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OFFICE OF ADMINISTRATIVE HEARINGS
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STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
18 EDC 05304

[redacted] by parent or guardian [redacted] Petitioner, v. Charlotte-Mecklenburg Schools Respondent.	**FINAL DECISION**

ORDER GRANTING SUMMARY JUDGMENT

THIS MATTER CAME on for hearing on January 23, 2019, before the Undersigned Administrative Law Judge presiding on Respondent's Motion for Summary Judgment. Present at the hearing were Christopher Z. Campbell, Campbell Shatley, PLLC and J. Melissa Woods, Charlottte-Mecklenburg Schools Board of Education, for the Respondent, and Aaron Tierney, Cuddy Law Firm, PLLC for the Petitioner.

The Undersigned, having heard arguments from counsel, giving careful consideration to the applicable law, and reviewing the following:

a) Respondent's Motion for Summary Judgment along with the affidavits of [redacted], principal; [redacted], speech/language pathologist; [redacted], school psychologist; [redacted], special education administrator; [redacted], accountability specialist; and [redacted], itinerant coordinating teacher and accompanying Exhibits; and

b) Petitioner's Opposition to Motion for Summary Judgment and Memorandum of Law in Support along with the affidavit of Petitioner [redacted] and accompanying Exhibits;

CONCLUDES that Respondent's Motion should be GRANTED for the reasons stated herein:

1. The Respondent has met its burden of demonstrating that there is no genuine issue of material fact regarding all nine (9) of Petitioner's claims for relief pursuant to requirements of the Individuals with Disabilities Education Act ("IDEA") and the North Carolina Policies

Governing Services for Children with Disabilities ("North Carolina Policies") and Respondent is entitled to judgment as a matter of law on all claims.

2. In response to the Respondent's Motion and submissions, the Petitioner has failed to produce a forecast of evidence through specific facts to demonstrate that Petitioner can at least establish a prima facie case at trial. The mere allegations contained in the Petition and the disagreements and opinions asserted in the affidavit of Petitioner are not sufficient to survive Summary Judgment.

3. In addition and as an alternative basis for relief, the undersigned finds that the applicable statute of limitations bars claims arising prior to August of 2017. Specifically, the statute of limitations bars claims three (3) and eight (8) to the extent that such claims relate to alleged violations occurring prior to August of 2017.

4. In addition and as an alternative basis for relief, the undersigned finds that claim nine (9) regarding Petitioner's request for Independent Educational Evaluations is barred by the applicable statute of limitations in that such request was made more than one year after the Respondent conducted its most recent evaluation of the minor Petitioner.

5. In addition and as an alternative basis for relief, the undersigned finds that the minor Petitioner never attended the North Carolina Virtual Academy and Petitioner and Respondent have agreed on evaluations and a new Individualized Education Plan for the minor Petitioner after the filing of this Petition. Therefore, the parties have voluntarily altered the legal relationship between them and there is no current legal controversy which has the capability of repeating while evading review. Thus, all claims in the Petition are moot.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT the Respondent's Motion for Summary Judgment is hereby GRANTED, Respondent is declared to be the PREVAILING PARTY, and the Petition is hereby 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 dismissal.

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 the State Board's designee, further notices and/or additional time lines 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 18th day of February, 2019.

Selina Malherbe

Selina Malherbe
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 NCAC 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 who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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This the 18th day of February, 2019.

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