

**BEFORE THE STATE DEPARTMENT OF EDUCATION
STATE OF NEBRASKA**

)	CASE NO. 22-02 SE
)	
)	
)	
Petitioner,)	ORDER
)	
vs.)	
)	
NORFOLK PUBLIC SCHOOLS)	
512 West Philip Avenue)	
Norfolk, NE 68701,)	
)	
Respondent.)	

THIS MATTER came before the Hearing Officer for prehearing conference and on Respondent’s *Motion to Dismiss* on September 26, 2022, at 12:00 p.m. via conference call. Present was Greg Perry, attorney for Respondent. The Hearing Officer attempted to call Petitioner; however, Petitioner did not answer and the Hearing Officer was unable to leave a voicemail because Petitioner’s voicemail was full. The Hearing Officer makes the following findings:

1. The allegations in Respondent’s *Motion to Dismiss* are true.
Specifically:
 - a. Petitioner’s Petition was filed on May 9, 2022 and Respondent filed its Answer on May 24, 2022.
 - b. Notices of Prehearing Conference were filed setting the matter for telephone conference on July 7, 2022, July 19, 2022, July 26, 2022, August 16, 2022, August 30, 2022, and September 26, 2022.
 - c. The July 7, 2022, Prehearing Conference was not held and was reset to July 19, 2022.

- d. At the July 19, 2022, Prehearing Conference, Petitioner indicated she could not proceed as did not have an attorney. On motion the Prehearing Conference was continued to July 26, 2022.
- e. At the July 26, 2022, Prehearing Conference, Petitioner indicated could not proceed as did not have an attorney.
- e. On August 8, 2022, Petitioner left a voicemail with the Nebraska Department of Education indicating desire to dismiss the Petition filed herein.
- f. At the August 16, 2022, Prehearing Conference the Hearing Officer inquired regarding Petitioner's desire to dismiss the Petition. Petitioner indicated was not going to commit.
- g. At the August 30, 2022, Prehearing Conference, Hearing Officer initiated the hearing with Respondent. Hearing Officer then attempted to contact Petitioner. Petitioner answered and then disconnected the call. Hearing Officer attempted to call Petitioner again; however, Petitioner did not answer.
- h. Petitioner emailed both the Hearing Officer and Respondent's attorney on Thursday, September 22, 2022, indicating, again, desire to dismiss the Petition filed herein.
- i. At the September 26, 2022, Prehearing Conference, Hearing Officer attempted to contact Petitioner, but Petitioner did not answer the call.
- j. The notices for prehearing conferences all included the following language: "A party who fails to attend or participate in a prehearing conference, hearing, or other stage of a contested case, or who fails to make a good faith effort to comply with a prehearing order may be held in default under the Administrative Procedure Act."
- k. At the time of this Order, it has been more than five (5) months since Petitioner filed the Petition herein.

The Hearing Officer therefore finds and orders that Respondent's *Motion to Dismiss* due to lack of a good faith effort to comply with the Prehearing Conference notices should be sustained.

IT IS THEREFORE ORDERED that the Petition herein is dismissed without prejudice.

IT IS SO ORDERED.

By: /s/ Mona L. Burton
Mona L. Burton, #21696
Hearing Officer
ANDERSON, CREAGER &
WITTSTRUCK, P.C., L.L.O.
1630 K Street
Lincoln, NE 68508
(402) 477-8800
(402) 477-8868 (facsimile)
mburton@acwlaw.com

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the above and foregoing was duly served on the 20th day of October, 2022, as follows:

Gregory H. Perry
gperry@perrylawfirm.com

/s/ Mona L. Burton
Mona L. Burton, #21696