

STATE OF NORTH CAROLINA  
COUNTY OF BURKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
25 EDC 03667

<p>Student by parent or guardian, Parent Petitioner,</p> <p>v.</p> <p>Burke County Board of Education Respondent.</p>	<p><b>REDACTED FINAL DECISION ORDER OF DISMISSAL Originally issued December 12, 2025</b></p>
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THIS MATTER CAME ON FOR HEARING on December 10, 2025, at 9 a.m. in Morganton, North Carolina pursuant to the Notice of Hearing issued by the undersigned Administrative Law Judge on November 26, 2025. Upon consideration of Respondent's Motion to Dismiss for Petitioner's failure to attend the hearing, and for good cause, the Undersigned GRANTS the motion as follows:

**FINDINGS OF FACT**

1. Both Respondent and Petitioner are registered e-filers in the Office of Administrative Hearings e-filing system.
2. Petitioner filed an Amended Petition for a Contested Case Hearing ("Petition") on October 16, 2025, alleging violations of the IDEA. In accordance with the law, the matter was initially set for hearing on Monday, November 24, 2025.
3. A Notice of Prehearing Conference was sent to the parties on October 21, 2025, establishing that the Prehearing Conference would be held on November 18, 2025, at 2:00 P.M. via Webex. Petitioner acknowledged receipt of the Notice of Prehearing Conference shortly after the notice was sent on October 21, 2025. The Petitioner failed to appear for the Prehearing Conference.
4. At the initially scheduled hearing of this matter on November 24, 2025, Petitioner appeared and requested a continuance for the purpose of obtaining legal counsel. Respondent and numerous witnesses appeared and were ready to proceed. Over objection of Respondent, the continuance was granted.
5. The matter was continued to December 10, 2025, at 9:00 a.m. A Notice of Hearing was issued on November 26, 2025, stating that the hearing would begin at 9:00 a.m. on

December 10, 2025, in Morganton, North Carolina. Petitioner acknowledged receipt of the Notice of Hearing on December 1, 2025. The Notice of Hearing states, among other things, that failure to appear for the scheduled hearing may result in "[d]ismissal of the case".

6. A Prehearing Conference was held on December 4, 2025. Petitioner. attended the Prehearing Conference at which the Undersigned reminded Petitioner that the hearing would begin promptly at 9 a.m. on December 10, 2025.
7. Respondent again appeared for hearing on December 10, 2025, with multiple witnesses as requested by Petitioner. Respondent made arrangements for coverage and secured substitute teachers and other personnel so that its witnesses would be available.
8. Petitioner failed to appear for the hearing. Phone calls were placed to Petitioner by the Undersigned's paralegal, Melissa Boyd. Petitioner did not answer the phone or return calls.
9. At 9:30 a.m. the Undersigned went on the record and noted that Petitioner had failed to appear. Subsequently, Respondent made a Motion to Dismiss based upon Petitioner's Failure to Appear.
10. Petitioner had ample notice of the timelines in this matter and had ample time and opportunity to notify the Tribunal of any reason for failing to appear in a timely manner and failed to do so.
11. Respondent's motion was granted by the Undersigned.

### **CONCLUSIONS OF LAW**

1. Imposition of sanctions and disposition of this case by dismissal of the Petition in accord with Chapter 3 of Title 26 of the North Carolina Administrative Code, N.C. Gen. Stat. § 150B33(b)(10), and N.C. Gen. Stat. 1A-1, Rule 41(b) is proper and lawful because of the Petitioner's failure to appear for the properly noticed hearing and Petitioner's failure to prosecute the contested case.
2. It is undisputed that Petitioner failed to attend the hearing on December 10, 2025.
3. Petitioner was provided notice of the hearing and had ample time to prepare.
4. The rules regarding sanctions that may be imposed by OAH state, "if a party fails to appear at a hearing or fails to comply with an interlocutory order of an administrative law judge, the administrative law judge may dismiss or grant the motion or petition." 26 NCAC 03 .0114 (a)(2) (emphasis supplied). This is in addition to the authority of the Tribunal under N.C. Gen. Stat. 1A-1, Rule 41(b).

5. Dismissal under N.C. Gen. Stat. 1A-1, Rule 41(b) for failure to prosecute a case presents three factors that the Tribunal must address before dismissing for failure to prosecute under Rule 41(b). The factors are: (1) whether the plaintiff acted in a manner which deliberately or unreasonably delayed the matter; (2) the amount of prejudice, if any, to the defendant; and (3) the reason, if one exists, that sanctions short of dismissal would not suffice. *Wilder v. Wilder*, 146 N.C. App. 574, 578, 553 S.E.2d 425, 428 (2001); *Foy v. Hunter*, 106 N.C. App. 614, 418 S.E.2d 299 (1992). Such a dismissal is not the only sanction available under such circumstances and should be imposed only when the Tribunal has determined that less drastic sanctions are insufficient. *Miller v. Ferree*, 84 N.C. App. 135, 136, 351 S.E.2d 845, 847 (1987).
6. In the present case, with respect to the first factor, Petitioner has both acted in a deliberate manner to delay the proceeding and has unreasonably delayed the proceedings. Petitioner was provided with ample notice of the hearing. Petitioner was given an opportunity to present the Undersigned with any questions Petitioner had regarding the hearing process at the Prehearing Conference held on December 4, 2025. During the December 4, 2025, Prehearing Conference, the Undersigned made clear to the parties that the hearing was scheduled to begin at 9:00 A.M. on December 10, 2025.
7. With respect to the second factor, Respondent would be greatly prejudiced if the motion was not granted. Respondent, as well as Respondent's witnesses, were present for the hearing on two separate occasions, November 24, 2025, and December 10, 2025. Respondent had to make arrangements to provide coverage and/or substitute teachers for those witnesses who were present for the hearing. By failing to attend the hearing or give proper notice that Petitioner would not be attending, Petitioner has frustrated the judicial process and failed to prosecute Petitioner's case.
8. With respect to factor (3), before dismissing an action with prejudice, the trial court (here, Tribunal) must make findings and conclusions, which indicate that it has considered less drastic sanctions and that sanctions short of dismissal will not suffice. If it does so, the resulting order will be reversed on appeal only for an abuse of discretion. *Id.* at 847. The Tribunal is not required to list and specifically reject each possible lesser sanction prior to determining that dismissal is appropriate. *Ray v. Greer*, 212 N.C. App. 358, 363, 713 S.E.2d 93, 97 (2011) (internal citations and quotations omitted).
9. Here, the Tribunal has so done and determines that dismissal is the only appropriate sanction. Petitioner has failed to attend the hearing as ordered by this Tribunal. Petitioner has failed to prosecute Petitioner's case. Petitioner has deliberately and unreasonably delayed the proceedings in this case and prejudiced Respondent.

### **FINAL DECISION**

The contested case is **DISMISSED** with prejudice.

**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.

**STAY OF FINAL DECISION**

This Final Decision is immediately enforceable by the State Board of Education and remains in effect until the party aggrieved moves the reviewing court for a Stay of the Final Decision and the reviewing court grants the Stay pursuant to N.C. Gen. Stat. § 150B-48.

**IT IS SO ORDERED.**

**Original Final Decision Served on the 12<sup>th</sup> day of December, 2025.**

**Redacted Final Decision For Publication Purposes Only.**

Served on the 16<sup>th</sup> day of February, 2026.



David F Sutton  
Administrative Law Judge