

**BEFORE THE CHIEF INFORMATION OFFICER  
STATE OF NORTH CAROLINA  
DEPARTMENT OF INFORMATION TECHNOLOGY  
Proceeding No. 000-1000A**

<p>AMPLIFY EDUCATION, INC., Petitioner,</p> <p>v.</p> <p>NORTH CAROLINA DEPARTMENT OF PUBLIC INSTRUCTION, Respondent, and IMAGINATION STATION, INC., Respondent - Intervenor.</p>	<p><b>RECOMMENDED ORDER OF DISMISSAL FOR MOOTNESS</b></p>
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THIS MATTER is before the undersigned on *Respondent North Carolina Department of Public Instruction's Motion to Dismiss as Moot*, on the grounds that Respondent (hereinafter, Respondent or DPI) has terminated the Read to Achieve RFP, awarded to Istation, Inc (hereinafter, Respondent-Intervenor or Istation) awarded June 7, 2019, which gave rise to a claim by Petitioner Amplify (hereinafter, Petitioner or Amplify). Respondent argues, and Respondent-Intervenor concurs, that due to the cancellation of the contract that was in dispute, no active controversy exists for the undersigned to adjudicate and therefore, Amplify's petition should be dismissed as moot; the undersigned agrees.

**FINDINGS OF FACT**

1. On 7 June 2019, Respondent Department of Public Instruction awarded the Read to Achieve Request for Proposal to Respondent-Intervenor Istation (RFP No. 40-RQ20680730).
2. On 24 June 2019, Petitioner Amplify submitted a protest letter and request for protest meeting with DPI.
3. In accordance with the NC Department of Information Technology (hereinafter, DIT) rules, DPI held a protest meeting with Amplify on 18 July 2019. DPI denied Amplify's protest in a letter dated 26 July 2019.
4. On 2 August 2019, Amplify commenced the instant contested case by filing a Request for Administrative Hearing and Final Decision with DIT.

5. On 18 September 2019, the then Secretary and Chief Information Officer of DIT Eric Boyette appointed the undersigned as the hearing officer for this matter in accordance with 09 NCAC 06B.1104(2).
6. On 13 January through 17 January 2020, the undersigned presided over an administrative hearing on the merits of Amplify's protest.
7. The parties each filed Proposed Decisions on 27 February 2020.
8. On 24 April 2020 DPI General Counsel Ryan Boyce notified the parties and the undersigned of DPI's intent to cancel the Read to Achieve contract. That same day, Mark Johnson, Superintendent of Public Instruction, notified Istation of its intent to terminate its contract with Istation effective "30 days from the date of this letter," pursuant to paragraph 29(ii) of Terms and Conditions of the contract. The termination letter provided in part, that:

The COVID-19 pandemic has significantly altered public school operations throughout North Carolina. Earlier today, Governor Roy Cooper announced that North Carolina public school buildings will remain closed for normal operation for the remainder of the 2019-2020 school year. Due to these unique circumstances and the novel needs that will face students and educators in the 2020-2021 school year, the Department of Public Instruction is terminating the above-referenced contract with Istation on the basis of convenience.

DPI 24 April 2020 Cancellation Letter to Istation.

9. On 28 April 2020, DPI, via counsel, filed a Motion to Dismiss as Moot.
10. On 29 April 2020, Amplify, via counsel, filed a Response to DPI's Motion to Dismiss.
11. On 29 April 2020, the undersigned issued an order allowing the parties until 1 May 2020 to file a response to DPI's Motion to Dismiss.
12. On 1 May 2020, Istation filed its Statement of in Support of NCDPI's Motion to Dismiss.
13. On 6 May 2020, the undersigned issued an Order staying the proceeding until 25 May 2020.
14. On 26 May 2020, Amplify filed its Supplemental Response to DPI's Motion to Dismiss.

#### **CONCLUSIONS OF LAW**

1. A case is "moot" when the adjudication of the matter cannot have any practical effect on

the existing controversy. Roberts v. Madison Cty. Relators Ass'n, 344 N.C. 394, 398-99, 474 S.E.2d 783,787 (1996).

2. North Carolina's mootness doctrine requires that an active controversy exist between the parties throughout the course of litigation, Messer v. Town of Chapel Hill, 346 N.C. 259, 261, 485 S.E.2d 269, 270 (1997), and that "[w]henver, during the course of litigation it develops that the relief sought has been granted or the questions originally in controversy between the parties are no longer at issue, the case should be dismissed." In re Peoples, 296 N.C. 109, 147, 250 S.E.2d 890, 912 (1978).
3. Furthermore, a tribunal must exercise judicial restraint and dismiss a claim that has become moots as "courts will not entertain or proceed with a cause merely to determine abstract propositions of law." Id. (citing Benvenue Parent-Teacher Ass'n v. Nash County Board of Education, 275 N.C. 675, 170 S.E.2d 473 (1969)).
4. The Read to Achieve Contract (RFP # 40-RQ20680730) awarded by DPI on 7 June 2020 was cancelled, effective 24 May 2020, when DPI invoked the termination for convenience clause of its contract in response the closing of NC public schools for the 2019-2020 school year due to the COVID-19 pandemic.
5. The undersigned cannot award Amplify the Read to Achieve contract as the contract no longer exists.
6. The undersigned lacks jurisdiction to order DPI to resolicit a procurement or to issue a contract to a vendor when the RFP, which forms the basis of the contract and an intent to be bound, no longer exists.
7. Therefore, the contract which is the subject matter of this case in controversy ceases to exist, as does the active controversy between the parties. Therefore, the North Carolina mootness doctrine applies, and this matter should be dismissed as moot.

Consequently, pursuant to 09 NCAC 06B.1107(a)(1) and (6) and 09 NCAC 06B.1115(c), the undersigned recommends that this matter be hereby **DISMISSED**.

**IT IS SO ORDERED.**

This the 27th day of May, 2020.

/s/ Jonathan D. Shaw  
Hearing Officer

**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 27<sup>th</sup> day of May, 2020.

/s/ Jonathan D. Shaw  
Jonathan D. Shaw  
Hearing Officer