

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
23 EDC 03289

<p>█ by parent or guardian █ and █ Petitioner,</p> <p>v.</p> <p>Wake County Board of Education Respondent.</p>	<p><b>FINAL DECISION ORDER OF DISMISSAL WITHOUT PREJUDICE</b></p>
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**THIS MATTER** is before the undersigned Administrative Law Judge on Respondent’s Motion to Dismiss (“Motion”) filed on August 1, 2023. The same day, Petitioners filed a Response to the Motion. The Undersigned having considered the entire record finds that the matter is now ripe for disposition on the issue of whether the Office of Administrative Hearings has subject matter jurisdiction in this case pursuant to Rule 12(b)(1) of the North Carolina Rules of Civil Procedure. The Undersigned has determined that this Tribunal does not have jurisdiction over Petitioners’ claims and that Respondent’s Motion should be **GRANTED**.

**APPEARANCES**

For Petitioners: █ and █, *pro se*  
Parents

For Respondent: Maya Hart Weinstein  
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**STANDARD OF REVIEW**

When a court, in this case a Tribunal, reviews the sufficiency of a complaint, before the reception of any evidence, its task is necessarily a limited one. The issue is not whether a plaintiff/petitioner will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. *Scheuer v. Rhodes*, 416 U.S. 232, 94 S.Ct. 1683 (1974). When ruling on a motion to dismiss, the Tribunal must determine “whether, as a matter of law, the allegations of the complaint ... are sufficient to state a claim upon which relief may be granted.” *Harris v. NCNB*, 85 N.C. App. 669, 355 S.E.2d 838 (1987). In ruling on a motion to dismiss, the Tribunal must treat the allegations in the complaint as true. *See Hyde v. Abbott Lab., Inc.*, 123 N.C.App. 572, 473 S.E.2d 680 (1996). The Tribunal must also construe the complaint liberally (*Branch Banking &*

*Trust Co. v. Lighthouse Fin. Corp.*, 2005 NCBC 3 (N.C.Super.Ct. July 13, 2005)) and in the light most favorable to the pleader (the Petitioner); *see also Scheuer*, 416 U.S. at 236, 94 S.Ct. at 1686.

Rule 12(b)(1) requires the dismissal of a petition when there is a “[l]ack of jurisdiction over the subject matter.” N.C. Gen. Stat. § 1A-1, Rule 12(b)(1). “Subject-matter jurisdiction derives from the law that organizes a court [or Tribunal] and cannot be conferred on a court by action of the parties or assumed by a court except as provided by that law.” *Clements v. Clements ex rel. Craige*, 219 N.C. App. 581, 586, 725 S.E.2d 373, 377 (2012) (citing *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010)). It further “cannot be conferred by consent or waiver and a court cannot create it where it does not already exist.” *Id.* (citing *Burgess v. Burgess*, 205 N.C. App. 325, 326-29, 698 S.E.2d 666, 668-69 (2010)).

This Tribunal must dismiss an action for want of subject matter jurisdiction “if the material jurisdictional facts are not in dispute and the moving party is entitled to prevail as a matter of law.” *Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647 (4th Cir.1999) (quoting *Richmond, Fredericksburg & Potomac R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir.1991)).

### **FINDINGS OF FACT CONSTRUED AS TRUE**

1. Even though Respondent contests the factual allegations, based on the applicable standard for deciding a motion to dismiss, the facts alleged in the Petition must be construed as true.

2. Petitioner ██████, by and through ██████ parents, ██████ and ██████. (“Petitioners”), filed a Petition for a Contested Case Hearing on July 17, 2023, and served it on the Superintendent of Wake County Public Schools (“Board” or “Respondent”) on July 21, 2023 (the “Current Petition”). On August 1, 2023, Respondent filed a Motion to Dismiss.

3. Previously, Petitioners filed a Petition for Contested Case Hearing against the Wake County Board of Education on December 30, 2021 (22 EDC 007) (the “First Petition”).

4. The First Petition was voluntarily dismissed with prejudice on March 3, 2022, as part of a Settlement Agreement. The Settlement Agreement became effective upon the Board’s formal approval on March 1, 2022.

5. The Current Petition indicates on its face that Petitioners filed this claim to contest an alleged breach of the Settlement Agreement. On the first page of the Petition, Petitioners state: “We are writing to appeal for equitable relief and financial compensation in the matter of Wake County Public School System (WCPSS) breaching all of the legally-binding terms, intent, and spirit of the 2022 memorandum of agreement [22 EDC 007] for our Due Process settlement in multiple ways laid out herein.” Pet. p 1.

6. Likewise, on page 2 of the Current Petition, Petitioners state, “We are back here, because WCPSS has violated Memorandum of Agreement ██████ vs. WCPSS M ██████ 22 EDC 007 dated February 12th and 15th, 2022.” Pet. p 2.

7. The remaining allegations in the Current Petition correlate to specific provisions in the Settlement Agreement.

8. Petitioners request that OAH enforce the parties' existing Settlement Agreement. *See* Pet. pp 7-8, ¶ 31 (asking that this Tribunal order “[n]eeded evaluations that are delinquent due to WCPSS actions,” “educational services,” “vocational training,” and compensation for such services – all of which are items agreed to and addressed by the Settlement Agreement).

9. Respondent moved to dismiss the Current Petition for lack of subject matter jurisdiction because the Office of Administrative Hearings cannot adjudicate the breach of the Settlement Agreement from the First Petition.

10. In Petitioners' Response, they poignantly describe the alleged failures of WCPSS to appropriately serve their son and to allegedly prepare him “for life after high school.” *See* Pet'r's Response p 2. In addition, Petitioners ask that their case not be dismissed “if it was all within the court's discretion.”

11. This Tribunal is not a court of competent jurisdiction to hear a breach of settlement claim. That jurisdiction lies with either the State General Superior Court of Justice or the federal district court. As such, the Undersigned has no discretion but to dismiss Petitioners' contested case.

**BASED UPON** the foregoing Findings of Fact, the Undersigned makes the following Conclusions of Law.

### CONCLUSIONS OF LAW

1. Petitioners' claims relate entirely to an alleged breach of the Settlement Agreement and thus are outside the jurisdiction of the Office of Administrative Hearings (OAH).

2. The Settlement Agreement is a private contract between the parties, which OAH has no authority to set aside, though it may consider the document in determining whether certain claims are jurisdictionally available to Petitioners. *See Sch. Bd. of Lee County v. M.C.*, 796 So.2d 581, 581-83 (Fla. Dist. Ct. App. 2001) (affirming that OAH lacked jurisdiction to set aside an agreement settling a previous due process petition); *D.B.A. ex rel. Snerling v. Special Sch. Dist. No. 1*, Minneapolis, Minn., 2010 WL 5300946, at 4 (D. Minn. Dec. 20, 2010) (“It is certainly true that a Hearing Officer has no authority to enforce settlement agreements. . . Yet there is no such prohibition on a Hearing Officer's ability to review and interpret a settlement agreement for the purposes of determining whether jurisdiction exists.”); *see also H.C. ex rel. L.C. v. Colton-Pierrepoint Cent. Sch. Dist.*, 341 F. App'x 687, 690 (2d Cir. 2009) (“[A] due process hearing before an IHO was not the proper vehicle to enforce the settlement agreement.”); *A.R. ex rel. R.V. v. New York City Dep't of Educ.*, 407 F.3d 65, 78 (2d Cir. 2005) (“The power and authority of the administrative agency do not underlie the private settlement agreement, which may only be enforced by a new and separate proceeding by one party against another.”).

3. OAH is an independent, quasi-judicial agency established as part of the executive branch of government and is vested with only those judicial powers necessary to accomplish the purposes for which it was created. *Employment Sec. Comm'n. v. Peace*, 128 N.C. App. 1, 8, 493 S.E.2d 466, 470 (1997).

4. The Administrative Procedures Act (“APA”) establishes a uniform system of adjudicatory procedures in OAH for State agencies, N.C. Gen. Stat. § 150B-1(a), and specifically excludes local units of government from its definition of “agency.” N.C. Gen. Stat. § 150B-2(1a).

5. “Local school boards and local school administrative units are local government units, and, as such, are not ‘agencies’ for the purpose of the APA.” *Thomas Jefferson Classical Academy Charter Sch. v. Cleveland Cnty. Bd. of Educ.*, 763 S.E.2d 288, 295 (N.C. Ct. App. 2014); *see also Coomer v. Lee Cnty. Bd. of Educ.*, 220 N.C. App. 155, 157, 723 S.E.2d 802, 803 (2012).

6. Because the Wake County Public School Board is a “local unit of government” and not an “agency” as defined by the APA, this Tribunal lacks jurisdiction to hear any claims brought against it unless such jurisdiction is specifically conferred by an “organic” statute outside the APA. *See Empire Power Co. v. N.C. Dept. of Environment, Health & Natural Resources*, 337 N.C. 569, 579, 447 S.E.2d 768, 774 (1994); *Batten v. N.C. Dept. of Corr.*, 326 N.C. 338, 342- 43, 389 S.E.2d 35, 38 (1990).

7. Petitioners have not cited any “organic” statute outside the APA conferring jurisdiction on OAH for breach of contract claims against local boards of education, and the Undersigned’s own research has not located any such statute.

8. Indeed, the only statute conferring jurisdiction on OAH for claims against local boards of education is N.C. Gen. Stat. § 115C-109.6(a), which sets forth the grounds upon which a party may file a petition with OAH. Those grounds are limited to “any matter relating to the identification, evaluation, or educational placement of a child, or the provision of a free appropriate public education of a child, or a manifestation determination.” N.C. Gen. Stat. § 115C-109.6(a).

9. The Individuals with Disabilities Education Improvement Act (“IDEA”) also does not confer jurisdiction on administrative law judges to enforce settlement agreements reached through the resolution processes set forth in the IDEA. *See* 20.U.S.C.1415(e)(2)(F)(iii) (defining the available remedies for enforcement of an agreement reached through the resolution processes established by the IDEA as “a State court of competent jurisdiction” or “a district court of the United States”).

10. Petitioners’ claims and requested relief for enforcement of the Settlement Agreement are not within the authority of OAH and the presiding administrative law judge has no discretion in the matter.

11. Accordingly, the Current Petition must be dismissed for lack of subject matter jurisdiction.

12. This dismissal is without prejudice and Petitioners may seek enforcement of the Settlement Agreement in a different forum.

**FINAL DECISION**

NOW, THEREFORE, based on the foregoing, the Undersigned hereby finds proper authoritative support of the Conclusions of Law noted above. Respondent's Motion to Dismiss is **GRANTED** and the contested case petition is **DISMISSED WITHOUT PREJUDICE**.

**NOTICE OF APPEAL RIGHTS**

In accordance with the Individuals with Disabilities Education Improvement Act and North Carolina's Education of Children with Disabilities laws, the parties have appeal rights regarding this Final Decision.

**Any party aggrieved by the findings and decision of a hearing officer may under N.C. Gen. Stat. § 115C-109.6 institute a civil action in State court within thirty (30) days after receipt of the notice of the decision or under 20 U.S.C. § 1415 a civil action in federal court within ninety (90) days after receipt of the notice of the decision.**

Unless appealed to State or federal court, the State Board shall enforce the final decision of the administrative law judge.

**IT IS SO ORDERED.**

This the 7th day of August, 2023.



Stacey Bice Bawtinheimer  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

[Redacted]

Parents

[Redacted]

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This the 7th day of August, 2023.



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