

STATE OF NORTH CAROLINA  
COUNTY OF CATAWBA

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
25 EDC 04588

[REDACTED] a minor student by and through her  
Petitioner,  
v.  
Catawba County Board of Education  
Respondent.

**FINAL DECISION  
ORDER OF DISMISSAL**

THIS MATTER came before the undersigned Administrative Law Judge upon consideration of Respondent's Motion to Dismiss filed on December 18, 2025. Having reviewed the Petition, Respondent's Motion to Dismiss, Petitioner's Response to said Motion, oral arguments of both parties, and taking all well-pleaded allegations of the Petition as true for purposes of the motion, the undersigned Administrative Law Judge DISMISSES the due process petition, as follows:

**SUMMARY OF PETITIONER'S ALLEGATIONS**

1. Petitioner filed a special education due process petition with this Tribunal on December 15, 2025, alleging that Respondent violated IDEA procedural safeguards, Stay Put provision, Child Find provision, and, in doing so, denied a free appropriate public education ("FAPE") to [REDACTED]
2. [REDACTED] is a fifth-grade student who has never been identified as a student in need of special education services under the IDEA. [REDACTED] has a known history of ADHD. Petitioner made the conclusory allegation that because [REDACTED] ADHD was known to the Respondent, that Respondent had reason to suspect that [REDACTED] was a child with a disability who required special education and related services under the IDEA.
3. Petitioner's specific allegations pertain to an October 20, 2025 decision by the District to change [REDACTED] general educational peer cohort. Petitioner further alleges that this decision was made without his knowledge and consent.
4. During the hearing of this Motion on January 9, 2026, when questioned by the Undersigned, Petitioner did not answer in the affirmative that he wanted [REDACTED] to be identified as a child with a disability in need of special education services under the IDEA.

## CONCLUSIONS OF LAW

1. A contested case petition as provided under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., and North Carolina General Statute § 115C-116 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); *see also*, 34 CFR § 300.503(a)(1) and (2).
2. A motion to dismiss for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) tests the sufficiency of a complaint. *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999). A complaint that does not contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face must be dismissed. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Additionally, “[c]onclusory allegations or legal conclusions masquerading as factual allegations will not suffice to prevent a motion to dismiss pursuant to 12(b)(6).” *Parham v. Pepsico, Inc.*, 927 F. Supp. 177, 178 (E.D.N.C. 1995).
3. [REDACTED] has never been identified as a student with a disability in need of special education services. [REDACTED] has always been served in the general education setting. The allegation that [REDACTED] has a history of ADHD, standing alone, is insufficient to state a claim that [REDACTED] is a student with a disability in need of special services under the IDEA, nor is it sufficient to state a claim that Respondent had reason to suspect that [REDACTED] was a child with a disability who required special education and related services under the IDEA.
4. Respondent’s decision to change the general educational peer cohort of [REDACTED] a general education student, is not a decision that can be challenged under the IDEA in this Tribunal.
5. Petitioner failed to state a claim upon which relief may be granted in this Tribunal.

## FINAL DECISION

Based upon the foregoing, this contested case petition 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.**

This the 12th day of January, 2026.

A handwritten signature in blue ink that reads "David F. Sutton". The signature is written in a cursive style with a blue ink pen.

David F Sutton  
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]

Parent

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This the 12th day of January, 2026.

Karen L Rust

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