

BEFORE THE STATE BOARD OF EDUCATION
STATE OF NEBRASKA

DALE AND HEATHER WHITE)	
103 Northridge Circle)	
North Platte, NE 69101)	CASE NO. 14-03
)	
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 their daughter, Nevaeh A. White, in the McPherson County School District for the 2014-2015 school year by not waiving the release approval deadline.

The hearing on this matter was convened pursuant to notice at approximately 1:00 p.m. on June 4, 2104, before Jim R. Titus, Hearing Officer, appointed by the State Board of Education, The Petitioners appeared on their own behalf. The Respondent appeared through its attorney, Gregory Perry. Tami Eshleman, Associate Superintendent of North Platte Public School District and Joe Sherwood, Superintendent of the McPherson County Public School District, were also present and testified. Dr. Marty Bassett was also present, but did not testify. 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 # 9, #10, #11, #12, and #13. The State Board does not adopt the Hearing Officer's Conclusions of Law #14. The State Board does not adopt the Recommended Decision of the Hearing Officer and, upon further consideration of the facts in this case and the intent of the option enrollment statutes, determines that the Petitioners should be granted release approval by the Respondent for their daughter to attend McPherson County Public School District as an option enrollment student.

WHEREFORE, the Nebraska State Board of Education orders as follows:

1. Respondent North Platte Public School's decision to deny the Petitioners' option enrollment application by not waiving the release approval deadline is hereby reversed and Petitioners' daughter is granted release approval to attend McPherson County Public School District as an option enrollment student.
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 8th day of August, 2014.

NEBRASKA STATE BOARD OF EDUCATION



Rachel Wise, President
State Board of Education

The vote by the State Board of Education to approve the Final Order in Case No. 14-03 on August 8, 2014, was 7 in favor, against, abstaining, and absent.

Individual State Board members voted as follows:

IN FAVOR: L. LARSEN, G. FLINT, R. WISE, J. WITZEL, P. TIMM, 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 Dale and Heather White, 103 Northridge Circle, North Platte, NE 69101; Greg Perry, Attorney at Law, 233 S. 13th Street, Ste. 1400, Lincoln, NE 68508; via United States Mail, certified mail return receipt requested and hand delivered to Margaret Worth, General Counsel, Nebraska Department of Education, 301 Centennial Mall South, 6th floor, Lincoln, NE, on this 8th day of August, 2014.

Brenda L. Wick

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

CASE NO. 14-03

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. § 79-239 (Cum. Supp. 2012) and Title 92, NAC, 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, Nevaeh A. White, in the McPherson County Public School District for the 2014-15 school year.

The hearing on this matter was convened pursuant to notice at 1:00 p.m. on June 4, 2014 before Jim R. Titus, Hearing Officer, appointed by the State Board of Education. The Petitioners appeared on their own behalf. The Respondent appeared through Gregory H. Perry, its attorney. Tami Eshleman, Associate Superintendent of North Platte Public School District and Joe Sherwood, Superintendent of the McPherson County Public School District, were also present and testified. Mr. Marty Bassett was also present, but did not testify.

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. Nine exhibits were offered and received into evidence without

objection, as follows:

Exhibit 1 - HPTO Agenda and Meeting Minutes

Exhibit 2 - April 9, 2014 letter from Heather White to Tami Eshleman

Exhibit 3 - Application for Student Transfer Nebraska Option Enrollment Program for Nevaeh A. White

Exhibit 4 - Letter dated April 9, 2014 from Tami Eshleman to Heather White

Exhibit 5 - Faxes from Buffalo Elementary and Washington Schools

Exhibit 6 - Minutes of meeting with Mr. Bassett dated May 12, 2014

Exhibit 7 - NPPS Manual Policy on Option Enrollment

Exhibit 8 - Newspaper article on transfer policy dated February 29, 2012

Exhibit 9 - Excerpt from North Platte Public School's website on option enrollment application deadline.

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 the North Platte Public School District and have been at all times relevant to these proceedings.

2. On or about April 8, 2014, Petitioners, pursuant to the Nebraska Enrollment Option Program, applied to have their daughter, Nevaeh A. White, enrolled in the McPherson County Public School District. Petitioners' application was not timely filed and the Respondent did not waive the deadline.

3. The testimony of Petitioner Heather White and the exhibits show that Petitioners wanted their daughter, Nevaeh White, in Tryon School in the McPherson County Public School

District since their other two children attend there, but heard that Hall School in the North Platte Public School District, which was near their home, had a low number of students in kindergarten, so decided to start their daughter there until she was older. Petitioners' daughter has a low immune system due to health conditions as an infant, so wanted a small class setting. Petitioners enrolled their daughter in the North Platte Public School District, but on April 7, 2014 were informed at a meeting that there would be no kindergarten at Hall School due to there only being four students enrolled in the kindergarten class. Even though petitioners were told at the meeting that out-of-district transfers would not be approved due to being after the deadline, Petitioners applied and obtained approval of the option district, but were rejected by the Respondent as the district of residence.

4. Petitioners are concerned that the smallest class size for kindergartens in the North Platte Public School District would be sixteen and would expose their daughter to greater health risk. Also, there would be additional costs for after school programs since both parents work, while the Tryon School bus comes near their home.

5. The Petitioners were familiar with the option enrollment process and deadline prior to March 15, 2014, and had previously utilized such procedure with their older two children.

6. The Associate Superintendent for North Platte Public Schools testified that Petitioners can transfer to any of the nine elementary schools in the North Platte School District if applied for by July 1, 2014. She also testified that North Platte School District has accommodations for students with health problems through either a 504 Plan or I.E.P. Plan.

7. The Respondent's school district has in place a policy for waiving the deadline for release of a resident student, contained in Exhibit 7. No evidence was offered or allegations

made that such policy was not properly adopted or enforceable. The Petitioners asked that the Board overrule the policy due to the canceling of the kindergarten program at Hall School in the North Platte Public School District after the March 15, 2014 deadline.

8. Petitioners do not assert any law or regulations allowing an applicable exception to the deadline.

RECOMMENDED CONCLUSIONS OF LAW

9. Petitioners perfected their appeal to the State Board of Education in a timely fashion and pursuant to Neb. Rev. Stat. § 79-239 (Cum. Supp. 2012).

10. Pursuant to Neb. Rev. Stat. § 79-239 (Cum. Supp. 2012), 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. § 79-238(2) (Cum. Supp. 2012) 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.”

12. The facts are not in dispute.

13. The Petitioners did not meet the March 15, 2014 deadline for the application for option enrollment. The policy for option enrollment adopted by the North Platte Public School District on or about March 13, 2012 only provides a new residency exception to the failure to submit an enrollment option application after March 15 of a year. While conditions underlying Petitioners’ decision to enroll Nevaeh in the North Platte Public School District changed after the March 15 deadline, it is not a reason that falls within the exception for untimely filings under the

policy adopted by the Respondent.

14. 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

15. The following is recommended by the Hearing Officer:

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

(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 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 13th day of June, 2014.

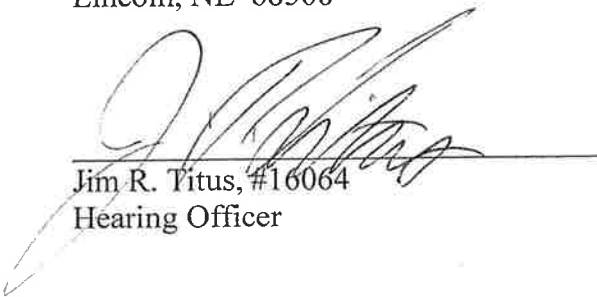

Jim R. Titus, #16064, Hearing Officer
MORRIS & TITUS LAW FIRM, PC, LLO
4645 Normal Blvd., Suite 272
Lincoln, NE 68506
(402) 434-5200 – phone
(402) 434-5209 – fax
jtitus@morristituslaw.com

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 June 13, 2014, and a true and correct copy of the foregoing was served by first-class United States mail, postage prepaid on June 13, 2014 to the following parties:

Dale and Heather White
103 Northridge Circle
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