

BEFORE THE NEBRASKA DEPARTMENT OF EDUCATION

ELKHORN PUBLIC SCHOOLS,
20650 Glenn Street
Elkhorn, NE 68022,

PETITIONER,

vs.



RESPONDENTS.

Case No. 25-02 SE

ORDER

Now before the undersigned Hearing Officer is the Petitioner’s Motion for Default Judgment. A hearing on the matter was held on September 11, 2025 at 2:00 p.m.

FACTUAL BACKGROUND

1. On May 7, 2025, counsel for Petitioner filed a Petition with the Nebraska Department of Education requesting (a) a hearing under 92 NAC 55 to show that the evaluations conducted by Petitioner on November 4, 2024 and November 18, 2024 were comprehensive and appropriate as required under 92 NAC 51-006.02C; (b) that the State Hearing Officer to issue an order determining that the Respondents are not entitled to an independent educational evaluation at public expense; (c) that Respondents shall pay Petitioner’s costs and attorneys’ fees; and (d) such other and further determination, relief, and orders the State Hearing Officer may deem appropriate in favor of Petitioner.
2. On May 7, 2025, counsel for Petitioner also sent the Petition to Respondents via First-Class USPS Certified Mail with return receipt requested to Respondents’ current home address at



3. On May 12, 2025, the undersigned Hearing Officer ordered the parties to appear at a telephonic hearing addressing all procedural and scheduling matters related to the Petition on June 27, 2025 at 2:30p.m. This Order included a Certificate of Service certifying that a true and accurate copy of the Order had been served upon Respondents via electronic mail to their email address, [REDACTED] on May 12, 2025.
4. On May 15, 2025, the undersigned Hearing Officer was appointed to this case and sent a copy of the Petition and the Notice of Assignment to Respondent's home address, [REDACTED] via U.S. mail with return receipt requested.
5. On May 15, 2025, legal counsel for the Department of Education, Troy Hawk, sent the Petitioners a Notice to File an Answer to Respondents' home address, [REDACTED] via U.S. mail with return receipt requested.
6. On May 27, 2025, Respondent [REDACTED] sent Petitioner and several other individuals an email containing a "Request for Summary Judgment for Independent Educational evaluation at Public Expense."
7. On July 31, 2025, a telephonic conference hearing was held at 10:00a.m. pursuant to prior notice issued by the undersigned Hearing Officer. Counsel for Petitioner was present at the hearing, but neither Respondent appeared.
8. Due to Respondents' failure to appear, the undersigned Hearing Officer attempted to contact both Respondents telephonically. The undersigned Hearing Officer left a voicemail for Respondent [REDACTED] when he failed to respond to attempts to contact him by phone.
9. At approximately 10:10a.m. on July 31, 2025, Respondent [REDACTED] responded to the undersigned Hearing Officer's attempts to contact her by phone. After being advised of the

purpose of the call, Ms. [REDACTED] stated that she was unable to proceed with the call due to her medical circumstances.

10. The undersigned Hearing Officer explained to Ms. [REDACTED] that the purpose of the call was merely to schedule the final hearing and the call should therefore be brief. Ms. [REDACTED] responded that she did not agree to appear on behalf of her [REDACTED] nor had she retained legal counsel to appear on her behalf for such scheduling purposes.
11. Soon after this call terminated, Ms. [REDACTED] called the undersigned Hearing Officer's office with a series of complaints relating to the undersigned Hearing Officer and Petitioner. Ms. [REDACTED] confirmed the email addresses of both Respondents, but refused to otherwise cooperate with scheduling the final hearing in either phone call.
12. On July 31, 2025, the undersigned Hearing Officer ordered the parties to show cause as to why the undersigned case should not be dismissed for the failure of Respondents to appear and ordered the parties to attend a telephonic hearing on this matter at 10:00a.m. on August 21, 2025.
13. On July 31, 2025, the corresponding Progression Order and Order to Show Cause was served upon Respondents by electronic mail at the email addresses provided by Ms. [REDACTED] via telephone that same day: [REDACTED] and [REDACTED]
14. On August 1, 2025, Respondent [REDACTED] sent Petitioner and several other individuals an email containing a "Motion to Disqualify Hearing Officer Robert Bartels."
15. On August 21, 2025, a telephonic hearing on the Order to Show Cause was held. The undersigned hearing officer was unable to reach Respondents. Counsel for Petitioner, Haleigh Carlson, appeared for Petition.

16. On August 21, 2025, the undersigned hearing officer entered a progression order stating that Respondents' Motion for Summary Judgment and Motion to Disqualify the Hearing Officer were overruled. Petitioner moved for Default Judgment. Further, the Order required Respondents to file a responsive pleading by September 10, 2025. Finally, the order called upon the parties, counsel, or legal representatives of the parties to forward the preferred telephone number for purposes of the hearing on September 11, 2025. The order was served upon Respondents by electronic mail at the email addresses provided by Ms. [REDACTED] via telephone that same day: [REDACTED] and [REDACTED]
17. Respondents did not file any pleadings or otherwise enter an appearance by September 10, 2025.
18. On September 11, 2025, only counsel for Petitioner, Haleigh Carlson, appeared by way of forwarding her telephone contact information. There was no appearance by Respondents nor any filing or notification of a telephone number or other means to contact Respondents in this case.
19. Petitioner requested the undersigned hearing officer to take judicial notice of the formal pleadings in this case including the August 21, 2025 order requiring Respondents to file and serve an Answer to the Petition.

LEGAL STANDARD

Under 92 NAC § 55-004.07, a petitioner must serve the petition on the respondent only by U.S. mail with return receipt requested. Under 92 NAC 55.004.08, a respondent has ten (10) days following receipt of the Petition to file an answer “specifically address[ing] the issues raised in the petition” with the hearing officer and serve the same upon the petitioner. Under 92 NAC § 55-006.05, contested special education cases may be disposed of by way of default judgment.

Under Neb. Ct. R. § 6-1432, a plaintiff is entitled to a default judgment when defendant fails to “answer, demur, or otherwise plead” in a timely manner where there is “a verified petition, affidavits, or sworn testimony establishing a claim.” While failure to enter a timely appearance after being “duly summoned in an action” is sufficient for an entry of default judgment against a defendant, a default judgment may still be rendered when the defendant has appeared if the defendant has “fail[ed] to answer or plead or take some step required within the time limited by statute or authoritative order or rule of court.” *Sporer v. Herlik*, 64 N.W.2d 342, 347 (Neb. 1954). Failure to comply with procedural requirements ordered by the court has also been held by the Nebraska Supreme Court to constitute a sufficient basis for default judgment. *See, e.g., Frazier, Inc. v. Alexander*, 161 N.W.2d 505 (Neb. 1968) (failure to amend answer within the time frame ordered by the court).

Having considered the arguments, the evidence before the undersigned Hearing Officer, and the prior filings in this action, the Hearing Officer finds that there are sufficient grounds to enter an Order of Default Judgment against the Respondents and in favor of Petitioner, Elkhorn Public Schools. Respondents have failed to file an Answer admitting or denying the allegations in the Petition filed by Elkhorn Public Schools despite receiving the Order to File an Answer on

May 15, 2025. Respondents have failed to appear at three scheduled telephonic conferences regarding this matter. Then, upon being notified of their failure to appear, Respondents indicated an intent not to appear on behalf of their [REDACTED] and engaged in behaviors that indicated a lack of intent to cooperate with court orders and participate in good faith.

The Court finds that the following orders are appropriate in light of the circumstances:

Petitioner, Elkhorn Public Schools, is entitled to default judgment in its favor and against Respondents, [REDACTED]. The Hearing Officer hereby finds and concludes that the Respondents, [REDACTED] are not entitled to an Independent Educational Evaluation from Elkhorn Public Schools. Petitioner, Elkhorn Public Schools, is the prevailing party.

SO ORDERED.

Dated this 17th day of September, 2025.



Robert F. Bartle
Hearing Officer

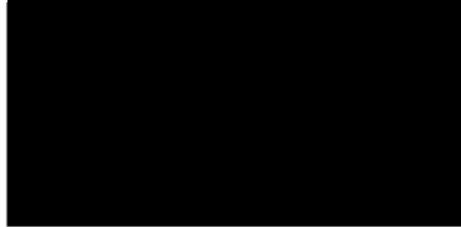
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 15, 2025, the above and forgoing was served upon the following:

Nebraska Department of Education
Troy L. Hawk, Legal Counsel
301 Centennial Mall South
P.O. Box 94987
Lincoln, NE 68509-4987
troy.hawk@nebraska.gov
debra.holmes@nebraska.gov



Petitioners

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Attorney for Respondent

A handwritten signature in cursive script, appearing to read "Robert F. Bartle".

Robert F. Bartle
Hearing Officer