



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED WITHOUT PREJUDICE: July 31, 2025

CBCA 8435

MISSOURI HIGHER EDUCATION LOAN AUTHORITY,

Appellant,

v.

DEPARTMENT OF EDUCATION,

Respondent.

Scott F. Lane of Thompson Coburn LLP, St. Louis, MO; and Jayna M. Rust of Thompson Coburn LLP, Washington, DC, counsel for Appellant.

Candice Jackson and Tim Rushenberg, Office of the General Counsel, Department of Education, Washington, DC, counsel for Respondent.

RUSSELL, Board Judge.

ORDER

On July 21, 2025, the parties jointly moved for voluntary dismissal of this appeal pursuant to Board Rule 12(b)(2) (48 CFR 6101.12(b)(2) (2024)). In their motion, the parties explained that the Department of Education's Office of Federal Student Aid "issued a new contracting officer's final decision under the Contract that 'rescinds in its entirety' the May [6, 2025, contracting officer's final decision] and which sets forth a new decision in the matter." The parties further noted that "[b]ecause the decision upon which this appeal was based has been rescinded, the appeal is moot, and the parties respectfully move that the Board dismiss this appeal."

In a subsequent July 29, 2025, joint status report—submitted in response to the Board’s order of July 23, 2025, requesting that the parties inform the Board as to the type of dismissal they are requesting in this appeal—the parties clarified that they are seeking dismissal without prejudice. *See* Rule 12(b)(2) (“[T]he Board will dismiss all or part of a case on the terms requested if the appellant, petitioner, or applicant moves for dismissal with prejudice or moves jointly with the respondent for dismissal with or without prejudice.”).

In their July 29 joint status report, the parties explained that:

Appellant does not intend to appeal the newly-issued decision. Furthermore, the parties are in agreement that (1) [the contracting officer’s issuance of “a new . . . final decision that ‘rescinds in its entirety’ the decision that had given rise to this appeal and which sets forth a new decision on the underlying matter”] moots the subject appeal, (2) while it is unlikely to occur, if the contracting officer were to rescind/revise the newly-issued decision, that would require yet another new contracting officer’s final decision that would have its own appeal rights, and (3) the subject matter of the appeal (allocation of work under an ongoing contract) is of a nature that similar disputes could conceivably occur in the future.

Thus, consistent with the circumstances and precedent set forth in *Ramah Navajo School Board, Inc. v. Department of the Interior*, CBCA 5753-ISDA, 17-1 BCA ¶ 36,897, and to avoid confusion as to whether the Board’s decision conclusively resolves the merits of the appeal, the parties respectfully request that dismissal be without prejudice.

As explained by the United States Court of Appeals for the Federal Circuit “[a] case should generally be dismissed as moot ‘[w]hen, during the course of litigation, it develops that the relief sought has been granted or that the questions originally in controversy between the parties are no longer at issue.’” *eSimplicity, Inc. v. United States*, 122 F.4th 1373, 1376 (Fed. Cir. 2024) (quoting *Chapman Law Firm Co. v. Greenleaf Construction Co.*, 490 F.3d 934, 939 (Fed. Cir. 2007)); *see also Ramah Navajo School Board*, 17-1 BCA at 179,796-97 (discussing dismissal without prejudice in the context of the parties’ joint request to dismiss an appeal on mootness grounds because the agency’s findings and determination (F&D) report, serving as the basis of the appeal, had been rescinded but there remained the possibility, though an unlikely one, that the agency, post-dismissal, could subsequently attempt to modify the F&D report).

Based on the foregoing, the parties' motion is granted. Given that there no longer is a dispute, this appeal is moot and is **DISMISSED WITHOUT PREJUDICE**.

Beverly M. Russell

BEVERLY M. RUSSELL

Board Judge