


STATE OF NORTH CAROLINA
COUNTY OF HARNETT

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
25 EDC 01835

Student by parent or guardian Parent Petitioner, v. Harnett County Schools Anderson Creek Primary School Board of Education Respondent.	REDACTED FINAL DECISION
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THIS MATTER is before this Tribunal for entry of an Order based upon Respondent's Motion to Dismiss. Upon reviewing the submissions of counsel and after a prehearing conference held on June 23, 2025, the Undersigned finds that the Petition should be dismissed as moot or, in the alternative, for abandonment by Petitioner as follows:

APPEARANCES

For Petitioners: Parent, *pro se*


For Respondent: Eva B. DuBuisson
Tharrington Smith LLP
150 Fayetteville Street, Suite 1900
Raleigh, NC 27602

ISSUE

Whether this case should be dismissed as moot or for failure to prosecute?

BASED UPON review of the Motion to Dismiss, and all relevant matters in the record, the Undersigned makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On May 16, 2025, Petitioners, Student, by and through his parent, Parent, filed a Petition for a Contested Case Hearing in the above-captioned matter alleging violations against Harnett County Schools of the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. §§ 1400 *et seq.* (“IDEA”) and N.C. Gen. Stat. §§ 115C-109.6 *et seq.*

2. Harnett County Schools Anderson Creek Primary School Board of Education (“Respondent”) was served with the Petition on May 16, 2025, and filed a written Response on May 28, 2025.

3. On May 27, 2025, the Undersigned issued an Order Setting Hearing calendaring the hearing to begin on June 30, 2025.

4. On June 9, 2025, the Undersigned issued a Notice of Prehearing Conference, directing the Parties to attend a prehearing conference on June 23, 2025 at 3:00 p.m., and to file a draft Prehearing Conference Order prior to the prehearing conference.

5. Respondent filed a Motion to Dismiss Petition on June 16, 2025. Respondent argued that the Petition should be dismissed because Petitioners had received all relief sought in the Petition, and the Petition was therefore moot.

6. On June 16, 2025, this Tribunal issued a Request for Expedited Response to Motion to Dismiss, ordering that Petitioners should respond to Respondent’s Motion to Dismiss on or before 12:00 PM on June 20, 2025.

7. Petitioners did not file a Response to Respondent’s Motion to Dismiss.

8. As previously noticed, Prehearing Conference was held on June 23, 2025. Counsel for Respondent attended the prehearing conference. The Undersigned waited for thirty (30) minutes, but Petitioner did not attend, nor respond to the Clerk’s efforts to reach her by telephone and email. Petitioners have not responded to email or telephone communications from the OAH clerks since filing this Petition.

9. The sole relief sought by Petitioner in the Petition is for her child “to be placed in ESY services in a timely manner” for the summer of 2025.

10. Respondent has filed in the record education records demonstrating that Student’s IEP team granted him ESY services in an IEP meeting on May 20, 2025, after the filing of this Petition. Petitioners have not contested this evidence.

11. Because the Petitioner has received the full relief sought, there remains no claim in her Petition over which this Tribunal has jurisdiction. “Whereas the Petitioner has received the relief sought due to the Respondent’s action, this matter is moot, leaving no issue for adjudication, and the Office of Administrative Hearings does not have subject matter jurisdiction over a non-justiciable claim.” *Duane G. Eldreth v. NC Alarm Services Licensing Board*, 2016 WL 3382239 (N.C. OAH 2016) (citing *Yeager v. Yeager*, 746 S.E.2d 427, 430 (N.C. Ct. App. 2013) (“A case is ‘moot’ when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy.”); *see also, Messer v. Town of Chapel Hill*, 346 N.C. 259, 260, 485 S.E.2d 269, 270 (1997), *see also In re Peoples*, 296 N.C. 109, 147, 250 S.E.2d 890, 912, *cert. denied*, 422 U.S. 929, 99 S. Ct. 2859 (1978) (“whenever, during the course of litigation it develops that the relief sought has been granted or that the questions originally in controversy between the parties are no longer at issue, the case should be dismissed . . .”).

12. Moreover, Petitioner Parent has failed to respond to Orders of this Tribunal and to email and telephone communications from the Office of Administrative Hearings since filing this Petition. Petitioner Parent did not appear at the Prehearing Conference and has not provided any explanation for her absence.

13. Rule 41(b) of the North Carolina Rules of Civil Procedure provides that an action or claim may be dismissed for “failure of the plaintiff to prosecute or to comply with these rules or any order of court”.

14. Dismissal is appropriate under Rule 41(b) because Petitioner has failed to prosecute her claim, has not responded to multiple direct communications from the Clerk’s office requesting a response, and has failed to comply with multiple orders including this Tribunal’s June 9, 2025, Notice of Prehearing Conference and June 16, 2025, Order Requesting an Expedited Response.

15. The Petitioners have received all relief sought in the Petition, and the Petition is therefore moot. The Petition must be dismissed for lack of subject matter jurisdiction.

16. In the alternative, the Petition must dismissed pursuant to N.C. Gen. Stat. § 1A-1, Rule. 41(b) for failure to prosecute by Petitioner Parent

FINAL DECISION

BASED UPON the foregoing, Respondent’s Motion to Dismiss is hereby **GRANTED**; all claims in Petition 25 EDC 01835 are **DISMISSED WITH PREJUDICE**; and the Notice of Hearing is **VACATED**.

MOREOVER, prior to publication of this Final Decision, all personally identifiable information about Student or other information which may make it possible to identify Student with reasonable certainty **SHALL BE REDACTED**.

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.

Under North Carolina's Education of Children with Disabilities laws (N.C.G.S. §§ 115C-106.1 et seq.) and particularly N.C.G.S. §§ 115C-109.9, "any party aggrieved by the findings and decision of a hearing officer under G.S. 115C-109.6 or G.S. 115C-109.8 may **appeal the findings and decision within 30 days after receipt of notice of the decision by filing a written notice of appeal with the person designated by the State Board** under G.S. 115C-107.2(b)(9) to receive notices. The State Board, through the Exceptional Children Division, shall appoint a Review Officer from a pool of review officers approved by the State Board of Education. The Review Officer shall conduct an impartial review of the findings and decision appealed under this section."

Inquiries regarding further notices, timelines, and other particulars should be directed to the Exceptional Children Division of the North Carolina Department of Public Instruction, Raleigh, North Carolina prior to the required close of the appeal filing period.

IT IS SO ORDERED.

This the 26th day of June, 2025.



Stacey Bice Bawtinhimer
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 N.C. Admin. Code 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 which will subsequently place the foregoing document into an official depository of the United States Postal Service.

Parent

[REDACTED]

Parent

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Attorney For Respondent

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

This the 26th day of June, 2025.

Karen L Rust

Karen L Rust
Law Clerk
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