



Conclusions of Law, the Hearing Officer's Findings of Fact and Conclusions of Law.

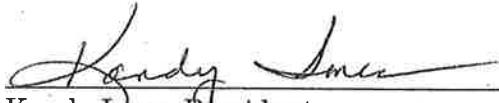
WHEREFORE, the Nebraska State Board of Education, finds, decrees, orders and adjudges:

1. The Petitioners' appeal was properly perfected pursuant to Nebraska law and proper notice of hearing was given to all parties.
2. At all times relevant the State Board of Education had jurisdiction over the subject matter and the parties.
3. The State Board of Education has jurisdiction to review the Respondent's decision rejecting Petitioners' application to enroll in the Respondent School District for the 2009-2010 school year pursuant Neb. Rev. Stat. §79-239 (Reissue 2008).
4. The State Board of Education finds as a matter of law that the Petitioners must demonstrate that the procedures of Neb. Rev. Stat. §79-234 through §79-241 (Reissue 2008) or any other requirements of law have not been followed in the Respondent's action denying Petitioners' application.
5. The State Board of Education finds that the Respondent's Board of Education followed the procedures of Neb. Rev. Stat. §79-234 through §79-241 (Reissue 2008) and other applicable law, in rejecting Petitioners' application for their child to attend the Respondent School District for the 2009-2010 school year. Specifically, Respondent followed these procedures in rejecting the application because the Petitioners had previously exercised option enrollment procedures for Lisa Ward and none of the exceptions for allowing another option enrollment in Neb. Rev. Stat. §79-734(1) apply.
6. Petitioners' appeal is denied and Respondent's Board of Education decision to deny the Petitioners' option enrollment application be affirmed.
7. The Hearing Officer's Findings of Fact and Conclusion of Law are hereby adopted in all respects and made a part of this Order by this reference to the same

extent and like effect as though such Findings of Fact and Conclusions of Law were fully set forth verbatim herein.

Dated this 12<sup>th</sup> day of August, 2009.

NEBRASKA STATE BOARD OF EDUCATION



Kandy Imes, President  
State Board of Education

The vote by the State Board of Education to approve the Final Order in Case No. 09-09, on August 12, 2009, was 7 in favor, \_\_\_\_\_ against, \_\_\_\_\_ abstaining, and 1 absent.

Individual State Board members voted as follows:

IN FAVOR: K. Imes, J. Scheer, R. Evnen, R. Valdez, P. Timm, F. Meyer, J. Higgins

AGAINST: \_\_\_\_\_

ABSTAINING: \_\_\_\_\_

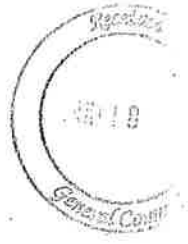
ABSENT: K. Winterer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Final Order was served upon Robert and Linda Ward, 7906 Maui Circle, Papillion, NE 68046; Dr. Bradley R. Conner, Student Services Director, Papillion-LaVista School District, 420 South Washington Street, Papillion, NE 68046; via United States Mail, first class postage prepaid and hand delivered to Margaret Worth, General Counsel, Nebraska Department of Education, 301 Centennial Mall South, 6<sup>th</sup> floor, Lincoln, NE, on this 12<sup>th</sup> day of August, 2009.



BEFORE THE STATE BOARD OF EDUCATION  
STATE OF NEBRASKA.



Robert and Linda Ward )  
7906 Maui Circle )  
Papillion, NE 68046 )  
 )  
Petitioners, )  
 )  
v. )  
 )  
Papillion-LaVista School District )  
420 South Washington Street )  
Papillion, NE 68046 )  
 )  
Respondent. )

NDE Case No. 09-09

HEARING OFFICER'S PROPOSED  
FINDINGS OF FACT, RECOMMENDED  
CONCLUSIONS OF LAW AND  
RECOMMENDED DECISION

INTRODUCTION

Petitioners have filed this appeal, pursuant to Neb. Rev. Stat. § 79-232, et seq. (Reissue 2008), and Title 92, Nebraska Administrative Code, Chapter 61. Petitioners request that the State Board of Education reverse the Respondent School District's decision disapproving the application filed by Petitioners to enroll their daughter, Lisa Ward, in the Papillion-LaVista School District for the 2009-2010 school year.

The hearing on this matter was convened pursuant to notice at 9:26 a.m. on May 5, 2009, before John M. Boehm, Hearing Officer, appointed by the State Board of Education, at the Department of Education, Sixth Floor, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, 68509. The Petitioners, Robert and Linda Ward, appeared on their own behalf and testimony was presented by Linda Ward. The Respondent appeared through Dr. Bradley Conner, Student Services Director for Papillion-LaVista Public School District, who also provided testimony. The hearing was recorded by General Reporting Service of Lincoln, Nebraska.

The hearing was conducted pursuant to Nebraska Department of Education Rules of Practice and Procedures for Hearings in Contested Cases before the Department of Education, Title 92, NAC Chapter 61. The following exhibits were offered and received without objection: (1) application for student transfer for 2002-2003 school year; (2) application for student transfer for 2009-2010 school year; (3) responsive pleading; (4) 2008-2009 attendance summary and grade report for Lisa M. Ward; (5) NDOE case file; (6) testimony notes of Linda Ward.

Having considered the sworn testimony of the witnesses and the exhibits, the Hearing Officer makes the following proposed findings of fact, recommended conclusions of law, and recommended decision.

#### PROPOSED FINDINGS OF FACT

1. The Petitioners are residents of South Sarpy #46 School District and have been at all times relevant to these proceedings.

2. In 2002, the Petitioners, pursuant to the Nebraska Enrollment Option Program applied to have their daughter, Lisa Ward, enrolled in the Millard Public School District for the 2002-2003 school year, which application was accepted. Their daughter was of kindergarten age at the time of this selection and Petitioners' were not satisfied with the educational opportunities available in their home school district. Additionally, Ms. Ward was teaching elementary school in the Millard Public School System and her husband worked in the maintenance department for Millard Public Schools. Ms. Ward and her daughter would be at the same school building. Millard also had an opening in the before and after care program at that time. These factors relating to transportation and daycare made it beneficial for the Petitioners to enroll their daughter in the Millard Public School District.

3. Petitioner is a good student with grades at the 1 and 2 level and is actively involved with band and a non-school related swimming program, The Monarch Swim Team. She has friends on that swim team who will be students in the Papillion-LaVista District. It will be easier transportation wise for Petitioners to get their daughter to and from various school events and programs at LaVista rather than the Millard School she will attend next year.

4. Petitioners intend to transfer their daughter to the Papillion-LaVista School District under Neb. Rev. Stat. § 79-2110(2)(a) (Reissue 2008), for the 2010-2011 school year. In this regard, Petitioners believe that transferring to Papillion in 2009 will result in an easier transition and adjustment for their daughter, when all students, including some of her friends on the swim team, will be starting at LaVista Junior High, rather than transferring in as a "new" student the following year.

5. Petitioners will also have the student's grandparents, who live in Papillion, able to assist them as a backup for transportation purposes, particularly for extra curricular activities.

6. Petitioners filed their application to transfer their daughter to the Papillion-LaVista School District on February 25, 2009, for the 2009-2010 school year. This application was disapproved by the Papillion-LaVista School District on February 25, 2009, by Dr. Bradley Conner, Student Services Director, for the reason that the Petitioners had already used the option enrollment procedure when they initially transferred their daughter from the South Sarpy #46 District to the Millard School District. Petitioners filed their appeal on March 16, 2009.

7. Respondent School District has no other objection to the transfer of this student other than the statutory restriction limiting a student to one option enrollment prior to graduation.

8. Petitioners' daughter, Lisa Ward, would not be eligible to participate in a public school sanctioned swim team until she is in high school.

9. Petitioners were unaware of the one time limit on option enrollment at the time they made their initial option enrollment application in 2002.

RECOMMENDED CONCLUSIONS OF LAW

1. Petitioners perfected their appeal to the State Board of Education in a timely fashion and pursuant to Neb. Rev. Stat. § 79-239 (Reissue 2008). The State Board of Education has jurisdiction over this matter and the parties thereto.

2. Pursuant to Neb. Rev. Stat. § 79-239 (Reissue 2008), the hearing on appeal shall determine whether the procedures of §§ 79-234 to 79-241 have been followed.

3. Neb. Rev. Stat. § 79-234(1) (Reissue 2008) provides in part as follows:

The option shall be available only once to each student prior to graduation unless (a) the student relocates to a different resident school district, (b) the option school district merges with another district, (c) the option school district is a Class I district, (d) the option would allow the student to continue current enrollment in a school district, or (e) the option would allow the student to enroll in a school district in which the student was previously enrolled as a resident student.

4. The facts are not in dispute.

5. The Petitioners had previously exercised the option enrollment procedures for their daughter in 2001 and none of the exceptions in Neb. Rev. Stat. § 79-234(1) are applicable.

6. The Respondent School District correctly applied the existing law, Neb. Rev. Stat. § 79-234(1), which provides that the option is available only once to each student prior to graduation, in denying the Petitioners' option enrollment application

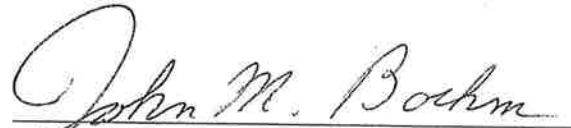
RECOMMENDED DECISION

The following is recommended by the Hearing Officer.

1. That the Respondent School District's decision to deny the Petitioners' option enrollment application be affirmed.

2. That the State Board of Education as a part of its order, adopt the Hearing Officer's findings of fact and conclusions of law in all respects, and that such be made part of its order by reference to the same extent and like effect as if such findings of fact and conclusions of law were fully set forth verbatim in its order.

Dated this 18<sup>th</sup> day of June, 2009.



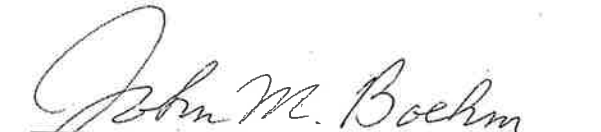
John M. Boehm, #15550  
811 South 13<sup>th</sup> Street  
Lincoln, NE 68508  
(402) 475-0811  
Hearing Officer

CERTIFICATE OF SERVICE

The undersigned, John M. Boehm, hereby certifies that the original of the foregoing with attached transcript was hand delivered to Margaret D. Worth, General Counsel, Nebraska Department of Education, 301 Centennial Mall South, Lincoln, Nebraska, on June 18, 2009, and a true and correct copy of the foregoing was served by first class United States Mail, postage prepaid, on June 18, 2009, to the following parties:

Robert and Linda Ward  
7906 Maui Circle  
Papillion, NE 68046

Dr. Bradley R. Conner  
Student Services Director  
Papillion-LaVista School District  
420 South Washington Street  
Papillion, NE 68046



John M. Boehm, #15550, Hearing Officer