

STATE OF NORTH CAROLINA  
COUNTY OF GUILFORD

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
17 EDC 06099

<p>██████ by parent or guardian ██████ Petitioner,</p> <p>v.</p> <p>Guilford County Board of Education Respondent.</p>	<p><b>FINAL DECISION ORDER OF DISMISSAL</b></p>
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This matter comes on for consideration of Respondent's Motion to Dismiss. Subsequent to receiving a Request for Response to this motion, Petitioner sent emails discussing various matters on February 26, and 28, 2018. Respondent has filed a Reply.

**ISSUE**

Should the Petition be dismissed for failure of the petitioner to prosecute the case?

**FINDINGS OF FACT**

1. The Petitioner has failed to comply with Orders of the Undersigned concerning various pre-hearing matters as detailed in Respondent's Motion to Dismiss and Reply.
2. Respondent filed a Motion to Dismiss on February 19, 2018.
3. Request for Response to the motion was sent to Petitioner.
4. The emails sent by Petitioner on February 26 and 28, 2018 do not respond to the Motion to Dismiss.
5. The Petitioner has failed to prosecute this contested case. The Petitioner has manifested an intention to thwart the progress of this contested case to its conclusion by not filing a Prehearing Statement. No less drastic sanctions would be effective in ensuring compliance with the court's order and would best serve the interest of justice.

**CONCLUSION OF LAW**

This contested case is subject to dismissal pursuant to GS § 1A-1, Rule 41(b), Rules of Civil Procedure, GS § 150B-33(b)(10), GS § 150B-34(e) and 26 NCAC 03 .0114, for failure of

the Petitioner to comply with the previous Order of the undersigned administrative law judge and for failure to prosecute the case.

### **FINAL DECISION**

It is hereby ORDERED that the contested case be 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.

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 further notices, time lines, and other particulars 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 6th day of March, 2018.



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 6th day of March, 2018.

A handwritten signature in blue ink that reads "Lisa J. Garner".

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Lisa J. Garner  
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