

BEFORE THE STATE BOARD OF EDUCATION
STATE OF NEBRASKA

TIMOTHY PIRNIE)	
621 S. Sycamore Street)	
North Platte, NE 69101)	CASE NO. 13-10
)	
Petitioner,)	
)	
v.)	FINAL ORDER
)	
NORTH PLATTE PUBLIC SCHOOLS)	
301 West "F" Street)	
P.O. Box 1557)	
North Platte, NE 69101)	
)	
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 to deny Petitioner's application to option enroll his son, Harlee Pirnie, in the Stapleton Public School District for the 2013-2014 school year.

The hearing on this matter was convened pursuant to notice at approximately 10:10 a.m. on July 2, 2103, before Jim R. Titus, Hearing Officer, appointed by the State Board of Education, The Petitioner, Timothy Pirnie, appeared on his own behalf and presented testimony by telephone conference, in which he had the opportunity to participate and hear the entire proceeding while it was taking place. The Respondent appeared through Greg Perry, Attorney at Law. Also present was Tami Eshleman, Associate Superintendent of North Platte Public School District who 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 North Platte 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 9 day of August, 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. 13-102 on August 9, 2013, was 7 in favor, _____ against, _____ abstaining, and 1 absent.

Individual State Board members voted as follows:

IN FAVOR: L. LARSEN, R. WISE, R. VALDEZ, P. TIMM, L. CRONK, M. O'HOLLERAN, J. STELER

AGAINST: _____

ABSTAINING: _____

ABSENT: M. QUANDAHL

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Final Order was served upon Timothy Pirnie, 621 S. Sycamore St, North Platte, NE 69101; Greg Perry, Attorney at Law, 233 S. 13th Street, Ste. 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 9th day of August, 2013.

Brenda L. Wid



BEFORE THE STATE BOARD OF EDUCATION
STATE OF NEBRASKA

TIMOTHY PIRNIE)
621 S. Sycamore Street)
North Platte, NE 69101)

CASE NO. 13-10

Petitioner,)
v.)

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

NORTH PLATTE PUBLIC SCHOOLS)
301 West 'F' Street)
P.O. Box 1557)
North Platte, NE 69101)

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 his son, Harlee Pirnie, in the Stapleton Public School District for the 2013-14 school year.

The hearing on this matter was convened pursuant to notice at 10:10 a.m. on July 2, 2013 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, Timothy Pirnie, appeared on his own behalf and testimony was presented by him. The Respondent appeared through Gregory H. Perry, its attorney, who was present in the offices of the hearing officer. Tami Eshleman, Associate Superintendent of North Platte Public School District, was also present on the conference call and testified.

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. Six 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 Petition, including his Application for Student Transfer; Exhibit 4, Respondent's Answer; Exhibit 5, a copy of Title 92 NAC Chapter 19; and Exhibit 6, a copy of Title 92 NAC Chapter 61.

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 Petitioner is a resident of the North Platte Public School District and has been at all times relevant to these proceedings.
2. On or about March 25, 2013, Petitioner, pursuant to the Nebraska Enrollment Option Program, applied to have his son, Harlee Pirnie, enrolled in the Stapleton Public School District. Petitioner's application was not timely filed and the Respondent did not waive the deadline.
3. Petitioner's testimony and petition for appeal both show that his reason for the late filing was he was not aware of the deadline, but had waited until after Stapleton School District's kindergarten roundup program to apply. He has two other children attending the Stapleton School District and had moved to the North Plate School District in December 2012.
4. Respondent's school district has in place a policy for waiving the deadline for release of a resident student, contained in Exhibit 1, which has been advertised. 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 his mistake in knowledge of the policy and application requirements.

5. Petitioner did not assert any law or regulation allowing an exception to the deadline. Petitioner's move to North Platte was about three months prior to the deadline for application.

RECOMMENDED CONCLUSIONS OF LAW

6. Petitioner perfected his 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.

7. 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.

8. 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.”

9. The facts are not in dispute.

10. The Petitioner did not meet the March 15, 2013 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. Petitioner's move to North Platte was prior to the March 15th deadline by about three months.

11. 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

12. 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 11 day of July, 2013.



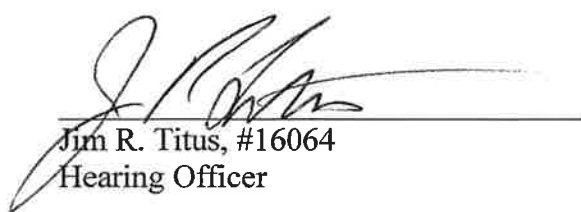
Jim R. Titus, #16064, Hearing Officer
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CERTIFICATE OF SERVICE

The undersigned, Jim R. Titus, hereby certifies that the original of the foregoing with attached transcript was hand delivered to Leslie S. Donley, Assistant Attorney General, Nebraska Department of Justice, 2115 State Capitol, Lincoln, Nebraska on July 11, 2013, and a true and correct copy of the foregoing was served by first-class United States mail, postage prepaid on July 11, 2013 to the following parties:

Timothy Pirnie
621 S. Sycamore Street
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