIVE SOURCES	STATE LAW	FEDERAL LAW
	<p>Hearing officer will consider information that was available to the Department at the time the decision was made. Appellant can show that there is additional relevant information that was not presented to the Department with good cause, and the case will be remanded to the department for consideration. The hearing officer will not retain jurisdiction after remand. <i>IDAPA 16.05.03.131</i></p>	<p>Hearing officer must have access to agency information necessary to issue proper hearing decision, including information concerning State policies and regulations. <i>42 CFR 431.240(c)</i></p>
AGREED UPON STANDARD	SETTLEMENT AGREEMENT & IMPLEMENTATION PLANS	
	<p>Settlement agreement does not directly address but requires the initial notice to the member to include the rationale for the action including the written documentation consulted and relied upon which supports the action. <i>Settlement Agreement ¶ 45.b.</i> Implementation Plan requires prehearing disclosure of the evidence on which any decision was based. <i>Implementation Plan 5.A.3.c.</i> Implementation Assurance Plan require compliance with state and federal law and the Settlement Agreement. <i>Implementation Assurance Plan, E. 1.b.</i></p>	
	<p>The hearing officer must have access to all necessary information concerning State policies and regulations. The Department must notify the Hearing Officer and Appellant of witnesses, in advance, who will testify at the hearing. The Department will provide finalized copy of this Due Process Protocol to the OAG FHU.</p>	
	<p>Participants will be encouraged to provide additional information to the Department prior to the hearing; in the event that does not happen, and new information comes to light at the hearing, a remand may occur. If possible, in the interest of judicial economy, the second notice of decision may supersede the previous decision. The appeals may be consolidated.</p>	

16. CRITERIA	<b>Matters to be Considered at the Fair Hearing</b>	
AUTHORITATIVE SOURCES	<b>STATE LAW</b>	<b>FEDERAL LAW</b>
	See “What can be appealed” section above.  In addition, the optional prehearing conference gives the parties an opportunity to clarify the issues for the Hearing Officer’s consideration. <i>See IDAPA 16.05.03.103</i>	An individual’s claim of erroneous action on the part of the agency or MCO (see “What can be appealed” section above). <i>42 CFR 431.241(a) referencing section 431.220</i>
	<b>SETTLEMENT AGREEMENT &amp; IMPLEMENTATION PLANS</b>	
	None of the documents directly address this issue; all require compliance with federal and state law.	
AGREED UPON STANDARD	The Hearing Officer may hear information presented to the FHU by the appellant or by the Department, that is relevant to the Department’s decision.	

17. CRITERIA	<b>Opportunity for External Medical Review</b>	
AUTHORITATIVE SOURCES	<b>STATE LAW</b>	<b>FEDERAL LAW</b>
	Defer to Federal Regulations	If the hearing involves medical issues such as those concerning a diagnosis, an examining physician’s report, or a medical review team’s decision, and the hearing officer considers it necessary to have a medical assessment other than that of the individual involved in making the original decision, such medical assessment must be obtained at agency expense and made part of the record. <i>42 CFR 431.240(b)</i>  In the case of an MCO, the state <i>may</i> offer and arrange for an external medical review if: at the enrollee’s option, independent of both the state and MCP, offered without cost to the enrollee, must not extend beyond timeframes or disrupt the continuation of benefits. <i>42 CFR 438.408(f)(1)(ii)</i>
	<b>SETTLEMENT AGREEMENT &amp; IMPLEMENTATION PLANS</b>	
	None of the documents directly address this issue; all require compliance with federal and state law.	
AGREED UPON STANDARD	The opportunity for external medical review exists as set out in the Federal Regulation. Informational materials, including the Practice Manual, should reflect this right.	



18. CRITERIA	Decision and Order	
AUTHORITATIVE SOURCE	STATE LAW	FEDERAL LAW
	<p>Preliminary order must:</p> <ul style="list-style-type: none"> <li>- be issued by hearing officer within thirty (30) days after case submitted for decision;</li> <li>- contain specific findings on all major facts at issue;</li> <li>- contain reasoned statement in support of the decision;</li> <li>- include all other findings and recommendations of the hearing officer;</li> <li>- include a preliminary decision affirming, reversing or modifying the department's decision or action, or remanding for further proceedings;</li> <li>- include procedures and time limits for filing requests for review of the order</li> </ul> <p><i>IDAPA 16.05.03.138; Idaho Code § 67-5248</i></p> <p>Either party may request a review by the Department Director within fourteen (14) days from the date the preliminary order was mailed identifying the legal and factual disagreements with the preliminary order. <i>IDAPA 16.05.03.150</i></p> <p>A preliminary order becomes final fourteen (14) days after the preliminary order was served upon the parties, if neither party appeals to the Department Director. <i>Idaho Code § 67-5246(3)</i></p> <p>If the preliminary order is appealed, the Director must allow briefing. The Director determines whether oral argument is allowed and whether a transcript of the hearing is needed. <i>IDAPA 16.05.03.150</i>. An oral record is available, even when the hearing is not transcribed.</p>	<p>Hearing recommendations or decisions must be based exclusively on evidence introduced at the hearing. <i>42 CFR 431.244(a)</i></p> <p>The applicant must have access to the record, which must contain only</p> <ul style="list-style-type: none"> <li>- the transcript or recording of testimony and exhibits, or an official report of what happened at the hearing;</li> <li>- papers and requests filed in the proceeding;</li> <li>- recommendation or decision of the hearing officer;</li> </ul> <p><i>42 CFR 431.244(b)-(c)</i></p> <p>Decision must be written and must summarize the facts and identify the regulations supporting the decision. <i>42 CFR 431.244(d)</i></p> <p>The Department must take final administrative action ordinarily within ninety (90) days from the date the Department received the request for a fair hearing under 42 CFR 431.221(a)(1) except in unusual circumstances such as when the appellant requests a delay or fails to take a required action, or there is a documented emergency beyond the Department's control. <i>42 CFR 431.244(f)(1)(ii) &amp; (4)</i></p> <p>The public must have access to all Department hearing decisions subject to safeguards of applicant and beneficiary information found in 42 CFR Subpart F. <i>42 CFR 431.244(g)</i></p> <p>The agency must provide written notice of the decision and of the right to request a state agency hearing or to seek judicial review. <i>42 CFR 431.245</i></p>

	<p>Following an appeal of the preliminary order, the Director issues a final order that affirms, modifies, or reverses the preliminary order or remands the matter to the hearing officer for further proceedings. The final order informs the parties of the procedure and time limits for appealing to district court. Motions for reconsideration of a final order are not accepted. <i>IDAPA 16.05.03.152</i></p> <p>Preliminary and final orders are deemed served when copies are mailed to all parties of record or their attorneys. <i>IDAPA 16.05.03.153</i></p> <p>The Department must conduct a hearing and take action within ninety (90) days from the date the hearing request is received unless an expedited fair hearing is requested under federal regulations, <i>42 CFR 431.224; IDAPA 16.05.03.204</i></p>	
	<p><b>SETTLEMENT AGREEMENT &amp; IMPLEMENTATION PLANS</b></p>	
	<p>None of the documents directly address this issue; all require compliance with federal and state law.</p>	
<p><b>AGREED UPON STANDARD</b></p>	<p>Hearing Officer’s preliminary decision (which may become a final order) must be written and must summarize the facts and identify the rules and/or regulations supporting the decision. The decision must also include notice of the right to request a state agency review. The Department must take final administrative action within ninety (90) days from the date the Department received the request for a fair hearing except in unusual circumstances where the delay of the final administrative action is requested by appellant or in an emergency beyond its control.</p>	