

**281—41.508(256B,34CFR300) Due process complaint.**

**41.508(1) General.** A due process complaint shall be provided to the department, and a copy shall be provided to each party to the complaint.

**41.508(2) Content of complaint.** The due process complaint required in subrule 41.508(1) must include the following information:

- a. The name of the child;
- b. The address of the residence of the child;
- c. The name of the school the child is attending;
- d. In the case of a homeless child or youth within the meaning of Section 725(2) of the McKinney-Vento 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;
- e. A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
- f. A proposed resolution of the problem to the extent known and available to the party at the time.

**41.508(3) Notice required before a hearing on a due process complaint.** A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of subrule 41.508(2).

**41.508(4) Sufficiency of complaint.**

a. *General.* The due process complaint required by this rule must be deemed sufficient unless the party receiving the due process complaint notifies the administrative law judge and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in subrule 41.508(2).

b. *Determination.* Within five days of receipt of notification under paragraph 41.508(4) “a,” the administrative law judge must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of subrule 41.508(2) and must immediately notify the parties in writing of that determination.

c. *Amending due process complaint.* A party may amend its due process complaint only if:

- (1) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to rule 281—41.510(256B,34CFR300); or
- (2) The administrative law judge grants permission, except that the administrative law judge may only grant permission to amend at any time not later than five days before the due process hearing begins.

d. *Timelines after amendment.* If a party files an amended due process complaint, the timelines for the resolution meeting in subrule 41.510(1) and the time period to resolve in subrule 41.510(2) begin again with the filing of the amended due process complaint.

**41.508(5) LEA response to a due process complaint.**

a. *General.* If the LEA has not sent a prior written notice to the parent regarding the subject matter contained in the parent’s due process complaint, the LEA must, within ten days of receiving the due process complaint, send to the parent a response that includes the following:

- (1) An explanation of why the agency proposed or refused to take the action raised in the due process complaint;
- (2) A description of other options that the IEP team considered and the reasons why those options were rejected;
- (3) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
- (4) A description of the other factors that are relevant to the agency’s proposed or refused action.

b. *Rule of construction.* A response by an LEA under paragraph 41.508(5) “a” shall not be construed to preclude the LEA from asserting that the parent’s due process complaint was insufficient, where appropriate.

**41.508(6) Other party response to a due process complaint.** Except as provided in subrule 41.508(5), the party receiving a due process complaint must, within ten days of receiving the due

process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

[ARC 7792C, IAB 4/17/24, effective 5/22/24]