

# Disability Rights Nebraska

Protection and Advocacy for People with Disabilities

## 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<sup>1</sup>. 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 or early intervention services to your child<sup>2</sup>.

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)<sup>3</sup>.

### 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<sup>4</sup>. After hearing all evidence and testimony, the hearing officer will make a final decision, but you still have a right to appeal the decision<sup>5</sup>.

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<sup>1</sup> Rule 55 sec. 001.02H (2012)

<sup>2</sup> Rule 55 sec. 001.02H (2012)

<sup>3</sup> Rule 55 sec. 001.02H1 (2012)

<sup>4</sup> Rule 55 sec. 001.02B (2012)

<sup>5</sup> Rule 55 sec. 008.09 (2012)

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

Yes. You must file a complaint with NDE **within two (2) years** of the date you “knew or should have known about the alleged action that forms the basis of the claim.”<sup>6</sup> For example, if you met with the school district to discuss 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 matter<sup>7</sup>. The resolution session must be held within seven (7) days of when the NDE receives notice of your petition<sup>8</sup>. If the matter has not been resolved within fifteen (15) days, the NDE will appoint a hearing officer who will conduct a hearing<sup>9</sup>. The hearing officer will make a final decision with the appropriate recommendations.

## 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<sup>10</sup>, or
- You can file a civil action within ninety (90) days after you are given the final decision<sup>11</sup>.

## How do I file a due process petition?

The procedures for filing 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) 471-2295 and asking for the Nebraska Department of Education. Rule 55 is also available on the Nebraska Department of Education website at [https://cdn.education.ne.gov/wp-content/uploads/2017/10/Rule55\\_2012.pdf](https://cdn.education.ne.gov/wp-content/uploads/2017/10/Rule55_2012.pdf).

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.

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<sup>6</sup> Rule 55 sec. 001.02H1 (2012); 34 CFR § 300.511(e) (2016)

<sup>7</sup> Rule 51 sec. 004.14B; sec. 016.04D2a (2017)

<sup>8</sup> Rule 55 sec. 016.04D2a (2012)

<sup>9</sup> Rule 55 sec. 016.04D2b (2012)

<sup>10</sup> Rule 55 sec. 009.02 (2012)

<sup>11</sup> Rule 55 sec. 009.08 (2012)

A sample due process petition is attached and is available through the Special Education section of the Nebraska Department of Education website. Select the "Dispute Resolution" option to find the Due Process Sample Form. Your due process petition should be mailed to:

Nebraska Department of Education  
P.O. Box 94987  
Lincoln, NE 68509-4987  
Attention: Office of Legal Counsel

Your petition should include the following:

- The school district that is responsible for your child's special education services including the name, address (or available contact information if the child is homeless), and school of your child<sup>12</sup>.
- The name and address of the Nebraska Department of Education and the title of the petition (Petition for Requesting a Special Education Due Process Hearing).
- 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<sup>13</sup>.
- 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.
- A proposed resolution of the problem<sup>14</sup>.
- 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 (or your attorney's signature if you are being represented by an attorney).

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<sup>12</sup> Rule 55 sec. 004.06A2(a) (2012)

<sup>13</sup> Rule 55 sec. 004.06A2(b) (2012)

<sup>14</sup> Rule 55 sec. 004.06A2(c) (2012)

## Additional resources:

- Sample Petition Form for Requesting a Special Education Due Process Hearing - Nebraska Department of Education, Special Education, Dispute Resolution.
- IDEA Part B Parents' Rights in Special Education (Age 3-21) - Nebraska Department of Education, Office of Special Education (August 2018).
- Rule 51, Regulations and Standards for Special Education Programs - Nebraska Department of Education (January 2017).
- Rule 55, Rules of Practice & Procedure for Due Process Hearings in Special Education Contested Cases - Nebraska Department of Education (September 2012).

## 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  
 P.O. Box 94987  
 Lincoln, NE 68509-4987  
 Attention: Office of Legal Counsel

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 he or she attends]. 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 Petition Form for Requesting a Special Education Due Process Hearing**

BEFORE THE STATE DEPARTMENT OF EDUCATION  
STATE OF NEBRASKA

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

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

Concisely set forth all material facts upon which the petition or appeal is based including:

1. The name of the child whose special education is the subject of the hearing.
2. The address of the residence of the child.
3. The name of the school the child is attending.
4. In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinneyVento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending.
5. 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 early intervention services to the child including the facts relating to the problem.
6. A proposed resolution of the problem to the extent known and available to the party at the time.

Attach as exhibits copies of any documents discussed or referenced above.

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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

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**

BEFORE THE STATE DEPARTMENT OF EDUCATION  
STATE OF NEBRASKA

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

