

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
25 EDC 02286

<p>█ by parent or guardian █ Petitioner,</p> <p>v.</p> <p>Wake County Board of Education Respondent.</p>	<p><b>FINAL DECISION DISMISSING PETITION WITHOUT PREJUDICE</b></p>
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**THIS MATTER** comes before the Honorable Karlene S. Turrentine, Administrative Law Judge, on of consideration Respondent’s Notice of Insufficiency, filed June 24, 2025. Therein Respondent asserts that

“The Petition does not comply with the requirements of 20 U.S.C. § 1415(b)(7)(A)(ii)[because f]ederal regulations promulgated in conjunction with the Individuals with Disabilities in Education Act (“IDEA”) state that parents may initiate a due process hearing on issues ‘relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child[,’ but i]n this instance, the student in question is not a student with a disability, nor does the Petition allege that she is a child with a disability. 34 C.F.R. § 300.507(a). See also 34 C.F.R. § 300.503(a)(1) and (2).

[Moreover, t]here no assertion that she meets the criteria as a child with a disability as that term is defined by the IDEA.”

Notice of Insufficiency, ¶¶2-5.

Upon reviewing the Petition, the Tribunal finds that Petitioners’ only assertion regarding the abilities of minor child is that the child is academically intellectually gifted (“AIG”) and thus “qualifies for special education as an AIG student[.]” Petition, ¶9. Taking the assertion as true, the Tribunal concludes as a matter of law that an academically intellectually gifted student without a disability is not entitled to special education under the Individuals with Disabilities Education Act (“IDEA”). IDEA mandates children with disabilities be provided a free appropriate public education essentially equal to that of children without disabilities. Under IDEA,

“The term ‘child with a disability’ means a child—

- (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this title [20 USCS §§ 1400 et seq.] as “emotional disturbance”), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
- (ii) who, by reason thereof, needs special education and related services.”

20 USC § 1401(3)(A). However, Petitioners do not assert the child has a qualifying disability. Thus, Petitioners do not have a claim which may be recognized under the IDEA.

Instead, it appears Petitioners claims *appear* to arise pursuant to N.C.G.S. § 115C-150.7 which requires “[e]ach local board of education [to] develop a local plan designed to identify and establish a procedure for providing appropriate educational services to each academically or intellectually gifted student.” N.C.G.S. § 115C-150.7(a). Moreover, the plan is required to include certain components, including—in pertinent part—the “screening, identification and placement procedures that allow for the identification of specific educational needs and for the assignment of academically or intellectually gifted students to appropriate services.” *Id.* at 150.7(b). However, Petitioners have not alleged sufficient facts to notice the Tribunal or Respondent of what specific failure has occurred and how Petitioners have attempted to resolve the disagreement with Respondent as required by the local plan.

**THEREFORE, BASED ON** the foregoing findings of fact and conclusions of law,

### **FINAL DECISION**

**IT IS ORDERED, ADJUDGED & DECREED** that because Petitioners’ Petition alleges claims arising under the Individuals with Disabilities Education Act but fails to show the minor child has any qualifying disability, the Tribunal has no subject matter jurisdiction to grant relief under IDEA. Thus, the Petition is hereby **DISMISSED WITHOUT PREJUDICE**, pursuant to N.C.G.S. § 1A-1, Rule 12(b)(1). Moreover, based on the contents of the current petition and the provisions of N.C.G.S. § 115C-150.8, dismissal without prejudice is further appropriate because Petitioners have failed to exhaust their administrative remedies. Petitioners *may* refile their Petition within one year of this dismissal, pursuant to N.C.G.S. § 1A-1, Rule 41(a)(2).

### **NOTICE OF APPEAL**

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34. Under the provisions of N.C. Gen. Stat. § 150B-45, any party wishing to appeal this Final Decision must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved

resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the Final Decision was filed.

The appealing party must file the Petition for Judicial Review within 30 days after being served with a written copy of this Final Decision. This Final Decision was served on the parties as indicated by the attached Certificate of Service pursuant to 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C.G.S. § 1A-1, Article 2.

N.C.G.S. § 150B-46 describes the contents of the Petition for Judicial Review and requires service of that Petition on all parties. Under N.C.G.S. § 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. The appealing party must send a copy of the Petition for Judicial Review to the Office of Administrative Hearings at the time the appeal is filed.

**SO ORDERED**, this the 24th day of June, 2025.



Hon. Karlene S. Turrentine  
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.

[REDACTED]

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This the 24th day of June, 2025.



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