

Resolving Disputes with Parents Series

Part 4 - The Due Process Complaint

IDEA requires school systems (called public agencies) to have procedures in place that make due process available to parents and public agencies to resolve a dispute involving any matter arising under Part B, including matters arising prior to the filing of a due process complaint. This includes both the due process complaint (summarized in this article) and the due process hearing (described separately).

A due process complaint is pretty much what it sounds like: a letter/complaint filed by an individual or organization on matters of conflict related to the identification, evaluation, or educational placement of a child, or the provision of a free appropriate public education (FAPE) to the child. There's a lot to know about filing a due process complaint; use the summary below to learn how this type of complaint works as a dispute resolution approach.

Due Process Complaints, Summarized

A due process complaint is a filing by a parent or a public agency on matters related to the identification, evaluation, or educational placement of a child, or the provision of FAPE to the child. Such a complaint must meet the content requirements in §300.508(b) (listed below). Whenever a due process complaint is received, the parents and LEA involved in the dispute must have an opportunity for an impartial a due process hearing, [§300.511(a)]. That's why filing a due process complaint represents the first step in the process that may lead to a hearing, a formal proceeding held to resolve conflicts between parents and schools.

Some basic things to know about due process complaints include:

- Complaints must be written, signed, and include a statement that a public agency has violated a requirement of Part B of IDEA, as well as the facts upon which the statement is based.
- Complaints must include specific information. A party may not have a hearing until the party (or the attorney representing the party) files a due process complaint that includes this information[300.508(c)].
- The party filing a due process complaint must provide a copy to the other party and forward a copy to the state educational agency (SEA) [§300.508(a)(2)].
- The information contained in the due process complaint must be kept confidential [§300.508(a)].
- There's a time limit for filing a due process complaint.

Information the Complaint Must Include

As spelled out by IDEA at §300.508(b), the due process complaint must contain specific information in order to be considered "sufficient." This information is:

- the child's name

- the address of the child's residence
- the name of the school the child is attending
- a description of the nature of the child's problem relating to the proposed action or refusal that's causing the conflict, and facts upon which the complaint is based
- a proposed resolution of the problem to the extent known and available to the person filing the complaint.

If the child is homeless, as defined in the McKinney-Vento Homeless Assistance Act, the complaint must include available contact information for the child—instead of the address of the child's residence—and the name of the school the child is attending. [§300.508(b)]

Who determines that the complaint contains all the required information?

A due process complaint is deemed "sufficient" unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receiving the due process complaint, that the notice does not meet the requirements [§300.508(d)(1)].

Within five days, the hearing officer must then make a decision based on the face of the due process complaint whether it is legally sufficient and immediately notify the parties in writing of the determination. If the hearing officer rules that the due process complaint is not sufficient, the decision will identify how the notice is insufficient so that the filing party can amend the notice, if appropriate.

If the due process complaint is determined to be insufficient and is not amended, the due process complaint could be dismissed (71 Fed. Reg. 46698).

Time Limits on Filing a Complaint

Due process complaints must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint. However, if the state has an explicit time limitation for requesting a due process hearing under Part B, the complaint must be filed in the time allowed by the state's law.