

BEFORE THE STATE BOARD OF EDUCATION
STATE OF NEBRASKA

Angie J. Blocher)	
1924 Burlington Blvd.)	
North Platte, NE 69101)	CASE NO. 12-10
)	
Petitioner,)	
)	
v.)	FINAL ORDER
)	
North Platte Public Schools)	
Tamie Eshleman, Interim Superintendent)	
301 West F Street)	
P.O. Box 1557)	
North Platte, NE 69101)	
)	
Respondent.)	

Petitioners filed this appeal pursuant to Neb. Rev. Stat. § 79-239 (Cum. Supp. 2010) and Title 92, NAC, Chapter 61, effective October 1, 1997. Petitioner requests that the State Board of Education reverse the Respondent School District's decision disapproving the application filed by the Petitioner to option enroll her daughter, Shanna Blocher, in the Maxwell Public School District for the 2012-2013 school year.

The hearing on this matter was convened pursuant to notice at 1:00 p.m. on August 8, 2012, before Jim Titus, Hearing Officer, appointed by the State Board of Education, by telephone conference by which each participant in the hearing had the opportunity to participate in and hear the entire proceeding while it was taking place. Petitioner Angie J. Blocher appeared on her own behalf and provided testimony. The Respondent appeared through Gregory H. Perry, its attorney. Tami Eshleman, Interim Superintendent of North Platte Public School District, was also present on the conference call. The hearing was recorded by Precision Reporting, Inc. of Lincoln, Nebraska.

The State Board of Education, having considered the record in the case and the Hearing Officer's Proposed Findings of Fact, Recommended Conclusions of Law and Recommended

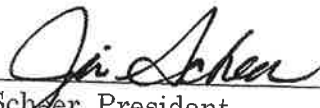
Decision, and having been fully advised in the matter, finds that it should adopt and incorporate by reference in its Order as its Findings of Fact and Conclusions of Law, the Hearing Officer's Findings of Fact and Conclusions of Law.

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

1. Respondent North Platte Public School's decision to deny the Petitioner's option enrollment application by not waiving the deadline is affirmed.
2. 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 7th day of September, 2012.

NEBRASKA STATE BOARD OF EDUCATION



Jim Scheer, President
State Board of Education

The vote by the State Board of Education to approve the Final Order in Case No. 12-10 on September 7, 2012, was 8 in favor, _____ against, _____ abstaining, and _____ absent.

Individual State Board members voted as follows:

IN FAVOR: R. EVNEN, M. QUANDAH, J. SCHEER, R. VALDEZ, P. TIMM, L. CRONK,
M. O'HOLLERAN, J. SIELER

AGAINST: _____

ABSTAINING: _____

ABSENT: _____

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Final Order was served upon Angie J. Blocher, 1924 Burlington Blvd., North Platte, NE 69101; Gregory H. Perry, Attorney at Law, 233 South 13th Street, Suite 1400, Lincoln, NE 68508; via United States Mail, first class postage prepaid and hand delivered to Margaret Worth, General Counsel, Nebraska Department of Education, 301 Centennial Mall South, 6th floor, Lincoln, NE, on this 11th day of September, 2012.

Brenda L. Wid

BEFORE THE STATE BOARD OF EDUCATION
STATE OF NEBRASKA



ANGIE J. BLOCHER
1924 Burlington Blvd.
North Platte, NE 69101

CASE NO. 12-10

Petitioner,

v.

NORTH PLATTE PUBLIC SCHOOLS
Tami Eshleman, Interim Superintendent
301 West 'F' Street
P.O. Box 1557
North Platte, NE 69101

Respondent.

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

INTRODUCTION

Petitioner has filed this appeal, pursuant to Neb. Rev. Stat. § 79-239 (Supp. 2010), and Title 92, NAC, Chapter 61. Petitioner requests that the State Board of Education reverse the Respondent School District's decision disapproving the application filed by Petitioners to enroll her daughter, Shanna Blocher, in the Maxwell Public School District for the 2012-13 school year.

The hearing on this matter was convened pursuant to notice at 1:00 p.m. on August 8, 2012 before Jim R. Titus, Hearing Officer, appointed by the State Board of Education, by telephone conference by which each participant in the hearing had the opportunity to participate in and hear the entire proceeding while it was taking place. The Petitioner Angie J. Blocher appeared on her own behalf and testimony was presented by her. The Respondent appeared through Gregory H. Perry, its attorney. Tami Eshleman, Interim Superintendent of North Platte Public School District, was also present on the conference call.

The hearing was conducted pursuant to the Nebraska Department of Education Rules of Practice and Procedures for hearings in contested cases before the Department of Education, Title 92, NAC, Chapter 61. Five exhibits were offered and received without objection, namely, Exhibit 1, the Respondent's policy manual on option enrollment; Exhibit 2, excerpts from newspaper articles announcing the policy on the deadline for applications to "opt-out;" Exhibit 3, Petitioner's Application for Student Transfer for her son Dylan dated March 4, 2011; Exhibit 4, Petitioner's Application for Student Transfer for her daughter Shanna dated April 17, 2012; and Exhibit 5, a copy of Title 92, NAC, Chapter 61.

Having considered the sworn testimony of the witness 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 Petitioner is a resident of the North Platte Public School District and has been at all times relevant to these proceedings.
2. In 2011, the Petitioner, pursuant to the Nebraska Enrollment Option Program, applied to have her son, Dylan Blocher, enrolled in the Maxwell Public School District, which application was accepted.
3. On or about April 17, 2012, Petitioner, pursuant to the Nebraska Enrollment Option Program, applied to have her daughter, Shanna Blocher, enrolled in the Maxwell Public School District. Petitioner's application was not timely filed and the Respondent did not waive the deadline.
4. Petitioner's testimony and petition for appeal both show that her reason for the late filing was her belief that since her son had already been granted approval to transfer the year

before, that she did not need her resident district's release for her second child.

5. Respondent school district has in place a policy for waiving the deadline for release of a resident student, contained in Exhibit 1. No evidence was offered or allegations made that such policy was not properly adopted or enforceable. The Petitioner asks that the Board overrule the policy due to her mistake in knowledge of the policy and application requirements.

6. Petitioner did not assert any law or regulation allowing an exception to the deadline.

7. The Application forms at Exhibits 3 and 4 state that a separate application is required for each applicant.

RECOMMENDED CONCLUSIONS OF LAW

8. Petitioner perfected her appeal to the State Board of Education in a timely fashion and pursuant to Neb. Rev. Stat. § 79-239 (Supp. 2010). The State Board of Education has jurisdiction over this matter and the parties thereto.

9. Pursuant to Neb. Rev. Stat. § 79-239 (Supp. 2010), the hearing on appeal shall determine whether the procedures of Neb. Rev. Stat. §§ 79-234 to 79-241 have been followed.

10. Neb. Rev. Stat. § 79-238(2) (Supp. 2010) provides in part as follows:

“The school board of every school district shall also adopt standards and conditions for acceptance or rejection of a request for release of a resident student submitting an application to an option school district after March 15 under subsection (1) of section 79-237.”

11. The facts are not in dispute.

12. The Petitioner did not meet the March 15, 2012 deadline for the application for

option enrollment. The reason for the untimely filing does not fall within the exception under the policy adopted by the Respondent.

13. The Respondent School District complied with Neb. Rev. Stat. § 79-238(2) by adopting a policy for standards and conditions for acceptance or rejection of a request for release of a resident student submitting an application to an option school after March 15 and properly declined to waive the deadline pursuant to its policy.


RECOMMENDED DECISION

14. The following is recommended by the Hearing Officer:

(a) That the Respondent School District's decision to deny the Petitioner's option enrollment application by not waiving the deadline be affirmed;

(b) The State Board of Education as a part of its order shall 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 10th day of August, 2012.



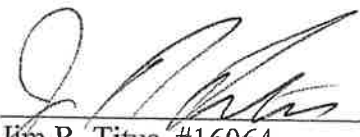
Jim R. Titus, #16064, Hearing Officer
MORRIS & TITUS LAW FIRM, PC, LLO
4645 Normal Blvd., Suite 272
Lincoln, NE 68506
(402) 434-5200 – phone
(402) 434-5209 – fax
jtitus@morristituslaw.com

CERTIFICATE OF SERVICE

The undersigned, Jim R. Titus, hereby certifies that the original of the foregoing with attached transcript was hand delivered to Leslie S. Donley, Assistant Attorney General, Nebraska Department of Justice, 2115 State Capitol, Lincoln, Nebraska on August 13, 2012, and a true and correct copy of the foregoing was served by first-class United States mail, postage prepaid on August 10, 2012 to the following parties:

Angie J. Blocher
1924 Burlington Blvd.
North Platte, NE 69101

Gregory H. Perry
Attorney at Law
233 South 13th Street, Suite 1400
Lincoln, NE 68508



Jim R. Titus, #16064
Hearing Officer