

# The Due Process Complaint

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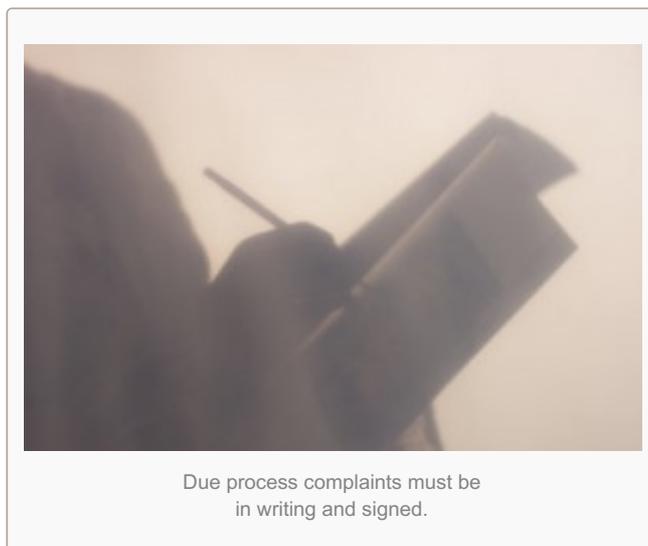
## **Alert! Alert!**

Because NICHCY's website will only remain online until September 30, 2014, most of its rich content has moved to a new home, the **Center for Parent Information and Resources** (CPIR), where it can be kept up to date.

The new address of *The Due Process Complaint* at the CPIR is:

[http://www.parentcenterhub.org  
/repository/dueprocess/](http://www.parentcenterhub.org/repository/dueprocess/)

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[This info in Spanish | Esta información en español](#)

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.

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. These procedures include both the **due process complaint** (summarized in this article) and the **due process hearing** (described separately).

Read more about the due process complaint below, in these brief sections:

- [Due process complaints, summarized](#)
- [Info the complaint must include](#)
- [Who determines that the complaint contains all the required info?](#)
- [Time limits for filing a complaint](#)
- [About CADRE](#)
- [Definition of "homeless" in McKinney-Vento Homeless Assistance Act](#)

Then go to these two separate pages for the details. **These details are important to know**, if you're thinking about filing a due process complaint as an approach to resolving a dispute in special education. The summary below is **not a substitute** for knowing the actual details of IDEA's regulations and requirements. It is just a summary.

- [Due Process Complaints, in Detail](#)
- [IDEA's Regulations on Due Process Complaints](#)

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## 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
- 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 local educational agency (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 is 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.

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## 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, and
- 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)]

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## 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).

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## 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.

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## About CADRE

We highly recommend visiting **CADRE**, the [National Center on Dispute Resolution in Special Education](#), where you'll find a wide range of materials in English and Spanish to help you understand how to resolve disputes in special education.



Find CADRE at: <http://www.directionservice.org/cadre/>

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## Would you like all the details?

As mentioned above, *indepth* exploration of the due process complaint is available in two companion pages:

- [Due Process Complaints, in Detail](#)
- [IDEA's Regulations on Due Process Complaints](#)

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## McKinney-Vento Definition of "Homeless"

Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act (Title X, Part C, of the No Child Left Behind Act) defines "homeless" as follows:

The term "homeless children and youths"—

(A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 103(a)(1)); and

(B) includes—

(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 103(a)(2)(C));

(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(iv) migratory children (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).

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