

STATE OF NORTH CAROLINA
COUNTY OF UNION

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
24 EDC 04663

<p>█ by parent or guardian █ & █, Petitioner,</p> <p>v.</p> <p>Charlotte-Mecklenburg Schools Board of Education, Respondent.</p>	<p>FINAL DECISION</p>
--	------------------------------

THIS MATTER comes for consideration of Charlotte-Mecklenburg Schools Board of Education's ("Respondent") Motion to Dismiss filed on December 12, 2024 for lack of subject matter jurisdiction, personal jurisdiction, and failure to state a claim. N.C. Gen. Stat. § 1A-1, Rules 12(b)(1), 12(b)(2), and 12(b)(6). The Parents of █, █, and █. ("Petitioners"), responded by filing an Amended Petition on December 13, 2024. After filing the Amended Petition, Petitioners filed a Motion to Amend Petition on December 18, 2024 to which Respondent objected. Both Parties have been given an opportunity to be heard, therefore, this matter is ripe for adjudication.

As indicated below, the Undersigned **GRANTS** Respondent's Motion to Dismiss the Petition and this case is **DISMISSED WITHOUT PREJUDICE**.

APPEARANCES

For Petitioners: Keith Lamar Pryor Howard
The Law Offices of Keith L. Howard, PLLC
keithh@khowardlaw.com

For Respondent: Ashley Frances Leonard
Ian M Shoulders
Campbell Shatley PLLC
ashley@csedlaw.com
ian@csedlaw.com

ISSUE

Whether █ and █, the parents of █, have standing to file or amend a contested case petition on behalf of █, a competent 18-year-old student, after their parental rights have been transferred?

STANDARDS OF REVIEW

When a court 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 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 court 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 court 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 court must 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. A court should dismiss an action for want of subject matter jurisdiction “only 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)). In ruling on a motion to dismiss for lack of jurisdiction, the court may consider materials beyond the bare pleadings. *Evans*, 166 F.3d at 647.

Rule 12(b)(6) of the North Carolina Rules of Civil Procedure authorizes a motion to dismiss for failure to state a claim upon which relief may be granted. N.C.G.S. § 1A-1, Rule 12(b)(6). The “well-pleaded factual allegations of the [petition] are treated as true for purposes of a 12(b)(6) motion.” *Dalenko v. Wake County Dep’t of Human Servs.*, 157 N.C. App. 49, 56, 578 S.E.2d 599, 604, *cert. denied*, 357 N.C. 458, 585 S.E.2d 3386 (2003), *cert. denied*, 540 U.S. 1178 (2004). Even so, courts are “not required . . . to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Laster v. Francis*, 199 N.C. App. 572, 577, 681 S.E.2d 858, 862 (2009) (citation and quotation marks omitted); *see also Alamance Cnty. v. N.C. Dep’t of Human Res.*, 58 N.C. App. 748, 750, 294 S.E.2d 377, 378 (1982).

If a petition asks for relief that the law does not authorize, then the claim should be dismissed for failure to state a claim upon which relief can be granted. *Forrester v. Garrett*, 280 N.C. 117, 119, 184 S.E.2d 858, 860 (1971); N.C.G.S. §1A-1, Rule 12(b)(6). A motion to dismiss should be granted under Rule 12(b)(6) when: “(1) the complaint on its face reveals that no law supports the plaintiff’s claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff’s claim.” *Prouse v. Bituminous Cas. Corp.*, 222 N.C. App. 111, 114, 730 S.E.2d 239, 241 (2012) (citation and quotation marks omitted); *see also Raritan River Steel Co. v. Cherry, Bekaert & Holland*, 322 N.C. 200, 205, 367 S.E.2d 609, 612 (1988) (avoiding dismissal under Rule 12(b)(6) requires that a complaint must “state enough to give the substantive elements of a legally recognized claim”), *rev’d*, 101 N.C. App. 1, 398 S.E.2d 889 (1990), *rev’d and reinstating the order by Superior Court*, 329 N.C. 646, 407 S.E.2d 178 (1991).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon careful consideration of the Petition, Amended Petition, motions and response of the Parties, as well as relevant statutory authorities and aforementioned standards of review, the undersigned Administrative Law Judge makes the following Findings of Fact and Conclusions of Law.

Overview

On December 2, 2024, the Parents of [REDACTED], [REDACTED], and [REDACTED] (“Petitioners” or “Parents”) filed a contested Case Petition (“Petition”) alleging that Charlotte-Mecklenburg Schools Board of Education (“Respondent”) had violated [REDACTED] substantive and procedural rights to a free appropriate public education (“FAPE”) in violation of the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.* (“IDEA”), Section 504 of the Rehabilitation Act (“504”), Title II of the Americans with Disabilities Act (“ADA”), and North Carolina General Statutes §§ 115C-106 *et. seq.*

Reviewing all the underlying alleged facts is not necessary because the relevant undisputed fact is that, at the time the Petition was filed by his Parents, [REDACTED] “birthdate is [REDACTED], and he is eighteen (18) years old.” Pet. § 13. This pertinent fact is not disputed.

Based on the Petition, [REDACTED] had already reached the age of majority, 18 years of age, when the Petition was filed by his Parents on December 2, 2024. His Parents have not alleged that [REDACTED] was incompetent and, in fact, he signed an Educational Power of Attorney on December 11, 2024. When a competent child with a disability reaches the age of majority under State law, the rights accorded to parents under the IDEA are automatically transferred to the student. 20 U.S.C. § 1415(m). The age of majority in North Carolina is 18 years. N.C. Gen. Stat. § 48A-2. Thus, the rights accorded to [REDACTED] and [REDACTED] transferred to [REDACTED] on February 17, 2024. [REDACTED], as the injured party, should have filed the contested case petition on his own behalf rather than his Parents.

Procedural History

Because the Parents’ rights had transferred to [REDACTED] before the filing of the Petition, Respondent filed a Motion to Dismiss¹ the Petition on December 12, 2024. While Respondent moved to dismiss the claims against it under numerous rules (i.e. Rules 12(b)(1), 12(b)(2) and 12(b)(6)), the crux of its argument is a single allegation; that is, the Parents lack “standing” to act on [REDACTED] behalf.

After the Motion to Dismiss was filed, a Request for Response to the Motion to Dismiss was issued on December 12, 2024 requesting the Petitioners to respond to the dispositive motion on or before December 23, 2024. Instead of responding, Petitioners filed an Amended Petition on

¹ Respondent also asserts that the “North Carolina *Policies Governing Services for Children with Disabilities* (“Policies”) sets out: “[a] parent may not file a petition on behalf of a student who has reached the age of majority unless the court has granted guardianship to the parent.” Policy 1504-1.8(a)(3).” Mot. p 1 ¶6. Irrespective of the fact that the “Policies” are not promulgated rules and nonbinding per N.C. Gen. Stat. § 150B-2(7a), they do contain a “special rule” consistent with 20 U.S.C. § 1415(m)(2) which does not require guardianship. *See* NC 1504-1.21.

December 13, 2024. Included in the Amended Petition was Petitioners' response and attached was an Educational Power of Attorney ("POA") executed by [REDACTED] on December 11, 2024. Notably, this POA was executed *after* the original Petition was filed. However, both the Petition and Amended Petition failed to plead any facts relating to [REDACTED] having given authority to his parents or his inability to file the claims contained in the Petition.

In an Order issued on December 16, 2024, Petitioners were advised that if they did not have consent from Respondent to amend their petition, it would be stricken from the record as non-compliant with statutory requirements. *See* N.C. Gen. Stat. 150B-33(b)(10); 26 NCAC 03 .0105(8), .0114(a). Petitioners were ordered to file Respondent's written consent to the amendment of the Petition on or before December 19, 2024 or the Amended Petition would be stricken from the record. It was later determined that Respondent did not consent to amendment of the Petition.

Later, on December 18, 2024, Petitioners filed a Motion to Amend and further responded to Respondent's Motion to Dismiss. Like in their original Petition, Petitioners admitted in their Motion to Amend that [REDACTED] was eighteen (18) years old when the Petition was filed. In addition, Petitioners admitted that the Educational Power of Attorney was executed *after* they filed their original Petition. *See* Motion to Amend ¶¶ 13-26.

Parents' Burden to Prove Standing

"Standing is a necessary prerequisite to a court's proper exercise of subject matter jurisdiction." *Aubin v. Susi*, 149 N.C. App. 320, 324 (2002). "As the party invoking jurisdiction, the [Parents] have the burden of proving the elements of standing." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). This they did not do.

Alleged Factual Claims

In both Petitions, [REDACTED] alleged FAPE violations from the 2019-2020 through the 2023-2024 school years. As remedy, [REDACTED] Parents sought prospective private school placement or compensatory education for him. Otherwise, [REDACTED] and [REDACTED] had no separate substantive claims or remedies from those of [REDACTED]. Assuming the alleged facts as true, [REDACTED] would be entitled to a remedy for the alleged denials of FAPE, not his Parents. A petitioner has standing if he/she has suffered an actual or imminent injury in fact which is concrete and particularized, there is a causal connection between the injury and the Respondent's actions, and it is likely that a favorable decision will redress the injury. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). The Parents have failed to allege sufficient facts to be a "real party in interest."

Real Party In Interest

Although [REDACTED] Parents undoubtedly have a personal interest about his future ability to function in the "real world" after graduation, they did not have the requisite personal interest for standing as a real party in interest at the commencement of the contested case. *See Coderre v. Futrell*, 224 N.C. App. 454, 457, 736 S.E.2d 784, 786 (2012) ("Standing refers to whether a party has a sufficient stake in an otherwise justiciable controversy so as to properly seek adjudication of

the matter."); *Green Tree Servicing LLC v. Locklear*, 236 N.C. App. 514, 519, 763 S.E.2d 523, 526 (2014) (stating "A party has standing to initiate a lawsuit if he is a real party in interest."). "If a party does not have standing to bring a claim, a court has no subject matter jurisdiction to hear the claim." *Coderre*, 224 N.C. App. at 457, 736 S.E.2d at 786-87 (internal citations and quotations omitted). "

While the Petitions do allege that the Parents could not "meaningfully participate" in the decision-making process, they otherwise do not allege that the Parents have an "injury in fact", such as claims for reimbursement, that could be redressed by a favorable decision. At best, if the Parents prevailed on their "participation" claim, the remedy would still be private school placement or compensatory education for ██████, not any redress for them. Therefore, in this case, the Parents' meaningful participation claim does not confer standing.

"Special Rule" Exception

IDEA has a "special rule" exception which allows a parent to represent the educational interests of a competent adult disabled student after the transfer of parental rights. *See* 20 U.S.C. § 1415(m)(2). In this situation, the adult student must not have the ability to provide informed consent with respect to his educational decision-making. *Id.* However, neither of the Petitions alleged sufficient facts to infer that ██████ did not have the ability to provide informed consent with respect to his educational program nor did Petitioners argue for application of the "special rule." *Compare, Wells v. Moore Cnty. Ach. Bd. of Educ.*, 2024 U.S. Dist. LEXIS 145304 * 16-17 (finding that complaint alleged sufficient facts to indicate the student was incompetent to act on his behalf; the Federal Rule 17(c)(2) permits suit by a "next friend" for incompetent person without a duly appointed representative, North Carolina Rule 17 does not); *adopted*, 2024 U.S. Dist. LEXIS 176567. Therefore, the "special rule" exception is not applicable in this case.

Parents' Request for Reimbursement of Attorney's Fees

Although the Parents are not seeking redress in the form of reimbursement for educational services which may be sufficient for standing, they are requesting an award of attorney's fees if they prevail. Any such award, however, would be "merely a 'byproduct' of a suit that already succeeded, not a form of redressability" for standing purposes. *Omeish v. Kincaid*, 86 F.4th 546, 553, 2023 U.S. App. LEXIS 30403, *13 quoting *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 802, 209 L. Ed. 2d 94 (2021); *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 107, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998)); *see also, Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 480, 110 S. Ct. 1249, 108 L. Ed. 2d 400 (1990). Neither the Parents nor the Tribunal can create jurisdiction where none exists." *Balawejder v. Balawejder*, 216 N.C. App. 301, 320, 721 S.E.2d 679, 690 (2011) (citing *In re McKinney*, 158 N.C. App. 441, 443, 581 S.E.2d 793, 795 (2003)). The Parents' request for reimbursement of attorney's fees does not create standing.

Amendment of the Petition

Regardless of the impropriety of the Amended Petition, the jurisdictional defect resulting from the Parents' lack of standing cannot be cured by amending the Petition, whether to add a party or for whatever reason. This is because where a plaintiff, in this case petitioner, lacked standing to file the initial complaint, that complaint is a "nullity" leaving "no valid complaint to

which [an] amended complaint could relate back." *See Coderre*, 224 N.C. App. at 457, 736 S.E.2d at 787 (holding that where a shareholder of a corporation filed suit for breach of a contract to which he was not a party, the lack of standing rendered the initial complaint a nullity such that the amended complaint, adding the corporation as a plaintiff, could not relate back to the initial complaint to prevent the claim from being time-barred); *see also, WLAE, LLC v. Edwards*, 257 N.C. App. 251, 260, 809 S.E.2d 176, 182-83 (2017) (holding where the trial court did not have subject matter jurisdiction over the proceeding at the time of filing, the court did not have authority to order substitution of the parties under Rule 17(a), and any attempt to do so would have been a nullity because no valid action existed for the real party in interest to ratify). Even with consent or leave to amend the Petition, the Amended Petition cannot cure the Parents' lack of standing.

Rule 12(b)(6) Defense

Moreover, because the Petition and Amended Petition disclosed facts that defeated Petitioners' claim, i.e. lack of standing and stated no claims of relief for the Parents, Petitioners have failed to state a claim for relief which could be granted to them. Dismissal is proper under Rule 12(b)(6). Since the case is dismissed for lack of subject matter jurisdiction and failure to state a claim, the Undersigned declines to address Respondent's Rule 12(b)(2) defense.

Conclusion

In sum, [REDACTED] and [REDACTED] did not have standing to file the Petition on behalf of [REDACTED], a competent 18-year-old student with a disability, the Parents' rights have transferred to [REDACTED], and the Parents are unable to cure the standing defect by filing an Amended Petition. Although this Petition must be dismissed, this Final Dismissal does not preclude [REDACTED] from filing his own contested case petition.

FINAL DECISION

BASED ON THE FOREGOING, Respondent's Motion to Dismiss is **GRANTED**; the original Petition is **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction and failure to state a claim; the Amended Petition is **STRICKEN** as improperly filed, and Petitioners' Motion to Amend is denied as **MOOT**. The Notice of Prehearing Conference and Hearing are **VACATED**. This contested case is **DISMISSED WITHOUT PREJUDICE**.

[This space left intentionally blank]

NOTICE OF APPEAL RIGHTS

In accordance with the Individuals with Disabilities Education 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 an Administrative Law Judge 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.

Because the Office of Administrative Hearings may be required to file the official record in the contested case with the State or federal court, a copy of the Petition for Judicial Review or Federal Complaint must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely preparation of the record.

This Final Decision is immediately enforceable by the State Board of Education unless and until the party aggrieved timely applies to a reviewing court, State or federal, and the reviewing court grants an order staying the enforcement of this Final Decision pending the outcome of the review. N.C. Gen. Stat. § 150B-48.

IT IS SO ORDERED.

This the 10th day of January, 2025.



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:

Keith Lamar Pryor Howard
The Law Offices of Keith L. Howard, PLLC
keithh@khowardlaw.com
Attorney For Petitioner

Ashley Frances Leonard
ashley@csedlaw.com
Ian M Shoulders
Ian@csedlaw.com
Campbell Shatley PLLC
Attorneys For Respondent

Teresa Silver King
NC Department of Public Instruction
due_process@dpi.nc.gov
Affiliated Agency

This the 10th day of January, 2025.



Karen L Rust
Law Clerk
N. C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285
Phone: 984-236-1876