

BEFORE THE STATE BOARD OF EDUCATION  
STATE OF NEBRASKA

Brandi Mitchell	)	
406 William Avenue	)	
North Platte, NE 69101	)	CASE NO. 13-02
	)	
Petitioner,	)	
	)	
v.	)	<b>FINAL ORDER</b>
	)	
Hershey Public Schools	)	
Michael Cuning, Superintendent	)	
301 South Lincoln	)	
Hershey, NE 69143	)	
	)	
Respondent.	)	

Petitioner filed this appeal pursuant to Neb. Rev. Stat. § 79-239 (Cum. Supp. 2012) 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 son, Zavion Mitchell, in the Hershey Public School District for the 2012-2013 school year.

The hearing on this matter was convened pursuant to notice at approximately 1:15 p.m. on April 11, 2013, before Jim R. Titus, Hearing Officer, appointed by the State Board of Education, The Petitioner, Brandi Mitchell, appeared on her own behalf by telephone conference, in which she had the opportunity to participate and hear the entire proceeding while it was taking place. Such appearance by telephone conference was by agreement of the parties. The Respondent appeared through Kelley Baker, Attorney at Law. Also present were Dr. Michael Cuning, Superintendent of Hershey Public School District and Dr. Jane Davis, Superintendent-elect of the Hershey Public School District. Dr. Cuning testified on behalf of the Respondent. 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 orders as follows:

1. Respondent Hershey Public School's decision to deny the Petitioner's option enrollment application 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 7 day of May, 2013.

NEBRASKA STATE BOARD OF EDUCATION



Patricia Timm, President  
State Board of Education

The vote by the State Board of Education to approve the Final Order in Case No. 13-02 on May 7, 2013, was 8 in favor, \_\_\_\_\_ against, \_\_\_\_\_ abstaining, and \_\_\_\_\_ absent.

Individual State Board members voted as follows:

IN FAVOR: L. LARSEN, M. QUANDAHL, R. WISE, 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 Brandi Mitchell, 406 William Avenue, North Platte, NE 69101; Kelley Baker, Attorney at Law, Harding & Schultz, P.O. Box 82028, Lincoln, NE 68501; 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 8<sup>th</sup> day of May, 2013.

*Brenda L. Wid*

BEFORE THE STATE BOARD OF EDUCATION  
STATE OF NEBRASKA

Brandi Mitchell	)	Case No. 13-02
406 William Avenue	)	
North Platte, NE 69101	)	
	)	
Petitioner,	)	
v.	)	HEARING OFFICER'S PROPOSED
	)	FINDINGS OF FACT, RECOMMENDED
Hershey Public Schools	)	CONCLUSIONS OF LAW AND
Michael Cuning, Superintendent	)	RECOMMENDED DECISION
301 South Lincoln	)	
Hershey, NE 69143	)	
	)	
Respondent.	)	

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 Petitioner to enroll her son, Zavion Mitchell, in the Hershey Public School District for the 2012-13 school year.

The hearing on this matter was convened pursuant to notice at approximately 1:15 p.m. on April 11, 2013, before Jim R. Titus, Hearing Officer, appointed by the State Board of Education. The Petitioner, Brandi Mitchell, appeared on her own behalf by telephone conference, in which she had the opportunity to participate and hear the entire proceeding while it was taking place. Such appearance by telephone conference was by agreement of the parties.

The Respondent appeared through Kelley Baker, Attorney at Law. Also present was Dr. Michael Cuning, Superintendent of the Hershey Public School District and Dr. Jane Davis, Superintendent-elect of the Hershey Public School District. Dr. Cuning testified on behalf of the Respondent. The hearing was recorded by Precision Reporting, Inc., of Lincoln, Nebraska.

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

contained in Title 92, NAC, Chapter 61. Exhibits #1 through #8 were offered and received without objection. Those Exhibits are as follows: Exhibit #1 - the Petition of Appeal; Exhibit #2 - Attachment to Exhibit #1 stating the grounds of the appeal; Exhibit #3 - Respondent's answer; Exhibit #4 - Application for Student Transfer Nebraska Enrollment Option Program; Exhibit #5 - Application for free and reduced price school meals; Exhibit #6 - Non-Resident Students policy of the Respondent; Exhibit #7 - Class-Department capacities policy of the Respondent; and Exhibit #8 - Rent receipts.

Having considered the sworn testimony of the witnesses, Brandi Mitchell and Dr. Cuning, 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. Some time in July or August of 2012, Petitioner enrolled her son Zavion in the Hershey Public School District for the 2012-13 school year as a resident of the Hershey Public School District.
2. Petitioner was separated from her husband during the summer of 2012 and testified that she moved into an apartment in Hershey, Nebraska with roommates and paid rent, for which she has receipts for August, September, October and November of 2012.
3. Dr. Cuning became aware in November, 2012 that Petitioner had listed a North Platte address on her application for free and reduced lunch. Also, the school nurse in Hershey had asked the Petitioner for her address and was given a North Platte address in November, 2012.
4. Petitioner was told by Dr. Cuning to file an Application for Student Transfer under the Nebraska Enrollment Option Program, which she did on January 4, 2013, which application stated a North Platte residence. On or about January 11, 2013, the Respondent denied the Application for Student Transfer on the basis that the application was past the April 15<sup>th</sup>

deadline for the school year, that the class was at full capacity according to the Respondent's policy and that the Petitioner was not a resident of the District when her son was enrolled.

5. Pursuant to Petitioner's testimony, I find that beginning July 4, 2012 she began residing 95% of the time at an apartment in North Platte with her husband, and that her son Zavion stayed with her at whatever place she was residing at the time. The other 5% of the time she stayed at the apartment being rented with others in Hershey, Nebraska. On November 1, 2012, Petitioner ceased renting a space in Hershey and moved back to a North Platte residence full time.

6. Petitioner also testified that she had another son who she enrolled in the North Platte School District at the beginning of the 2012-13 school year, which son was enrolled and attended the North Platte Madison Middle School as a resident, not as an option transfer student.

7. The resident school district on January 4, 2013 signed the application for student transfer waiving the deadline dates.

8. At the time of the application for student transfer in January, 2013, the seventh grade in the Hershey Public School District had 52 students and had denied other option applicants due to limits and some due to late filings.

#### RECOMMENDED CONCLUSIONS OF LAW

9. 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.

10. 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.

11. Neb. Rev. Stat. § 79-234(1) (Supp. 2010) provides in part as follows:

“Neb. Rev. Stat. § 79-238 (Reissue 2009) provides that the School Board of every

School District shall adopt standards and conditions for acceptance and rejection of a request for a release”.

Neb. Rev. Stat. § 79-239 provides that if an application for student transfer is rejected by the option school district, the rejecting school shall provide written notification to the parents stating the reasons for the objection and the process for appealing such rejection to the State Board of Education. The Exhibits evidence that the Respondent complied with the statute.

12. Neb. Rev. Stat. § 79-215 (reissue 2009) provides that a student is a resident of the school district where he or she resides and shall be admitted to any such school district upon request without charge, and that a School Board shall admit a student upon request without charge if at least one of the student’s parents resides in the school district. Neb. Rev. Stat. §§ 79-232 to 79-246 were adopted to allow an enrollment option program for attending schools outside the resident school district.

13. It is apparent from the Petitioner’s testimony that neither her nor her son, Zavion, were residents of the Hershey Public School District at the time of enrollment for the 2012-13 school year. Petitioner argues that residency should be where she is paying rent, even though she and her son only resided there approximately 5% of the time from before enrollment through November 1, 2012 when she moved full time with her son to North Platte. Petitioner does not provide any legal basis for such meaning of residency. Title 92, NAC, Chapter 19.002.14 defines residence as that place in which a person is actually domiciled, which is one’s established home and the place to which one intends to return when absent therefrom and is the place where a person is actually living full time, as opposed to vacationing or visiting. Statutes and case law confirm that a person may have many residences, but only one domicile. Neb. Rev. Stat. § 79-215 (2009), *State ex rel: Frasier v. Whaley*, 194 Neb. 703, 235 N.W.2d 394 (1975); *State v. School District*, 55 Neb. 317, 75 N.W. 855. There is no support for the position of establishing residency in a school

district by living in such school district only 5% of the time, especially where Petitioner admitted that from July 4, 2012 through November 1, 2012, they spent most days of the week in their North Platte apartment, therefore, the 95% primary residency in North Platte was established in July of 2012 through November 1, 2012, at which time Petitioner and her son became 100% residents of North Platte. At no time was the Petitioner and the student a resident of the Hershey Public School District, therefore enrollment in the Hershey Public School District was subject to the statutes for the enrollment option program.

14. The Hershey Public School District has adopted policies and standards for considering such applications for student transfer, which the Respondent applied in denying the Petitioner's application.

15. The Respondent's School District has correctly applied the law in denying the Petitioner's application for student transfer, as the student was not a resident of the Respondent's District for any part of the 2012-13 school year.

#### RECOMMENDED DECISION

16. The following is recommended by the Hearing Officer:

(a) That the Respondent School District's decision to deny the Petitioner's option enrollment application be affirmed; and

(b) The State Board of Education as 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 a 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 April, 2013.



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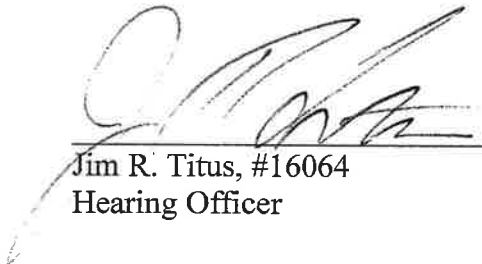
Jim R. Titus, #16064, Hearing Officer  
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CERTIFICATE OF SERVICE

The undersigned, Jim R. Titus, hereby certifies that the original of the foregoing with attached transcript and pleadings were hand delivered to Leslie S. Donley, Assistant Attorney General, Nebraska Department of Justice, 2115 State Capitol, Lincoln, Nebraska on April 18, 2013, and a true and correct copy of the foregoing was served by first-class United States mail, postage prepaid on April 18, 2013, to the following parties:

Brandi Mitchell  
406 William Ave.  
North Platte, NE 69101

Kelley Baker, Esq,  
Harding & Shultz, P.C., L.L.O.  
P.O. Box 82028  
Lincoln, NE 68501-2028



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Jim R. Titus, #16064  
Hearing Officer