

Disability Rights Nebraska

Protection and Advocacy for People with Disabilities

This is basic information and does not constitute legal advice.

How to File a Due Process Petition with the Nebraska Department of Education (NDE)

This is an informal guide to provide general information regarding how to file a due process petition with the Nebraska Department of Education (NDE).

What is a Due Process Petition?

A due process petition is a document you file with the NDE when you are not satisfied with the special education services your child is receiving. A due process petition lets the school district know that you are requesting a due process hearing. You may wish to file a due process petition if you are not satisfied with your child's school district and their decisions regarding:

- Whether your child is identified as a "child with a disability;"
- Whether, after an evaluation of your child, your child should receive special education services;
- The educational placement of your child;
- Whether the school district is providing a free appropriate public education to your child¹.

The due process petition must state that a violation(s) of your child's special education rights has occurred and include a description of the violation(s).

What is a due process hearing?

At a due process hearing, you and the school district will inform a neutral third party of your concerns. The neutral third party is called a hearing officer. After hearing all evidence and testimony, the hearing officer will make a final decision, but you still have a right to appeal the decision.

Do I have to file a due process petition by a certain time?

Yes. A complaint must be filed with NDE **within two (2) years** of the date you or the school district "knew or should have known about the alleged action that forms the basis of the request for a due process hearing."² For example, if you met with the school district to discuss

¹ Rule 51 sec. 009.09 (2006)

² 34 CFR § 300.511(e) (2006)

a problem with your child's IEP and it is still not resolved, you have to file a complaint with the NDE within two years of the date you met.

What happens after I file a due process petition?

After you file a due process petition, you and the school district will be required to meet to see if you can resolve the matter³. The meeting must be held within fifteen (15) days of when the NDE receives notice of your petition. If the matter has not been resolved within thirty (30) days, the NDE will appoint a hearing officer who will conduct an investigation and a hearing⁴. The hearing officer will make a final decision with the appropriate recommendations. The hearing officer's decision can be appealed within two years of when the final decision was mailed.

What if I do not agree with the hearing officer's final decision?

If you do not agree with the hearing officer's decision, you have two options:

- You can file a petition, or appeal, with the district court where the school district's administrative offices are located within two (2) years after you are given the final decision, or
- You can file a civil action within one (1) year after you are given the final decision.

How do I file a due process petition?

The procedures for a due process petition can be found in Title 92, Nebraska Administrative Code Chapter 55, otherwise referred to as "Rule 55." You can request a copy of Rule 55 from the Nebraska Department of Education by calling (402) 471-2471 or (888) 806-6287 and ask for the Nebraska Department of Education. Rule 55 is also available on the Nebraska Department of Education web site at <http://www.education.ne.gov/LEGAL/RULE55.html> by clicking on the link at the bottom of the page.

This guide is being provided for general assistance in drafting and filing your complaint. It is not intended to be all-inclusive. If you have any questions about the application of Rule 55 to the particular facts of your case, please contact our office.

A sample due process petition is attached and is available in Appendix A of Rule 55 which can be obtained from the Nebraska Department of Education as described above. Your due process petition may also be in the form of a letter addressed to:

Nebraska Department of Education
Special Populations Officer, 6th Floor
301 Centennial Mall South
P.O. Box 94987
Lincoln, NE 68509-4987

³ Rule 51 sec. 009.11A (2006)

⁴ Rule 51 sec. 009.11B (2006)

Your letter should include the following:

- The school district that is responsible for your child's special education services including the name, address, and school of your child.
- A detailed explanation of the specific facts that give rise to you filing the complaint. When possible, give specific dates and names of persons involved in the events you describe.
- An explanation of all attempts you have made to resolve the matter. Give specific dates and names of persons involved. Include what the school's response has been to these attempts, and point out that the problems have continued.
- Describe, specifically, how the ongoing problems are in violation of the school district's responsibility by citing the appropriate section(s) of Rule 51.
- A copy of your child's Individual Education Program (IEP) documentation. You may also wish to include any copies of other documentation that supports your claim. This may include: correspondence to or from school personnel, Student Assistance Team (SAT) documents, Multi-Disciplinary Team (MDT) evaluation reports, or disciplinary documents or reports.
- Your address, phone number, and signature.

It is preferable to attach a copy of your child's Individual Education Program (IEP) documentation. You may also wish to attach any copies of any other documentation that supports your claim. This may include: correspondence to or from school personnel, Student Assistant Team (SAT) documents, Multi-disciplinary Team (MDT) evaluation reports, or disciplinary documents or reports.

Additional resources:

- Sample Petition Form for Special Education Contested Cases. Title 92, Nebraska Administrative Code Chapter 55, Appendix A. Nebraska Department of Education (2006).
- Parental Rights in Special Education. Nebraska Department of Education Special Populations Office (August 2007).
- Rule 51 Regulations and Standards for Special Education Programs. Nebraska Department of Education (May 2006).
- Rule 55 Special Education Appeals. Nebraska Department of Education (May 2006).

Sample Letter

You may wish to use similar language when sending a due process petition to the Nebraska Department of Education:

Nebraska Department of Education
Special Populations Officer
301 Centennial Mall South
P.O. Box 94987
Lincoln, NE 68509-4987

Re: [Your child's name] – Due Process Petition to the Nebraska Department on Education

Dear Compliance Officer:

This is a formal due process petition regarding the denial of Special Education Services to my child, [insert your child's name, address and the school they attend]. The [insert the school district's name and address] School District has not provided the services that they are responsible for under Rule 51 section [insert appropriate Rule 51 section number].

For example, on this date [insert date of incident that gives rise to filing of the complaint], this incident occurred [insert incident and facts that gives rise to filing of the complaint. Also include the names of any persons involved]. I have attempted to resolve the matter informally on these dates [insert dates] by [insert your actions; For example, contacting and meeting with the school principal]. The school has responded by [insert what the school told you they would or would not do to resolve the matter]. However, the problems have continued and are ongoing.

I have attached relevant documentation to support this claim. I look forward to your response in resolving this matter quickly. You can contact me at home and/or at work [insert your home and/or work phone numbers and addresses].

Sincerely,
[Your signature]

[Your Name]
[Your Address]
[Your City, State, Zip]
[Your Phone number]

Sample Due Process Petition to the Nebraska Department of Education

Rule 55 APPENDIX A: Sample Petition Form for Special Education Due Process Hearing

BEFORE THE STATE DEPARTMENT OF EDUCATION
STATE OF NEBRASKA

_____) (Name))		
_____) (Address))		CASE NO. (LEAVE
_____) Petitioner,)		
vs.)		PETITION
_____) (Name))		
_____) (Address))		
_____) Respondent.)		

Petitioner, in accordance with title 92, Chapter 55, of the Nebraska administrative Code, states and alleges as follows:

1. (Set forth a concise statement of the grounds upon which the Department’s authority or jurisdiction depends.)

2. (Specifically state the legal rights, duties, or privileges of the petitioner that the hearing officer is required by law to determine.)

3. (Concisely set forth all material facts upon which the petition or appeal is based. The petition MUST include: (A) the name of the child whose special education is the subject of the hearing, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending; (B) a description of the nature of the problem of the child relating to the proposed or refused initiation of, or change in, the identification, evaluation, or educational placement of the child, or the provision of a free public education to the child including facts relating to the problem; and, (C) a proposed resolution of the problem to the extent known and available to the party at the time.)

4. (Attach as exhibits copies of any documents discussed above. If this is an appeal of a decision of a public agency, attach a copy of its determination.)

Rule 55 APPENDIX A: Sample Answer Form for Special Education Due Process Hearing, page 2

WHEREFORE, Petitioner requests that the State Hearing Officer (state remedy sought).

Dated this _____ day of _____.

(Signature)
(If attorney for petitioner, list address)

VERIFICATION

State of Nebraska)
) ss
County of _____)

I, _____, being first duly sworn under oath, state that I have read the contents of the foregoing petition and that to the best of my knowledge, information, and belief such contents are true and there is reasonable cause for filing said petition.

Subscribed and sworn before me this _____ day of _____, by

(Name of Petitioner)

(Seal)

Notary Public

NOTE: A copy of the petition **MUST** be mailed to the other party by U.S. Mail, return receipt requested. A copy of the return receipt must be filed with the Department and with the hearing officer.

Sample Due Process Answer to the Nebraska Department of Education

Rule 55 APPENDIX B: Sample Answer Form for Special Education Due Process Hearing

BEFORE THE STATE DEPARTMENT OF EDUCATION
STATE OF NEBRASKA

)		
(Name)))	CASE NO. _____
)		
(Address))		
)		
Petitioner,)		
vs.)	ANSWER	
)		
(Name))		
)		
(Address))		
)		
Respondent.)		

Comes now Respondent, _____ (Name) _____, and, for his/her

Answer to the Petition of the Petitioner, admits, denies, and alleges as follows.

(Respondent should specifically deny or admit each material allegation of the pleading being answered and should completely advise all parties as to the nature of the objection to the Petition.)

WHEREFORE, Respondent prays that the Hearing Officer dismiss the Petition in this matter

(and/or state any additional action sought)

(Signature of Respondent of signature
and address of his or her attorney)

VERIFICATION

State of Nebraska)
) ss
County of _____)

I, _____, being first duly sworn under oath, state that I have read the contents of the foregoing petition and that to the best of my knowledge, information, and belief such contents are true and there is reasonable cause for filing said petition.

Subscribed and sworn before me this _____ day of _____, by

(Name of Respondent)

(Seal)

(Notary Public)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above Answer, including a copy of any exhibits cited therein, were mailed to the following persons by regular first-class mail, postage prepaid, this day of _____.

(Signature of Respondent)

(List names and addresses)

