



resolution of each of the specific problem(s) identified. Petitioners were ordered to file their amended complaint no later than January 17, 2011.

5. Petitioner notified the Office of Administrative Hearings that her Amended Petition would be delayed. On January 25, 2011, Petitioner filed a document entitled "Additional Information Reply to Response Regarding Petition Sufficiency," hereafter referred to as "Additional Information." Due to the title and look of Petitioners' document the Clerk's Office did not record it as an Amended Petition.

6. On January 31, 2011, the Respondent filed an "Objection to the Sufficiency of the Petition/Motions to Dismiss." The Undersigned has accepted the above mentioned Petitioners' document as an Amended Petition and has allowed time for Petitioners to reply to Respondent's Motion. The record reflects no response.

7. Petitioners' Additional Information cites that the "family was denied access prior to the IEP meeting through various letters and e-mails in participation at the proposed meeting and thereby used their only tactic known at the time in order to restore an appropriate IEP meeting at which point the school conducted a meeting without the parents and their supports anyway regardless of their needs and requests to participate at the meeting." Petitioners go on to state that "our next IEP date is the 25<sup>th</sup> of January and I would not be surprised if it ends in another Due Process as to not allowing an appropriate Review and Revision of the previous IEP." In awaiting "this process to occur," Petitioners believe that their "situation is really protracted and precarious and perhaps that is the very environment that his school system develops for children with special needs so that they do not have a chance to learn in an appropriate environment."

8. As a proposed resolution the Petitioners cite that the court should award "whatever they deem fit and necessary to allow for an appropriate IEP process to take place." Petitioners further state, "Perhaps that means requiring the Special Education Department to be required to read the IDEA law and take a test and when pass can conduct *Student's* future IEP meeting."

9. Respondent in its Motion to Dismiss cites that "not only does the petition fail to allege any specific facts; the Petitioner (sic) should be dismissed because the information provided in the supplemental pleading by the Petitioner provides no conclusive breach of IDEA by the Respondent Board of Education." Respondent states that it is unaware of what the Petitioner is alleging when she states the family was denied access prior to the IEP meeting through various letters and emails. Respondent further sets forth that "the Petition does not allege any specific facts as to how the "family" was denied access to any part of the IEP meeting or process."

10. "In determining the sufficiency of the complaint the court must accept all of plaintiffs' well-pled material allegations as true and draw all reasonable inferences there from in favor of plaintiffs." *Graves v. Lowery*, 117 F.3d 723, 726 (3d Cir.1997); *see also Evancho v. Fisher*, 423 F.3d 347, 350 (3d Cir.2005). However, under *Bell Atlantic v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007), a complaint must be dismissed if the Plaintiff fails to allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic* further states, "While a complaint attacked by a motion to dismiss for failure to state a claim upon which relief can be granted does not need detailed factual allegations, a plaintiff's obligation to provide

the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” A petitioner or plaintiff cannot just state that a violation occurred without providing adequate support for them. *See Stringer v. St. James R-1 School Dist.*, 446 F.3d. 799 (8<sup>th</sup> Cir. 2006) (affirming the trial court ruling that the student and mother appearing *pro se* failed to state a cause of action when the complaint “merely stated that school district ‘violated written notice’ and did not allege any specific facts.”)

11. Petitioners’ description of the nature of the problem(s) and facts relating to the problem(s); as well as the proposed resolution of the problem(s) are legally inadequate as a matter of law. Petitioners’ Petition fails to state a claim to relief that is “plausible on its face,” as required under the Individuals with Disabilities Education Act (IDEA 2004) and Regulations, and the North Carolina State laws.

### **FINAL DECISION**

Based on the foregoing, the Undersigned allows Respondent’s Motion to Dismiss. Disposition of this case by dismissal in accord with Chapter 3 of Title 26 of the North Carolina Administrative Code, and N.C. GEN. STAT. § 150B-33 and N.C. GEN. STAT. § 1A-1, Rule 12 of the North Carolina Rules of Civil Procedure, as well as the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, and implementing regulations, 34 C.F.R. Part 300, is proper and lawful.

It is hereby **ORDERED** that this matter be **DISMISSED with prejudice**.

### **NOTICE**

In accordance with the Individuals with Disabilities Education Act (as amended by the Individuals with Disabilities Education Improvement Act of 2004) and North Carolina’s Education of Children with Disabilities laws, the parties have appeal rights.

### **Under Federal Law**

Any person aggrieved by the findings and decision of this Final Decision, Order of Dismissal may institute a civil action in the appropriate district court of the United States as provided in Title 20 of the United States Code, Chapter 33, Subchapter II, Section 1415 (20 USC 1415). Procedures and time frames regarding appeal into the appropriate United States district court are in accordance with the aforementioned Code cite and other applicable federal statutes and regulations. A copy of the filing with the federal district court should be sent to the Exceptional Children Division, North Carolina Department of Public Instruction, Raleigh, North Carolina so that the records of this case can be forwarded to the court.

**Under State Law**

Pursuant to the provisions of NORTH CAROLINA GENERAL STATUTES Chapter 150B, Article 4, any party wishing to appeal the final decision of the Administrative Law Judge may commence such appeal by filing a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The party seeking review must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Decision and Order. N.C. GEN. STAT. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Pursuant to N.C. GEN. STAT. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal.

**IT IS SO ORDERED.**

This the 22nd day of March, 2011.

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Augustus B. Elkins II  
Administrative Law Judge