**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Student v. Winthrop Public Schools BSEA #: 2506433**

**RULING ON PARENTS’ MOTION FOR DEFAULT**

This matter comes before the Hearing Officer on Parents’ January 14, 2025 *Motion for Default (Motion)*, in which Parents request that the Hearing Officer enter a default judgment against the Winthrop Public Schools (Winthrop or the District) and award Parents the relief sought in the Initial Hearing Request. As grounds thereof, Parents’ assert that the District has failed to serve and file a response to Parents’ Initial Hearing Request, in violation of the Hearing Officer’s Order dated January 7, 2025. Parents further assert that Parents “have been prejudiced by the [District’s] dilatory conduct insofar as the Due Process Hearing date is fast approaching and the [District’s] failure to abide by [the January 7, 2025] Order has limited the [Parents’] ability to prepare. The [Parents] still need to conduct discovery and request subpoenas [] for witnesses and documents, and serve the same, at least 10 days prior to the Hearing which is scheduled for January 30, 2025.”

Parents requested a hearing on the *Motion*. Said hearing was held on January 16, 2025, and both parties had an opportunity to present their arguments.

For the reasons set forth below, Parents’ *Motion* is DENIED.

**PROCEDURAL HISTORY AND RELEVANT FACTS[[1]](#footnote-1):**

Student is an eight-year-old resident of Winthrop, Massachusetts. He is eligible for special education and related services pursuant to the primary disability category of Developmental Delay, a secondary disability category of Health, and a tertiary disability category of Emotional Disability. Until recently, Student was enrolled in the third grade at the District’s Arthur T. Cummings Elementary School. He is currently being home-schooled.

On December 26, 2024, Parents filed an Initial Hearing Request in this matter. In it, they alleged, in part, that the District failed to provide Student with a free and appropriate public education (FAPE) when it failed to implement Student’s Individualized Education Program (IEP) and to respond appropriately to Student’s allegations of bullying and harassment. Parents requested an order for an out-of-district placement (including transportation). Prior to filing the Hearing Request, the parties participated in an unsuccessful mediation.

On January 7, 2025, District’s Counsel requested an extension until January 13 to file a Response to the Hearing Request. Via Order dated the same day, and over Parents’ objection, the Hearing Officer allowed the request for good cause.

On January 14, 2025, via email, Winthrop’s Counsel indicated that he would file the Response by January 15. As grounds for the delay, Counsel noted that he was “preparing for a BSEA hearing scheduled for [] next week and was prepping witnesses all day yesterday.” Parents’ Counsel responded via email objecting to the late filing on the grounds that Winthrop “must show good cause.  Prioritizing other cases in violation of this [Hearing Officer’s] Order does not constitute good cause.”

Winthrop filed its Response on January 15, 2025, asserting, in part, that Student’s IEPs and placements were reasonably calculated to provide him with FAPE in the least restrictive environment (LRE) and that, as such, Student is not entitled to an out-of-district placement.

**LEGAL STANDARDS AND DISCUSSION:**

* 1. Legal Standards:

Hearing Officers are bound by the *BSEA* *Hearing Rules for Special Education Appeals* (*Hearing Rules*) and the Standard Rules of Adjudicatory Practice and Procedure, 801 Code Mass Regs 1.01. BSEA Hearing Rule I(D) states that within ten (10) calendar days of receipt of the moving party’s hearing request, the opposing party must send to the other party and the Hearing Officer a response that specifically addresses the issues raised in the hearing request.[[2]](#footnote-2) However, if the school district sent a prior written notice to the parent regarding the issues raised in the parent’s hearing request in accordance with 34 C.F.R. § 300.503, the school district need not send an additional response.

Neither IDEA, BSEA Hearing Rules, nor 801 Code Mass Regs 1.01 addresses default judgments for failure to file a Response to a Hearing Request.[[3]](#footnote-3) Where a party fails to file documents required by statute or by 801 CMR 1.00, to respond to notices or correspondence, to comply with orders of the Presiding Officer, or otherwise indicates an intention not to continue with the prosecution of a claim, the Hearing Officer may initiate or a Party may move for an order requiring the party to show cause why the claim shall not be dismissed for lack of prosecution.[[4]](#footnote-4) If a party fails to respond to such order within ten days, or a party's response fails to establish such cause, the Hearing Officer may dismiss the claim with or without prejudice.[[5]](#footnote-5)

Massachusetts Rules of Civil Procedure Rule 6(b)(2) provides that when “an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion … upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.” In addition, Mass. R. Civ. P. 55(a) and (b) allow, in general, entry of a default judgment when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules. Although Hearing Officers are often guided by the Federal or Massachusetts Rules of Civil Procedure, they are not bound by them.

1. Application of Legal Standard:

In evaluating the *Motion* under the *Legal Standards*set forth *supra*, and considering the thoughtful arguments of Counsel, and the specific facts and circumstances presented by the instant matter, I find it inappropriate to enter the extraordinary relief of a default judgment against Winthrop. My reasoning follows.

Parents argue that they “are entitled to notice” of the District’s position, which is the “cornerstone of due process.” In addition, Parents assert undue prejudice, as the delay has hampered their ability to prepare for Hearing as they “still need to conduct discovery and request subpoenas [] for witnesses and documents, and serve the same, at least 10 days prior to the Hearing which is scheduled for January 30, 2025.” Parents also argue that Winthrop’s Counsel articulated neither good cause nor excusable neglect for his untimely submission. According to Parents, a defendant may obtain relief from a default on a showing of “good cause,” which requires a showing by affidavit that the defendant had a good reason for failing to plead or defend in a timely manner and had meritorious defenses.[[6]](#footnote-6) They point to *Feltch v. Gen. Rental Co.,* 383 Mass. 603 (1981) for the proposition that “excusable neglect is not meant to cover the usual excuse that the lawyer is too busy, which can be used, perhaps truthfully, in almost every case.... It is (meant) to take care of emergency situations only.”[[7]](#footnote-7) Parents also distinguish *In re: Student v. Attleboro Public Schools (Ruling On Parent’s Motion To Exclude District’s Response To Hearing Request And Attleboro Public Schools’ Request To Postpone),* BSEA # 2313823 (Kantor Nir, 2023) from the instant matter. In *Attleboro*, the undersigned Hearing Officer found that “the one-day delay [did not warrant] removal of the Response from the record. In considering mitigating factors, I note[d] that Attleboro received the Hearing Request and Notice of Hearing on June 30, 2023, the Friday before the holiday week.” In contrast, here, Winthrop’s Counsel did not articulate any mitigating factors other than that he was preparing for a hearing in a different matter.

Parents are correct that the District was untimely in filing its Response, even after receiving the extension sought by Winthrop’s Counsel. Parents are also persuasive that Winthrop’s Counsel did not articulate good cause for his delay in filing the Response beyond the January 13 extension.[[8]](#footnote-8)

Nevertheless, I cannot issue the relief Parents seek as I am not authorized to issue a default judgment under the present circumstances.[[9]](#footnote-9) According to the *BSEA Hearing Rules*, a default judgment may be appropriate if a party fails to file documents required by statute or regulation, to respond to notices or correspondence, to comply with orders of the Hearing Officer, to appear at the scheduled hearing or otherwise indicates an intention not to continue with prosecution of the claim.[[10]](#footnote-10) Although Winthrop has failed to file its Response in accordance with the January 7, 2025 Order, the use of the plural “documents” and the phrase “may be appropriate” in BSEA Hearing Rule IX (F) suggest not only that a single transgression does not necessarily warrant the extraordinary measure of a default judgment[[11]](#footnote-11) but also the need for discretion in granting said judgment. Here, Parents seek the relief of an out-of-district placement. A default judgment against Winthrop would obligate Winthrop to remove Student to a more restrictive setting without the benefit of a hearing to determine whether such a placement is appropriate for Student. Such judgment is disproportionate in light of Counsel’s untimely filing.

Moreover, I find Parents’ distinction between *Attleboro* and the instant matter unpersuasive. In *Attleboro*, the Response was one day late. Here, as the matter was granted an extension for good cause, the Response was two days late. This difference is marginal. In addition, although Parents assert that the delay has hampered their ability to prepare for Hearing as they “still need to conduct discovery and request subpoenas [] for witnesses and documents, and serve the same, at least 10 days prior to the Hearing which is scheduled for January 30, 2025,” Parents have failed to articulate why the District’s untimely filing has impacted their ability to file their discovery requests at any time[[12]](#footnote-12) or to request subpoenas for witnesses and documents in time for the Hearing.[[13]](#footnote-13) As such, Parents have not demonstrated undue prejudice as a result of the District’s late filing.

For the reasons stated above, Parents’ *Motion* is hereby DENIED.

**ORDER:**

Parents’ *Motion for Default Judgment* is DENIED.

By the Hearing Officer:

/s/ Alina Kantor Nir

Alina Kantor Nir
Dated: January 16, 2025

1. These facts are subject to amendment in later rulings and following a hearing on the merits. [↑](#footnote-ref-1)
2. See also 20 USC §1415(c)(2)(B)(i)-(ii); 34 CFR 300.508(e). [↑](#footnote-ref-2)
3. See *In Re: Springfield Public Schools (Ruling On Parent's Motion To Bar District From Submitting Late Response, Motion To Dismiss And Request For Reconsideration In Resolution Meeting Violation And Order In Favor Of Parent For District Violation Of Well Established BSEA Timelines)*, BSEA # 2203555 (Berman, 2022) (“While the pertinent Federal statute and regulation require the non-filing party to submit a response to a due process complaint, they do not provide for consequences to a party who either fails to respond or responds after expiration of the ten-day deadline. Moreover, neither the Massachusetts special education statute or regulations, nor the state Administrative Procedures Act (APA) or its implementing regulations, contain any language that imposes consequences for failure to respond to a complaint prior to the statutory deadline. There are no provisions that would allow a hearing officer to "bar" a party from filing a late response to a hearing request or require a ‘default’ decision on the merits in favor of the party filing the hearing request”); see also In re Ann v. Springfield Public Schools, BSEA # 061175 (Oliver, 2006) (“There is nothing under IDEA 2004 which delineates any ramifications for failing to respond to Parents' Hearing Request within the ten-day framework. There are no default procedures under federal or state special education law, the Massachusetts Administrative Procedures Act, or the formal rules of state adjudicatory practice and procedures (801 CMR 1.01)”). [↑](#footnote-ref-3)
4. 801 CMR 1.01(7)(g)(2). [↑](#footnote-ref-4)
5. *Id*.   [↑](#footnote-ref-5)
6. See *Johnny's Oil Co. v. Eldayha*, 82 Mass. App. Ct. 705, 708 (2012) (finding Eldayha’s failure “to accompany his motion, as required, with an affidavit setting forth the facts and circumstances, including the nature of his defenses, offering, instead, a motion with mere conclusory statements that he had meritorious defenses” to be “a fatal omission”). [↑](#footnote-ref-6)
7. *Feltch v. Gen. Rental Co.,* 383 Mass. 603, 613-614 (1981) (internal quotations and citations omitted) (finding that excusable neglect “requires circumstances that are unique or extraordinary”). [↑](#footnote-ref-7)
8. In contrast, and as I indicated in my Order dated January 7, 2025, Winthrop’s Counsel did articulate good cause in his January 7, 2025 request, when seeking the initial extension to file the District’s Response. [↑](#footnote-ref-8)
9. See, for example, In re Ann v. Springfield Public Schools, BSEA # 061175 (Oliver, 2006). [↑](#footnote-ref-9)
10. See BSEA Hearing Rule IX(F) [↑](#footnote-ref-10)
11. See *Metro Funding, Corp. v. Vila Corp*. (D.P.R. Apr. 6, 2010) (allowing motion to strike answer and entering a default judgment as sanction where Defendants repeatedly violated the Court's Orders and the rules of procedure). [↑](#footnote-ref-11)
12. See BSEA Hearing Rule V(B) (“Unless the case has been granted expedited status, formal requests for information may be made at any time after a request for hearing is filed and the resolution meeting, when required, has been held or waived”). [↑](#footnote-ref-12)
13. See BSEA Hearing Rule VII(B) (“The request, which must be simultaneously sent to the opposing party and the Hearing Officer, must be received by the Hearing Officer at least ten (10) calendar days prior to the hearing”). [↑](#footnote-ref-13)