

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF EDUCATION

[Redacted] (parents), on behalf of [Redacted]
(student),

v.

[Redacted] (school district).

**ORDER ON NOTICE OF
INSUFFICIENCY, MOTION TO
DISMISS, AND REQUEST FOR
HEARING**

This matter came before Administrative Law Judge Jim Mortenson on a Notice of Insufficiency filed as part of the school district's response to the complaint on October 7, 2016.

[Redacted] appeared on her own behalf and without counsel. Teri Schmitz and Laura T. Booth, Booth Law Group, LLC, appeared on behalf of the school district.

Pursuant to law, the administrative record, and for the reasons explained in the memorandum below,

IT IS HEREBY ORDERED:

1. The due process hearing complaint filed September 27, 2016, is **INSUFFICIENT**.
2. The school district's motion to dismiss is **DENIED**.
3. Parents are hereby granted permission to amend their complaint. No due process hearing will be held on the parent's complaint until it meets the requirements of 34 C.F.R. § 300.508(b); Minn. Stat. § 125A.091, subd. 14(b) (2016).
4. Parents must file and serve a response to the school district's request for hearing within ten days of their receipt of the hearing request, pursuant to 34 C.F.R. § 300.508(f); Minn. Stat. § 125A.091, subd. 14(f) (2016).

5. The second telephone prehearing conference will proceed as scheduled in the October 6, 2016 Second Prehearing Order on **October 17, 2016, at 9:30 a.m.**

Dated: October 12, 2016



JIM MORTENSON
Administrative Law Judge

MEMORANDUM

On September 27, 2016, parents filed a due process complaint. On October 6, 2016, the initial prehearing conference was held via telephone. On October 7, 2016, the school district filed its response, Notice of Insufficiency, and Motion to Dismiss for Lack of Specificity.

Within five days of a notice of insufficiency 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” for the contents of a due process complaint.¹

A parent may file a written request for a due process hearing regarding a proposal or refusal to initiate or change his or her child’s evaluation, individualized education program (IEP), or educational placement, or to provide a free appropriate public education (FAPE).² This is often referred to as a due process complaint. The contents of the due process complaint must include:

- the name of the child;
- the address of the child’s residence;
- the name of the school the child attends;
- a description of the child’s problem relating to the proposed or refused initiation or change, including facts relating to the problem; and
- a proposed resolution of the problem to the extent known and available to the parents at the time.³

¹ 34 C.F.R. § 300.508(d)(2); Minn. Stat. § 125A.091, subd. 14(e)(2) (2016).

² Minn. Stat. § 125A.091, subd. 14(a); 34 C.F.R. § 300.507 (2016).

³ Minn. Stat. § 125A.091, subd. 14(b); 34 C.F.R. § 300.508(b).

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While detailed factual allegations are not required with regard to the factual basis for the complaint, the complaint must include “enough facts to state a claim to relief that is plausible on its face.”⁴

The complaint in this matter included no facts that would indicate to either the judge or the school district what the parents’ dispute is about. Parents merely assert their claims about “identification, evaluation, educational placement, manifestation determination, and the provision of FAPE” to their child are based on “disagreements . . . concerning matters taken place over the past year, during the pupil’s enrollment in [redacted].”⁵

During the first prehearing conference, held October 3, 2016, the judge inquired of the parent about what her complaint was about in order to determine if the matter could be easily clarified. One of the first things asked of the parent was to provide details on the manifestation determination and why an expedited hearing was requested.⁶ Parent explained that she made an error including the manifestation determination as an issue, and further explained that she wanted an expedited hearing to address the provision of FAPE and because the student is “so young and he’s in such great need of services[.]”⁷ Thus, it was clarified that there was no basis for an expedited proceeding or an appeal of or dispute about a manifestation determination under 34 C.F.R. § 300.532 (2016).

Additional clarification was sought about the other claims, including notification, evaluation, educational placement, and the provision of FAPE.⁸ While some discussion was held at the October 3 prehearing about these claims and possible resolution, the facts remain unclear. The complaint lacks relevant factual allegations or descriptions of what parents want to resolve their claims. What are the disagreements referred to? What was requested by the parents and rejected by the school district? What was proposed by the school district that parents are rejecting, and why? These are just some basic questions a reasonably composed complaint will answer to enable the judge to understand the dispute, and enable the school district to reasonably respond to.

The judge has the authority to permit parents to file an amended complaint.⁹ This is reasonable given the significant concerns about their child’s education parents raised at the first prehearing, and given the concerns about the student the school district raises in its hearing request. Thus, the school district’s request for dismissal of the parents’ complaint is denied.

Based on the school district’s hearing request, and the discussion with parent at the prehearing conference on October 3, 2016, it appears the parties share at least some of the same concerns about evaluating and serving the student. While the resolution meeting

⁴ *C.N. v. Willmar Public Schools, Independent School Dist. No. 347*, 591 F.3d 624, 629-30 (8th Cir. 2010), citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

⁵ Due Process Complaint, at 2 (Sept. 27, 2016).

⁶ Prehearing Transcript, at 6 (Oct. 3, 2017).

⁷ *Id.* at 6-7.

⁸ *Id.* at 14-30.

⁹ 34 C.F.R. § 300.508(d)(3)(ii) (2016).

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held October 7, 2016, did not result in a settlement agreement, the parties are again encouraged to consider the use of a mediator to assist them in overcoming the present barriers to successful resolution. The parties may contact the Minnesota Department of Education or the Office of Administrative Hearings to have a mediator assigned.

J. R. M.