

STATE OF NORTH CAROLINA  
COUNTY OF GASTON

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
25 EDC 03292

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| <p>■ by parent or guardian ■<br/>Petitioner,</p> <p>v.</p> <p>Lincoln Charter School, Board of Directors<br/>Respondent.</p> | <p><b>FINAL DECISION<br/>ORDER OF DISMISSAL</b></p> |
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**THIS MATTER** comes before the Honorable Karlene S. Turrentine, Administrative Law Judge, on consideration of Respondent’s Second Notice of Insufficiency and Motion to Dismiss, filed September 26, 2025. Respondent, thereafter, withdrew its second notice of insufficiency on September 29, 2025. Thus, the Tribunal has before it: a) Respondent’s Motion to Dismiss (“MTD”) with supporting Memorandum of Law; b) Petitioners’ Response in Opposition to the MTD, also filed September 29, 2025; c) Respondent’s Request for Expedited Decision on Motion to Dismiss, filed October 23, 2025; and, d) Petitioners’ Motion for Continuance and Stay Pending Mediation. Having determined that Respondent is entitled to dismissal of this action, the Parties’ respective motions for expedited decision and continuance are rendered moot hereby.

The Tribunal fully incorporates by reference herein its September 25, 2025 Order Denying Petitioners’ Motions: a) For Stay Put; b) For Expedited Hearing; c) For Interim Relief; and, d) For Protective Order, as though fully set out herein.

### **FINDINGS OF FACT**

1. A Petition for a Contested Case Hearing (“Original Petition”) in this matter was filed on September 12, 2025. The Petition claimed that ■ (hereinafter, “■”<sup>1</sup> “was enrolled at Lincoln Charter School, Denver Campus for the 24-25 school year...[t]he school failed to conduct [an] IEP evaluation, ignored Child Find obligations under IDEA, failed to provide counselor follow-up, failed to document a 504 Plan despite acknowledging disability-related needs, and [unilaterally] withdrew [■] from Lincoln Charter, without notification to [■]’s parents. Petition, ¶9.

2. As a result, Petitioner requested the following relief:

- Expedited Hearing on the issue of “stay put”;
- That the Tribunal find “stay-put” for ■ is Respondent’s school;

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<sup>1</sup> For anonymity and ease of reading, the Petitioner-■ the minor child is to be referred to as “■”

- That the Tribunal order Respondent to reenroll [REDACTED] into its school's Denver campus;
- That Respondent conduct an IEP evaluation and, develop and implement a 504 Plan for [REDACTED] and,
- Attorney's fees reimbursement—though no attorney made an appearance on behalf of Petitioners.

Petition, ¶10.

3. On September 16, 2025, the Tribunal issued an Order for Respondent's Immediate Response to Petitioners' Request for Expedited Hearing.

4. On September 18, 2025, Petitioners filed an Amended Petition (but which plainly reflected Petitioner intended to supplement the Original Petition)—requesting it be considered as part of the Original Petition—and therein requested the Tribunal require that [REDACTED] remain enrolled *and* be immediately reinstated at the Lincoln Charter School, Denver Canvas and, that Respondent be ordered to promptly initiate a comprehensive Individuals with Disabilities Education Act ("IDEA") evaluation and, if found eligible, that Respondent develop an IEP, compensatory education, and attorney's fees.

5. On September 18-19, 2025, Petitioners filed several exhibits to support their Petition.

6. On September 19, 2025, Respondent filed its Response (objecting) to Petitioner's Request for Expedited Hearing on Stay Put, and denied that [REDACTED] is a student in its school.

7. On September 22, 2025, Respondent filed Notice of Insufficiency asserting that the Petition "... fail[ed] to properly identify the school that the child is attending ... fail[ed] to identify any facts to support any basis for any dispute regarding the child's identification, evaluation, placement, or the provision of a free, appropriate public education ... [and]... includes numerous references to allegations outside of the scope of this Tribunal. *See* (First) Notice of Insufficiency ¶¶9-11. Respondent also served its 10-Day Letter/Response that same day.

8. On September 23, 2025, Petitioners filed several more exhibits, their Response to Respondent's Notice of Insufficiency, and a Motion for Protective Order.

9. Thereafter, on September 23, 2025, the Tribunal issued an Order of Insufficiency Granting Leave for Petitioners to Amend Petition, pursuant to 20 U.S.C. §1415(b)(6); 34 CFR § 300.507(a)(1).

10. On September 24, 2025, Petitioners filed their First Amended Petition<sup>2</sup>, pursuant to the Tribunal's 09/23/25 Order. Therein, they admit that "[o]n August 13, 2025, [REDACTED] **was not enrolled in any school...**[and Mom] placed [REDACTED] at [REDACTED] Charter School] MICS on August 18, 2025, **solely to avoid compulsory attendance violations under N.C.G.S. § 115C-**

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<sup>2</sup> This First Amended Petition is actually Petitioners' 3<sup>rd</sup> bite at the apple; however, the Tribunal accepted what they labeled as their (first) Amended Petition, filed September 18, 2025, to be an *addition* to their Original Petition.

378....” First Amended Petition, ¶II (emphasis in original). Petitioners again requested that [REDACTED] be reinstated into Respondent’s school.

11. On September 24-25, 2025, Petitioners filed several more exhibits.

12. On September 25, 2025, Petitioners filed a Second Amended Petition, without leave of the Tribunal, therein claiming that the Respondent: a) violated NC DPI SASA Manual regarding “blackout dates”; b) violated FERPA in some way having to do with “accurate and non-misleading disclosure of educational records; c) violated Section 504 by unilaterally withdrawing [REDACTED] while “he was in the middle of a 504 evaluation; and, d) violated State law by “[k]nowingly falsifying enrollment/attendance data...[ and undermining c]ompulsory attendance obligations” in violation of N.C.G.S. §§ 115C-317 and 115C-378. Second Amended Petition, pp.1-3. Petitioners also filed a Motion for Interim Relief on September 25, 2025, again asking that [REDACTED] be placed back in Respondent’s school.

13. Thereafter, on September 25, 2025, the Tribunal issued an Order Denying Petitioners’ Motions: a) For Stay Put; b) For Expedited Hearing; c) For Interim Relief, and; d) For Protective Order. All Findings of Fact in that Order are fully incorporated herein by reference.

14. On September 26, 2025, Respondent filed a Second Notice of Insufficiency and Motion to Dismiss with a Memorandum of Law. Therein Respondent asserted “[t]here are no claims in the September 25, 2025 [Second] Amended Petition that relates [sic] to the “identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child[; thus,] ... the Petition fails to state a claim for which relief can be granted.” *Id.* at ¶¶23 and 25.

15. On September 29, 2025, Respondent withdrew its Second Notice of Insufficiency, leaving only its Motion to Dismiss (“MTD”) for the Tribunal to consider.

16. Later, on September 29, 2025, Petitioners filed their Response in Opposition to Respondent’s Motion to Dismiss (“Response to MTD”). Therein, Petitioners argue that their “claims upon which relief can be granted” are as follows:

- Unilateral Withdrawal Without [Prior Written Notice]
- NC DPI Policy: Records Request ≠ Withdrawal
- Evidence I SIS -Infinite Campus
- Improper Use of the 48-Hour Rule
- Misrepresentation of Withdrawal Date and Improper Records-Request Withdrawal

Response to MTD, ¶IV 1-5. To support these claims, Petitioners allege Respondent committed the following “substantive violations”, specifically: a) Respondent violated IDEA’s requirement of child find by “acknowledging 504 process [was] underway[and, in]stead of initiating evaluation, Respondent withdrew [REDACTED]” in direct contravention of 20 USC § 1412(a)(3) and 34 CFR § 104.32(a), and; b) Respondent denied [REDACTED] a Free Appropriate Public Education (“FAPE”) “[b]y withdrawing [him] during NC DPE Summer End Enrollment blackout period....” *Id.* at ¶V 1-2.

17. On October 3, 2025, Respondent filed its 10-Day Letter Response to Petitioner's September 25, 2025 Second Amended Petition.

18. On October 23, 2025, Respondent filed a Request for Expedited Decision on the MTD.

19. On October 27, 2025, Petitioners file a Motion to Continue Hearing and Stay Prehearing Deadlines Pending Mediation.

20. With the exception of their last filing on October 27, 2025, all of Petitioners' previous filings have simply been a regurgitation of their initial Petition, perhaps with a few more details.

**BASED ON** the foregoing Findings of Fact, the Undersigned makes the following:

### **CONCLUSIONS OF LAW**

1. This Order incorporates and reaffirms the Conclusions of Law contained in the Tribunal's previous Order Denying Petitioners' Order Motions: a) For Stay Put; b) For Expedited Hearing; c) For Interim Relief; and, d) For Protective Order, entered in this litigation on September 25, 2025.

2. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011). *Warren v. Dep't of Crime Control*, 221 N.C. App. 376, 377, 726 S.E.2d 920, 923, *disc. review denied*, 366 N.C. 408, 735 S.E.2d 175 (2012).

### **Respondent's 12(b)(1) Motion to Dismiss:**

3. In its MTD, Respondent first argues that this Tribunal does not have **subject matter jurisdiction** to hear Petitioners' claims arising from Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act ("ADA"); thus, that portion of the Petition must be dismissed pursuant to N.C.G.S. § 1A-1, Rule 12(b)(1).

4. N.C.G.S. § 150B-1(e)(5) specifies, in pertinent part, that: "The contested case provisions of this Chapter do not apply to[...]hearings required pursuant to the Rehabilitation Act of 1973, (Public Law 93-122), as amended and federal regulations promulgated thereunder." *Id.* Moreover, there is no statutory provision under which the Office of Administrative Hearings has jurisdiction to hear ADA claims.

"Under the General Statutes, it is the General Court of Justice—not an 'independent, *quasi-judicial agency*' such as the OAH, N.C.G.S. § 7A-750 (2017) (emphasis added)—which is presumed to have 'general jurisdiction' over 'matters of a civil nature.' N.C.G.S. § 7A-240; *see also Reaves v. Earle-Chesterfield Mill Co.*, 216 N.C. 462, 465, 5 S.E.2d 305, 306 (1939) (concluding that an 'administrative [body], with quasi-judicial functions,' and

with ‘special or limited jurisdiction created by statute[,]’ is not a court of general jurisdiction and its jurisdiction can be ‘enlarged or extended only by the power creating the court.’ (citations omitted).”

*Intersal, Inc. v. Hamilton*, 373 N.C. 89, 104 n.4, 834 S.E.2d 404, 415 (2019).

5. As such, the Tribunal lacks subject matter jurisdiction. That portion of Respondent’s Motion to Dismiss must be granted and Petitioners’ 504 claims must be dismissed without prejudice, pursuant to N.C.G.S. § 1A-1, Rules 12(b)(1) and 12(h)(3).

### **Respondent’s 12(b)(6) Motion to Dismiss**

6. Next, Respondent argues that Petitioners remaining claims should be dismissed pursuant to N.C.G.S. § 1A-1, Rules 12(b)(6) for failure to state a claim upon which relief may be granted.

7. A motion to dismiss tests the legal sufficiency of the complaint. Thus, where “the complaint affirmatively disclose[s] that the plaintiff had no cause of action against the defendant[...and...] no amendment could supply the deficiency, the action [is properly] dismissed.” *Sutton v. Duke*, 277 N.C. 94, 106, 176 S.E.2d 161, 168 (1970).

“Dismissal of an action under Rule 12(b)(6) is appropriate when the complaint ‘fail[s] to state a claim upon which relief can be granted.’ N.C.G.S. § 1A-1, Rule 12(b)(6) (2013). ‘[T]he well-pleaded material allegations of the complaint are taken as true; but conclusions of law or unwarranted deductions of fact are not admitted.’ *Sutton v. Duke*, 277 N.C. 94, 98, 176 S.E.2d 161, 163 (1970)(quoting 2A James Wm. Moore et al., *Moore’s Federal Practice* P 12.08 (2d ed. 1968)). When the complaint on its face reveals that no law supports the claim, reveals an absence of facts sufficient to make a valid claim, or discloses facts that necessarily defeat the claim, dismissal is proper.

*Arnesen v. Rivers Edge Golf Club & Plantation, Inc.*, 368 N.C. 440, 448, 781 S.E.2d 1, 7-8 (2015).

### **Free Appropriate Public Education (“FAPE”)**

8. The IDEA requires that “[a] free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.” 20 U.S.C. § 1412(a); 34 C.F.R. § 300.101(a).

9. A contested case petition, as provided for under IDEA, pursuant to 20 U.S.C. §§ 1400 *et seq.*, and N.C.G.S. § 115C-109.6, **must be based on a dispute regarding the “identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child.”** 34 CFR § 300.507(a)(1) (emphasis added). *See also* 34 CFR § 300.503(a)(1) and (2).

10. Looking to Petitioners' Second Amended Petition, Petitioners allege their "action is brought under the...IDEA...[and they] allege procedural and substantive violations of IDEA, Section 504, and state education law by Lincoln Charter School." Second Amended Petition, ¶I.

11. However, within the Second Amended Petition, Petitioners' only allegations are:

- a) That MISC "issued a transcript/records request for [REDACTED]...[which] fell within NC DPI's End-of Year...blackout period when no student record changes, including withdrawals or transfers are permitted. ...By treating [MISC's] request as a withdrawal trigger, [Respondent] violated [DPI's] SASA [manual]."
- b) That Respondent's registrar emailed Mom in July stating [REDACTED] "was unenrolled...because of the MISC request[.] When Mom told the registrar [REDACTED] was not enrolled elsewhere because Mom had forfeited the seat, the registrar told Mom "his seat was already given up" to another student and failed to disclose that under NC DPI No Show rules, [REDACTED] could have retained his seat simply by attending Lincoln Charter on the first day of school, August 13, 2025.
- c) That Respondent's registrar "misrepresented [REDACTED] enrollment rights.
- d) That there was "leadership-level involvement" in [REDACTED] records being transferred to MISC.

Second Amended Petition, ¶II.

12. Petitioners further assert that Respondent:

- e) violated the 'NC DPI SASA Manual...[which p]rohibits enrollment/withdrawal during blackout[ and] requires "No Show" process after the first day of school (Second Amended Petition, ¶III-1);
- f) violated FERPA as "[p]arents are entitled to accurate and non-misleading disclosure of educational records[and the r]egistrar's misrepresentation violated th[is] (Second Amended Petition, ¶III-2);
- g) violated Section 504 by unilaterally withdrawing him while he was in the middle of a 504 evaluation (Second Amended Petition, ¶III-3);
- h) violated N.C.G.S. § 115C-317 by knowingly marking [REDACTED] as withdrawn "despite clear evidence he had no other enrollment<sup>3</sup> (Second Amended Petition, ¶III-4); and,

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<sup>3</sup> Petitioners claim this violation is criminal because Respondent "[k]nowingly falsif[ied] enrollment/attendance data...." Third Petition, ¶III-4.

- i) violated N.C.G.S. § 115C-378 because “[c]ompulsory attendance obligations were undermined by [Respondent’s] fail[ure] to inform [Mom] that [REDACTED] could preserve his seat by attending the first day.” (Second Amended Petition, ¶III-5.)

13. Applying the standard of review for a Rule 12(b)(6) MTD, the Tribunal must accept all of Petitioners’ allegations as true but, the Tribunal is not required to accept Petitioners’ “conclusions of law or unwarranted deductions of fact....” *Sutton v. Duke*, 277 N.C. 94, 98, 176 S.E.2d 161, 163 (1970).

14. Petitioners’ Second Amended Petition references IDEA five (5) times: twice in stating the Tribunal has subject matter jurisdiction over the issues, and three (3) times in requesting relief. Petitioners request: 1) Comprehensive evaluation for IDEA/504 eligibility with appropriate Prior Written Notice, and; 2) Reimbursement of Costs Incurred: \$2,800 for attorney and consultant fees reasonably incurred in responding to Respondent’s improper actions, including preparation of grievance appeal and consultation regarding IDEA/504 procedures. This claim is preserved for review under IDEA, Section 504, and/or OCR jurisdiction if not granted here. There is no allegation that [REDACTED] is a child with a disability coming under IDEA nor is there any allegation that Respondent school failed in its identification, evaluation or educational placement of [REDACTED] as a child with a disability.

15. There are no allegations regarding Respondent’s identification, evaluation or educational placement of [REDACTED] and no facts asserted to support such a conclusion.

16. There is no allegation that Respondent failed to provide [REDACTED] with a free, appropriate public education and, again, no facts have been asserted to support such a conclusion.

17. Further, Petitioners have failed to assert facts to support [REDACTED] is a child with a disability as defined by IDEA.

18. Thus, even in accepting Petitioners’ allegations as true, the Tribunal concludes Petitioners have failed to allege *anything* that brings this action under IDEA. Thus, the Petition must be dismissed.

**Petitioners’ Continued Requests For [REDACTED] To Be Reinstated at Respondent’s School:**

19. In truth, the only thing Petitioners have alleged sufficiently is that Respondent unilaterally withdrew [REDACTED] from its school and [REDACTED] should be reinstated therein.

20. Although the evidence of record unequivocally refutes this allegation, for the purposes of a Rule 12(b)(6) dismissal, the Tribunal considers it true. Yet, having done so, Petitioners’ contested case must be dismissed because, even if true, it is a claim upon which relief cannot be granted.

**Petitioners' Request for Attorney's Fees and Consultant Fees:**

21. In their Second Amended Petition, Petitioners also request \$2,800.00 in "attorney and consultant fees reasonably incurred." Yet, no attorney has made an appearance in this matter. Thus, the Tribunal must conclude that Petitioners have engaged what some call a "special education advocate" for whom Petitioners seek payment. However, if the Tribunal is correct and Petitioners did so engage an advocate, this Final Decision reveals such advocate has failed to avail Petitioners of any real assistance due to ignorance of the law. Moreover, the law does not provide for fees paid to non-attorney representatives.

**BASED ON** the foregoing Findings of Fact and Conclusions of Law,

**FINAL DECISION**

**IT IS ORDERED, ADJUDGED & DECREED** that:

1. Respondent's Motion to Dismiss is hereby **GRANTED**. This contested case is dismissed.
2. Petitioners' Section 504 claims are **DISMISSED WITHOUT PREJUDICE**, pursuant to N.C.G.S. § 1A-1, Rule 12(b)(1); and,
3. All remaining claims are **DISMISSED WITH PREJUDICE**, pursuant to N.C.G.S. § 1A-1, Rule 12(b)(6).
4. Petitioner's Motion to Continue Hearing and Stay Prehearing Deadlines Pending Mediation is **MOOT**.

**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 Official record.

Unless appealed to State or Federal court, the State Board shall enforce the Final Decision of the Administrative Law Judge.

**SO ORDERED**, this the 30th day of October, 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 30th day of October, 2025.



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