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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0368**

John Paul Haik,
Respondent,

vs.

Professional Educator Licensing and Standards Board,
Appellant.

**Filed September 29, 2025
Reversed and remanded
Cochran, Judge**

Ramsey County District Court
File No. 62-CV-24-6488

Daniel J. Supalla, Stanley E. Siegel, Nilan Johnson Lewis PA, Minneapolis, Minnesota (for respondent)

Keith Ellison, Attorney General, Erin Farmer, Nathan J. Hartshorn, Assistant Attorneys General, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Cochran, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this interlocutory appeal, appellant licensing board challenges the district court's order denying its motion to dismiss. Appellant argues that the district court erred by denying its motion to dismiss counts I-III of respondent licensee's complaint for lack of subject-matter jurisdiction. Appellant further argues that the district court erred by

declining to dismiss count I-IV for failure to state a claim because respondent waived judicial review of all four counts.

We conclude that the district court lacks subject-matter jurisdiction over counts I-III because respondent failed to exhaust his administrative remedies. But we decline to reach appellant’s argument regarding waiver—which challenges all counts, including count IV—because that argument is not within the scope of this interlocutory appeal. Accordingly, we reverse the district court’s order denying the motion to dismiss as to counts I-III and remand for further proceedings on count IV—the only remaining count.

FACTS¹

Respondent John Paul Haik held a short-call substitute-teacher license issued by appellant Professional Educator Licensing and Standards Board (the board). Haik’s license was valid until June 30, 2023.

On December 5, 2022, Haik was substitute teaching at a public elementary school. As Haik was returning to the classroom, he encountered a female fourth-grade student in the stairwell. Haik initiated a conversation with the student and identified himself “by the name of the teacher for which he was a substitute that day.” “Then as a joke, Haik said ‘maybe I could be Mr. [student name] and then we’d both have cool names.’”

¹ The facts in this opinion are based solely on the allegations in the complaint, and the parties’ stipulation and consent order referenced in the complaint, viewed in the light most favorable to respondent as the nonmoving party. *See Cruz-Guzman v. State*, 916 N.W.2d 1, 7 (Minn. 2018) (stating that when reviewing a motion to dismiss, an appellate court accepts the allegations in the complaint as true and “construe[s] all reasonable inferences in favor of the nonmoving party” (quotation omitted)); *see also In re Hennepin Cnty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 497 (Minn. 1995) (approving district court’s review of documents cited in a complaint, in consideration of a motion to dismiss).

Haik returned to the elementary school the following day to continue his substitute teaching assignment. That morning between 9:00 and 9:30 a.m., the principal called Haik to her office. The principal informed Haik that he had been involved in an “inappropriate interaction” with a student on the day prior. When Haik asked the principal what she was referring to, the principal responded that Haik “got too close to a student and made them feel uncomfortable.” After the meeting with the principal, Haik was escorted from the building.

The principal thereafter made a complaint to the board about Haik. The principal based her complaint on information she learned from a social worker who had talked to the student’s parent as well as video from the school stairwell. The board opened an investigation and requested records from the school district related to the complaint. After receiving a response from the school district in February 2023, the board notified Haik that it was investigating the principal’s complaint about him. The board gave Haik an opportunity to respond. In March 2023, Haik sent a letter to the board explaining that the allegations in the board’s letter were misleading and providing the board with his recollection of the events that occurred on the day in question in December 2022. He also requested a copy of the principal’s complaint. The board did not respond to Haik’s request.

In early May 2023, Haik was contacted by an assistant attorney general representing the board. The attorney informed Haik that the board’s disciplinary committee had recommended punishment of a stayed suspension of his substitute-teaching license. The attorney enclosed a proposed stipulation to resolve the complaint. The proposed stipulation did not specify a statutory basis for the proposed sanction of Haik’s license. Haik requested

specification, but the board declined. After discussion, the assistant attorney general proposed a revised stipulation and consent order, and she indicated that it was her “client’s best and final offer.”

On July 18, 2023, Haik signed the stipulation “unaware [that] the Board’s stipulation would become public data.” On July 19, 2023, the stipulation was signed by a representative of the board’s disciplinary committee. And, on July 21, 2023, a representative of the board signed the consent order, adopting and incorporating the stipulation in full.

The stipulation and consent order specifies that “[i]t was reported that [Haik] engaged in an inappropriate interaction with a student on December 5, 2022.” The stipulation and consent order also provides that Haik understands that the board was “prepared to initiate contested[-]case proceedings to determine whether sufficient grounds exist to revoke or suspend his license” and that Haik “has the right to a contested[-]case proceeding regarding any proposed disciplinary action against his Minnesota teaching license,” but Haik “is waiving that right” by signing the stipulation. “[I]n consideration of the foregoing,” the stipulation and consent order imposed a two-year suspension of Haik’s short-call substitute teaching license, stayed as long as Haik complies with the requirements of the stipulation. The stipulation and consent order also provides that the board may lift the stay under certain specified circumstances. And, if the board lifts the stay, Haik “waives the right to any other judicial review of the suspension by writ of certiorari, appeal, or other action.”

In December 2023, following the parties' agreement to the stipulation and consent order, Haik graduated with a master's degree in school counseling. In February 2024, the board issued a school-counselor license to Haik. Haik then began seeking employment as a school counselor. While doing so, Haik became aware that the stipulation and consent order was public information available on a database maintained by the board. Haik was turned down for employment as a school counselor with two different schools, each of which cited the stipulation and consent order as a reason for not offering Haik employment. In September 2024, Haik filed suit against the board in district court.

Haik's complaint alleges four causes of action. Count I alleges the board violated his due-process rights based on the board's alleged failure to give Haik sufficient notice of the nature and character of the charges against him. Count II seeks declaratory relief requesting the stipulation and consent order be vacated based on Haik's allegation that the board did not have authority to sanction his short-call substitute license because his license had expired before the stipulation and consent order were signed. Count III seeks declaratory relief vacating the stipulation and consent order based on Haik's allegation that the board's conduct was arbitrary and capricious. Count IV alleges that the board violated Minnesota Statutes section 13.04, subdivision 2 (2024), a provision of the Minnesota Government Data Practices Act (MGDPA), by failing to disclose to Haik that the consent order would be publicly available.

The board moved to dismiss Haik's complaint for lack of subject-matter jurisdiction and failure to state a claim. *See* Minn. R. Civ. P. 12.02(a), (e). Regarding subject-matter jurisdiction, the board argued that the district court lacks jurisdiction to decide counts I-III

because Haik failed to exhaust his administrative remedies prior to filing his lawsuit. Alternatively, the board argued that the district court lacks subject-matter jurisdiction over claims I-III because those claims challenge a quasi-judicial decision of the board, review of which is subject to the exclusive certiorari jurisdiction of this court. The board also argued that all four counts should be dismissed for failure to state a claim as a matter of law.

The district court denied the board's motion in its entirety. The district court denied the board's motion to dismiss claims I-III for lack of subject-matter jurisdiction based on its conclusion that Haik's decision to not pursue the administrative remedy of a contested-case hearing did not bar his claims. The district court further determined that the stipulation and consent order was not a quasi-judicial decision subject to this court's exclusive certiorari jurisdiction. Lastly, the district court denied the board's motion to dismiss for failure to state a claim, determining that each of Haik's four claims stated a claim upon which relief can be granted.

The board appeals.

DECISION

An order denying a motion to dismiss for lack of subject-matter jurisdiction is immediately appealable as a matter of right. *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn 2005). But "[a] district court order denying a motion to dismiss for failure to state a claim is generally not immediately appealable as of right." *Cruz-Guzman*, 916 N.W.2d at 7. Consequently, our scope of review is limited to issues relating to the district court's decision on the question of subject-matter jurisdiction; our

review does not include the district court’s denial of the board’s motion to dismiss for failure to state a claim. *See Stone v. Invitation Homes, Inc.*, 986 N.W.2d 237, 246 (Minn. App. 2023) (stating that, “when an order is appealable in part and not appealable in part, then an immediate appeal brings up for review only that part which is appealable” (quotation omitted)), *aff’d*, 4 N.W.3d 489 (Minn. 2024).

The board raises two primary arguments for reversal. First, the board argues that the district court erred in denying its motion to dismiss counts I-III for lack of subject-matter jurisdiction because Haik failed to exhaust his administrative remedies or, alternatively, because the board’s sanction of Haik’s license is a quasi-judicial decision subject to the exclusive certiorari jurisdiction of this court. Second, the board argues that the district court erred in denying its motion to dismiss count IV (and the other counts) because Haik agreed to waive judicial review of these claims by signing the stipulation.

As explained below, we conclude that the district court lacks subject-matter jurisdiction to address counts I-III due to Haik’s failure to exhaust his administrative remedy of a contested-case hearing and therefore the district court erred in denying the board’s motion to dismiss counts I-III. Accordingly, we do not reach the board’s alternative argument regarding lack of subject-matter jurisdiction. With regard to the board’s argument that Haik waived his right to judicial review of count IV (the only remaining count after dismissal of counts I-III), we conclude this argument does not raise an issue of subject-matter jurisdiction and therefore is not properly before us in this interlocutory appeal.

I. The district court lacks subject-matter jurisdiction over counts I-III because Haik did not exhaust his administrative remedies.

It is well established that generally a party must exhaust available administrative remedies “before judicial review of administrative proceedings will be permitted.” *Nw. Airlines, Inc. v. Metro. Airports Comm’n*, 672 N.W.2d 379, 381 (Minn. App. 2003), *rev. denied* (Minn. Feb. 25, 2003); *see also Uckun v. Minn. State Bd. of Med. Practice*, 733 N.W.2d 778, 785 (Minn. App. 2007) (calling the doctrine of exhaustion of administrative remedies a “long-settled rule”) (quoting *Thomas v. Ramberg*, 60 N.W.2d 18, 20 (Minn. 1953)). “Courts require exhaustion of administrative remedies to protect the autonomy of administrative agencies and to promote judicial efficiency.” *Nw. Airlines*, 672 N.W.2d at 381. But “administrative remedies need not be pursued if it would be futile to do so,” *Uckun*, 733 N.W.2d at 786, or if a party alleges a “clear and unambiguous” constitutional violation, *County of Hennepin v. L. Enft Lab. Servs., Inc., Loc. No. 19.*, 527 N.W.2d 821, 825 (Minn. 1995).

“A claim of failure to exhaust administrative remedies may raise an issue of subject-matter jurisdiction.” *Centra Homes, LLC v. City of Norwood Young America*, 834 N.W.2d 581, 585 (Minn. App. 2013) (citing *Nw. Airlines*, 672 N.W.2d at 381-82, 385). We review questions of subject-matter jurisdiction *de novo*. *Tischer v. Hous. Redevelopment Auth. of Cambridge*, 693 N.W.2d 426, 428 (Minn. 2005); *see also Builders Ass’n of Minn. v. City of St. Paul*, 819 N.W.2d 172, 177 (Minn. App. 2012) (“Whether the exhaustion doctrine applies is a determination of law, which this court reviews *de novo*.”).

The board contends that the district court lacks subject-matter jurisdiction to hear

and decide counts I-III because Haik failed to exhaust his administrative remedies before filing his lawsuit. We agree. To provide context for our analysis, we first discuss precedent addressing when a failure to exhaust an administrative remedy deprives a court of subject-matter jurisdiction.

In *Centra Homes*, we examined whether a party's failure to exhaust its administrative remedies regarding a city's permitting decision deprived the district court of subject-matter jurisdiction, and we concluded that it did. 834 N.W.2d at 585-88. That case concerned two building permits issued by the City of Norwood Young America to Centra. *Id.* at 582-83. Centra filed a lawsuit alleging the "permit valuations" used by the city to set the fees for the building permits violated state law because they were not related to actual costs. *Id.* at 583. Two builders associations were also named as plaintiffs in the lawsuit. *Id.*

Prior to filing the lawsuit, Centra and the city entered into an escrow agreement that permitted Centra "to file an appeal to the district court under [Minnesota Statutes section] 462.361 (2012), to challenge the city's permit valuations for the two homes." *Id.* After the lawsuit was filed, the city moved to dismiss the complaint for lack of subject-matter jurisdiction, "arguing that Centra's appeal from the permit valuations was an appeal of a decision made by a building official relative to the application and interpretation of the building code" and that Centra failed to exhaust available administrative remedies prior to filing its lawsuit. *Id.* (quotations omitted). The district court denied the motion. *Id.* The district court acknowledged that generally a party must exhaust its administrative remedies before bringing a lawsuit under section 462.361, but the district court determined that it

had subject-matter jurisdiction because the lawsuit raised claims for declaratory judgment, mandamus, and injunctive relief. *Id.* at 583-84. The district court was “not persuaded that the[] claims [we]re merely challenges to [building] code interpretation/application.” *Id.* at 584. The district court also determined “it would not serve the interests of judicial economy to dismiss the action.” *Id.*

This court reversed the district court’s denial of the city’s motion to dismiss for lack of subject-matter jurisdiction. We explained that the rules applicable to the state building code, which the city adopted and used in its permit decision-making process, set forth a number of administrative remedies. *Id.* at 587. Those remedies included an appeal to either a municipal board of appeals or the state appeals board. *Id.* The appeals board’s decision could then be administratively appealed to the commissioner of the Minnesota Department of Labor and Industry through a contested-case hearing process, and the commissioner’s decision could be appealed to this court by certiorari. *Id.* Because Centra failed to challenge the city’s permit valuations through this administrative appeal process, we concluded that the district court lacked subject-matter jurisdiction to hear its claims. *Id.* at 588. We reached this conclusion notwithstanding the language in the parties’ escrow agreement that permitted Centra to file an appeal of the city’s permit valuations in district court, noting that “parties cannot confer subject-matter jurisdiction on the district court by agreement.” *Id.* at 586. We also rejected Centra’s argument that it did not need to exhaust its administrative remedies because it brought claims for declaratory judgment, mandamus, and injunctive relief, explaining that each of these claims was “based on the validity or invalidity of the permit valuations set by the city, which are determinations made by the

city building official relative to the application and interpretation of the state building code.”² *Id.* at 587. Therefore, we concluded that Centra was “required to exhaust [its] administrative remedies before seeking judicial review, and the district court erred in denying the city’s motion to dismiss for lack of subject-matter jurisdiction.” *Id.* at 588.

Similarly, in *Northwest Airlines*, we concluded that the district court lacked subject-matter jurisdiction to hear and decide a lawsuit involving a challenge to a governmental body’s decision where the plaintiff failed to exhaust available administrative remedies. 672 N.W.2d at 385. The lawsuit in *Northwest Airlines* concerned an ordinance adopted by the Metropolitan Airports Commission pursuant to its legislative authority. *Id.* at 380. The ordinance set rental rates for certain tenants at “reliever airports” (airports other than Minneapolis-St. Paul International Airport (MSP)). *Id.* The ordinance went into effect in January 1999. *Id.* Northwest Airlines was concerned that the rental rates adopted by the commission under the ordinance failed to cover the costs of reliever airports, resulting in Northwest Airlines and other tenants at MSP subsidizing the costs of reliever airports. *Id.* at 380-81. Northwest Airlines filed a lawsuit seeking declaratory judgment that the ordinance was in violation of the statutory requirement that rental rates be “established with due regard to the value of the property and improvements used and the expense of operation to the corporation.” *Id.* at 381 (quoting Minn. Stat. § 473.651 (2002)). The

² We also concluded that Minnesota Statutes section 462.361, subdivision 1, did “not permit [Centra] to bring an action in district court to obtain review of the city’s building-permit fees,” further supporting our conclusion that Centra needed to exhaust its administrative remedies under the state building code. *Centra Homes*, 834 N.W.2d 585-86.

district court dismissed Northwest Airlines' lawsuit for lack of subject-matter jurisdiction, concluding Northwest Airlines failed to exhaust its administrative remedies. *Id.* The district court determined that Northwest Airlines had an administrative remedy under Minnesota Statutes section 473.608, subdivision 17(6) (2002), which provided that an interested party "may" petition the commission for reconsideration, amendment, modification, or waiver of an ordinance adopted by the commission. *Id.* at 381-82.

We affirmed the district court's dismissal for lack of subject-matter jurisdiction. We concluded that, notwithstanding the permissive language in section 473.608, subdivision 17(6), providing that a party "may" file a petition with the commission to amend or waive an ordinance, Northwest Airlines was required to exhaust that administrative remedy before bringing its challenge to the ordinance in district court. *Id.* at 382-83. We relied on prior precedential decisions in which we interpreted similar statutes that also used the word "may" and we held that a party was required to exhaust an available administrative remedy even when the applicable statute was permissive and not mandatory. *Id.*; see also *Counties of Blue Earth v. Minn. Dep't of Lab. and Indus.*, 489 N.W.2d 265, 267 (Minn. App. 1992) (requiring the exhaustion of the administrative remedy provided in Minnesota Statutes section 177.41, subdivision 4 (1990), which states that a party "may" petition for reconsideration of a prevailing wage and "may" seek a contested-case hearing); *Zaluckyj v. Rice Creek Watershed Dist.*, 639 N.W.2d 70, 75, 77 (Minn. App. 2002) (requiring exhaustion of the administrative remedy provided by Minnesota Statutes section 103E.715, subdivision 1 (2000), which states that an interested party "may" petition for repair of a ditch), *rev. denied* (Minn. Apr. 16, 2002). We also

rejected Northwest Airlines’ argument that, because it was challenging the validity of the ordinance, it did not need to exhaust its administrative remedies. *Northwest Airlines*, 672 N.W.2d at 383-84. We noted that Northwest Airlines raised an argument that the rental rates set by the commission under the ordinance were too low, not a “bona fide challenge to the validity or constitutionality” of the ordinance. *Id.* at 384. And by requiring the exhaustion of administrative remedies, we emphasized that the commission would be required to affirmatively respond to Northwest Airlines’ request for relief, and that, in the event of a denial, Northwest Airlines could then pursue an action in district court. *Id.* at 385.

Together, *Centra Homes* and *Northwest Airlines* instruct that a district court lacks subject-matter jurisdiction to hear and decide a challenge to an agency decision if a party has failed to exhaust administrative remedies available to address the underlying dispute. *See Centra Homes*, 834 N.W.2d at 588 (requiring the exhaustion of the administrative remedies before bringing a district court action); *Nw. Airlines*, 672 N.W.2d at 382-83 (requiring the exhaustion of administrative remedies notwithstanding permissive language that a party “may” seek an administrative remedy). In other words, if an aggrieved party can seek a remedy through an administrative procedure, then the party must do so before seeking judicial relief unless an exception recognized in caselaw applies. *See Uckun*, 733 N.W.2d at 786; *Nw. Airlines*, 672 N.W.2d at 381-82; *County of Hennepin*, 527 N.W.2d at 825. With these principles in mind, we turn to whether there was an administrative remedy available to Haik that he failed to exhaust, thereby depriving the district court of subject-matter jurisdiction over claims I-III.

Administrative Remedy

The board argues that the allegations set forth in counts I-III of Haik’s complaint could have been resolved through a contested-case hearing before an administrative-law judge (ALJ). The board further argues that Haik decided not to avail himself of this administrative remedy and therefore the district court lacks subject-matter jurisdiction over claims I-III.

The statutory framework governing the board and its authority to impose sanctions provides the administrative remedy of a contested-case hearing to a licensee. The board was created by the legislature to license teachers. Minn. Stat. §§ 122A.09, subd. 4, .18 (2024). The legislature also conferred on the board the power to “refuse to issue, refuse to renew, suspend, or revoke a teacher’s license” for certain statutorily defined reasons following receipt of a written complaint. Minn. Stat. § 122A.20, subd. 1(a) (2024). Should the board believe that there are grounds to take such action against a license following a complaint and investigation, the board must first schedule a contested-case hearing in accordance with the Minnesota Administrative Procedure Act (MAPA), Minn. Stat. §§ 14.001-.69 (2024). The requirement for a contested-case hearing arises under Minnesota Statutes section 214.10 (2024), which sets forth the complaint resolution process for state licensing boards including the professional educator licensing and standards board. Minn. Stat. § 214.10, subd. 1; *see also* Minn. R. 8710.2100, subp. 3(A) (2023) (stating that enforcement of the teacher code of ethics “shall be in accord with” section 214.10).

A contested-case hearing under MAPA provides a number of procedural protections to a licensee including reasonable notice and an opportunity to be heard before the board makes a final decision regarding a potential licensing sanction. *See* Minn. Stat. §§ 14.58-.62 (2024). The notice shall state the “issues involved” and specify “the allegations or issues to be determined together with a citation to the relevant statutes or rules allegedly violated or which control the outcome of the case.” Minn. Stat. § 14.58; Minn. R. 1400.5600, subp. 2(D) (2023).³ Further, each party may demand discovery, including a summary of any witness statements, written or recorded statements, and any written exhibit to be introduced by an opposing party at the hearing. Minn. R. 1400.6700, subp. 1 (2023). A party may also bring motions before the ALJ, Minn. R. 1400.6600 (2023), and may cross examine witnesses and bring rebuttal evidence, Minn. Stat. § 14.60, subd. 3. And a party who is adversely affected by the ALJ’s recommended decision must be afforded ten days to file exceptions before the agency makes its final decision. Minn. Stat. § 14.61, subd. 1. In addition, an aggrieved party may seek judicial review of the final agency decision by filing a petition for a writ of certiorari with this court. Minn. Stat. §§ 14.63-.64. That review can include, among other issues, whether the agency’s decision was “in violation of constitutional provisions,” “in excess of the statutory authority or jurisdiction of the agency,” or “arbitrary or capricious.” Minn. Stat. 14.69(a)-(c), (f).

In sum, licensed teachers are entitled to the administrative remedy of a contested-case hearing, and the due-process protections that it affords, before the board takes formal

³ The procedures detailed by Minn. R. 1400.5010 to 1400.8400 (2023) govern all contested-case hearings conducted pursuant to MAPA. Minn. R. 1400.5010.

disciplinary action against a teacher's license. Minn. Stat. §§ 122A.20, subd. 1(a), 214.10, subd. 2; *see GH Holdings, LLC v. Minn. Dep't of Com.*, 840 N.W.2d 838, 842 (Minn. App. 2013) (stating that the procedures provided by a contested-case hearing "are the incidents of a trial" (quotation omitted)). And the record reflects that Haik failed to exhaust this administrative remedy. As the board notes, it was prepared to initiate a contested-case proceeding to address the principal's complaint against Haik, but Haik decided to waive his right to a contested-case hearing and instead entered the stipulation with the board. By signing the stipulation and expressly waiving his right to a contested-case hearing, Haik voluntarily failed to exhaust his administrative remedy.

Haik's failure to avail himself of this administrative remedy deprived the district court of subject-matter jurisdiction over claims I-III because the issues raised in counts I-III could have been addressed by a contested-case hearing had Haik chosen to avail himself of this remedy. *See Centra Homes*, 834 N.W.2d at 588. In count I of his complaint, Haik alleges that his due-process rights were violated because of insufficient notice by the board of the principal's complaint about him, the evidence against him, and the legal basis for disciplinary action. Haik also alleges that he was denied an opportunity to present countervailing evidence. But if Haik had chosen to participate in a contested-case hearing instead of signing the stipulation, these concerns would have been addressed through the contested-case hearing. The contested-case process ensures adequate notice, an opportunity for discovery, and a trial-like hearing with the opportunity for each party to present evidence and cross-examine witnesses. Minn. Stat. §§ 14.58, .60, subd. 3; Minn. R. 1400.6700, subp. 1. Similarly, Haik could have addressed the allegations in count II—

that the board was without authority to discipline him when it took its licensing action because his substitute-teaching license expired—by making a motion before the ALJ to that effect during the contested-case hearing. Minn. R. 1400.6600. Finally, count III could also have been resolved through a contested-case hearing. In count III of his complaint, Haik alleges that the board’s conduct was arbitrary and capricious because the board never made findings of facts or conclusions of law that Haik’s conduct violated a specific statute or rule provision. But, if Haik had availed himself of the contested-case process, the ALJ would have issued findings of fact, conclusions of law, and recommendations, which the board would then have accepted, rejected, or modified. Minn. Stat. §§ 14.50, .62.

Accordingly, we conclude that Haik was required to raise his concerns about the board’s disciplinary process at a contested-case hearing to exhaust his administrative remedies before seeking judicial review. Requiring exhaustion of this administrative remedy furthers the dual purposes of promoting judicial efficiency and the autonomy of administrative agencies. *See Nw. Airlines*, 672 N.W.2d at 381 (discussing purposes of the exhaustion requirement).

Haik’s Arguments

Haik does not dispute that he could have pursued a contested-case hearing and did not do so. Haik instead argues that, after he entered the stipulation and consent order, he “had no more administrative remedies to exhaust.” We are not persuaded. Haik’s argument asks us to consider the administrative remedies available to him *after* he entered the stipulation and consent order. Haik’s argument ignores the fact that he could have participated in a contested-case hearing but he instead voluntarily waived his right to that

administrative remedy. And Haik provides no legal support for his position that waiver of an administrative remedy creates an exception to the requirement that a party must first exhaust their administrative remedies to seek judicial review. *See id.* at 383 (stating that, before a party may bring an action in district court, they “must first exhaust their administrative remedies under the appropriate statutes”).

Haik’s argument is also inconsistent with our decision in *Centra Homes*. As discussed above, in *Centra Homes*, the parties entered into an escrow agreement which included language that permitted Centra to file an action in district court challenging the city’s permit valuations. *Centra Homes*, 834 N.W.2d at 583. This court concluded that Centra was required to exhaust its administrative remedies (which included a contested-case hearing and certiorari review) notwithstanding the language of the parties’ escrow agreement permitting Centra to bring suit in district court. *Id.* at 586-87. Similarly here, Haik’s waiver of his right to a contested-case hearing by signing the parties’ stipulation cannot excuse Haik from the requirement that he exhaust his administrative remedies or confer subject-matter jurisdiction on the district court. As we stated in *Centra Homes*, “parties cannot confer subject-matter jurisdiction on the district court by agreement.” *Id.* at 586.

Haik argues, in the alternative, that even if we conclude that he failed to exhaust his administrative remedies, count I of the complaint can still be heard and decided by the district court because count I raises a constitutional due-process claim. Haik is correct that in certain circumstances a party is not required to exhaust their administrative remedies prior to bringing a constitutional claim. In *McGrath v. State*, the supreme court considered

various alleged constitutional violations by prison security guards who were disciplined for “abuse of their sick-leave privileges.” 312 N.W.2d 438, 440 (Minn. 1981). The guards used their sick time in protest of what they believed to be unfair disciplinary action against guards following a prisoner escape. *Id.* In their complaint, the guards who took sick leave alleged that the disciplinary procedures imposed by prison officials pursuant to the guards’ collective bargaining agreement violated their constitutional rights. *Id.* The supreme court held that “a failure to exhaust may be excused when the complaining party can show that an administrative agency has taken some action which clearly and unambiguously violates the complaining party’s constitutional rights.” *Id.* at 441 (quotation omitted). This exception exists because a constitutional challenge “requires judicial interpretation.” *Nw. Airlines*, 672 N.W.2d at 383. However, the supreme court concluded that the claims at issue in *McGrath* did not allege an agency action that “clearly and unambiguously” violated the guard’s constitutional rights because their complaint raised “only violations of the collective bargaining agreement.” *McGrath*, 312 N.W.2d at 441. And the supreme court emphasized that “a mere allegation of a constitutional deprivation is not sufficient to avoid the exhaustion requirement.” *Id.* The supreme court went on to hold that “[i]n the normal case, where the constitutional violations alleged are of a general nature,” exhaustion of administrative remedies is required. *Id.* at 442. And “[t]he alleged constitutional violations may be raised at the time of judicial review of the [administrative decision].” *Id.*

Similar to *McGrath*, count I of Haik’s complaint does not allege an agency action that “clearly and unambiguously” violated his constitutional rights to due process. Haik’s due-process claim rests on allegations that he did not receive adequate notice or a

meaningful opportunity to be heard before entering into the stipulation with the board. But Haik cites no authority, and we are aware of none, that holds that constitutional due-process protections apply when a licensee voluntarily resolves a licensing matter through a stipulation rather than through a contested-case hearing. Furthermore, as discussed above, if Haik had availed himself of a contested-case hearing instead of signing the stipulation, Haik would have received detailed notice of the board's allegations against him and he would have had the opportunity to be heard through a trial-like proceeding, potentially resolving the due-process concerns raised in Haik's complaint without the need for judicial review. In short, Haik has not alleged a clear and unambiguous due-process violation that provides an exception to the general requirement that a party exhaust their available administrative remedies.

We therefore conclude that Haik was required to exhaust his administrative remedy of a contested-case hearing and, because he failed to do so, the district court lacks subject-matter jurisdiction to hear and decide counts I-III of Haik's complaint. *See Centra Homes*, 834 N.W.2d at 588; *Nw. Airlines*, 672 N.W.2d at 381.

II. The board's argument regarding count IV is not properly before this court.

We next consider the board's argument challenging the district court's denial of its motion to dismiss for failure to state a claim as it relates count IV—the only remaining count in the complaint. In its motion to dismiss, the board did not seek dismissal of count IV, which alleges a violation of the MGDPA, based on lack of subject-matter jurisdiction. As noted above, the board's argument relating to subject-matter jurisdiction was limited to counts I-III. But the board also sought dismissal of counts I-IV on the basis that Haik

waived these claims by signing the stipulation. On appeal, the board argues that the district court should have found that Haik waived judicial review of these claims and requests that we order the district court to dismiss count IV on that basis. We decline to do so because the board's request is outside the scope of this interlocutory appeal.

The scope of an interlocutory appeal is confined to that part of the district court's order that is immediately appealable. *Stone*, 986 N.W.2d at 246. Here, the board's interlocutory appeal is limited to the district court's denial of the board's motion to dismiss for lack of subject-matter jurisdiction. *See Janssen*, 704 N.W.2d at 763 (allowing for immediate appeal of a denial on an order to dismiss for lack of subject-matter jurisdiction). Consequently, only matters pertaining to subject-matter jurisdiction are within the scope of this appeal. *See Stone*, 986 N.W.2d at 246 (considering only immediately appealable matters on interlocutory appeal).

The board's argument regarding waiver of count IV falls outside of the scope of this appeal because subject-matter jurisdiction and waiver raise distinct legal issues. Subject-matter jurisdiction concerns a court's authority to hear and decide a certain type of case. *McCullough & Sons, Inc. v. City of Vadnais Heights*, 883 N.W.2d 580, 585 (Minn. 2016). Waiver, on the other hand, is "the intentional relinquishment of a known right." *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 367 (Minn. 2009) (quotations omitted). The board cites no legal authority, and we are aware of none, that treats the waiver of a right as a matter of subject-matter jurisdiction. Additionally, construing the board's waiver argument on appeal as a subject-matter jurisdiction challenge would be inconsistent with the board's motion to dismiss for lack of subject-matter jurisdiction before the district

court, which was limited to counts I-III. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (declining to consider issues that the record shows were not presented to and considered by the district court). We therefore decline to address the board’s argument for dismissal of count IV based on waiver.⁴

Conclusion

In sum, because Haik failed to exhaust his administrative remedies, we reverse the district court’s denial of the board’s motion to dismiss counts I-III for lack of subject-matter jurisdiction and judgment should be entered in favor of the board on those counts. And because the board’s argument regarding the district court’s denial of its motion to dismiss count IV for failure to state a claim is not properly before us, we remand the case for further proceedings on count IV—the sole remaining count.

Reversed and remanded.

⁴ In doing so, we express no opinion regarding the district court’s interpretation of the waiver provision of the stipulation. We also do not express any opinion as to the merits of count IV.