

BEFORE THE STATE BOARD OF EDUCATION
STATE OF NEBRASKA

ADAM AND DENISE ZIEMBA)	
57829 S. 310 TH AVENUE)	
CLARKS, NE 68628)	CASE NO. 14-12
)	
Petitioners,)	
)	
v.)	FINAL ORDER
)	
HIGH PLAINS COMMUNITY SCHOOLS)	
PHILIP MAHAN, Ed.D., SUPT.)	
P.O. BOX 29)	
POLK, NE 68654)	
)	
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 children, Landon and Lainie, in the Fullerton Public 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 10:12 a.m. on November 5, 2104, before Jim R. Titus, Hearing Officer, appointed by the State Board of Education. The Petitioners appeared through John Morgan, their attorney, 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 Respondent appeared through its attorney, Gregory Perry, who together with Philip Mahan, superintendent of Respondent, were present in the offices of the hearing officer. The Petitioners were also present on the conference call and Mrs. Ziemba testified.

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. 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.
2. Respondent North Platte Public School's decision to deny the Petitioners' option enrollment application by not waiving the release approval deadline is affirmed .

Dated this 11th day of December, 2014.

NEBRASKA STATE BOARD OF EDUCATION

Handwritten signature of Rachel Wise in cursive script.

Rachel Wise, President
State Board of Education

The vote by the State Board of Education to approve the Final Order in Case No. 14-12 on December 5, 2014, was 6 in favor, 1 against, _____ abstaining, and _____ absent.

Individual State Board members voted as follows:

IN FAVOR: L. LARSEN, R. WISE, J. WITZEL, P. TIMM, M. O'HOLLERAN, J. SIELER

AGAINST: G. FLINT

ABSTAINING: _____

ABSENT: _____

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Final Order was served upon John Morgan, Attorney at Law, 309 Broadway, P.O. Box 549, Fullerton, NE 68638; 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 30th day of December, 2014.

Brenda L. Wild



BEFORE THE STATE BOARD OF EDUCATION
STATE OF NEBRASKA

ADAM AND DENISE ZIEMBA)
57829 S. 310th Avenue)
Clarks, NE 68628)

CASE NO. 14-12

Petitioners,)

v.)

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

HIGH PLAINS COMMUNITY SCHOOLS)
Philip Mahan, Ed.D. Superintendent)
P.O. Box 29)
Polk, 68654)

Respondent.)

INTRODUCTION

Petitioners have filed this appeal, pursuant to Neb. Rev. Stat. § 79-239 (Cumm. 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 Petitioner to enroll their children, Landon and Lainie, in the Fullerton Public Schools District for the 2014-2015 school year.

The hearing on this matter was convened pursuant to notice at 10:12 a.m. on November 5, 2014 before Jim R. Titus, Hearing Officer, appointed by the State Board of Education, at the office of the hearing officer. The Petitioners appeared through John Morgan, their attorney, 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 Respondent appeared through Gregory H. Perry, its attorney, who, together with Philip Mahan, superintendent of Respondent, were present in the offices of the hearing officer. The Petitioners were also present on the conference call and Mrs. Ziemba 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. Nine exhibits were offered and received without objection; namely, Exhibit 1, the Respondent's Board of Education meeting minutes for November 11, 2013 and June 10, 2013; Exhibit 2, correspondence from Respondent's superintendent dated August 15, 2014 rejecting Petitioners' application; Exhibit 3, Petitioners' Applications for Student Transfer; Exhibit 4, the pleadings in this case; Exhibit 5, an excerpt of Respondent's policies showing Option Enrollment Policy dated January 10, 2011; Exhibit 6, Respondent's Board of Education meeting minutes from June 10, 2013; Exhibit 7, Respondent's Option Enrollment Policy dated November 11, 2013; Exhibit 8, Respondent's Board of Education meeting minutes dated June 9, 2014; and Exhibit 9, Respondent's Board of Education meeting minutes dated August 11, 2014.

Having considered the sworn testimony of the witnesses, Denise Ziemba and Philip Mahan, 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 High Plains Community Schools District and has been at all times relevant to these proceedings.
2. On or about July 24, 2014, Petitioners, pursuant to the Nebraska Enrollment Option Program, applied to have their children, Landon and Lainie, enrolled in the Fullerton Public School District. Petitioners' applications were not timely filed and the Respondent did not waive the deadline.
3. The testimony of Denise Ziemba and petition for appeal both show that Petitioners' reason for the application was to reduce the distance their children would need to be

on the bus to go to school, from 26 miles to 9 miles. No reason was given for the late filing, yet they knew of the distance issue prior to March 15, 2014, since Mrs. Ziemba drives a school bus for the Respondent.

4. The June 10, 2013 minutes of the Respondent's Board of Education show an approval of a late option enrollment application. Dr. Mahan testified that such approval was made under a prior policy and for the reasons that the parents had thought they were in the other school district, their child attended preschool and kindergarten roundup in such other school district and it was only after the deadline that they found out they actually resided in the High Plains District.

5. The current option enrollment policy was adopted November 11, 2013 by the Respondent's Board of Education. Such Board has denied four late option out applications and granted none since the current policy was adopted.

6. 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.

7. Petitioners did not assert any law or regulation allowing an exception to the deadline. Petitioners did not give any mitigating reasons for their late application.

RECOMMENDED CONCLUSIONS OF LAW

8. Petitioners perfected their appeal to the State Board of Education in a timely fashion and pursuant to Neb. Rev. Stat. § 79-239 (Cumm. Supp. 2012). The State Board of Education has jurisdiction over this matter and the parties thereto.

9. Pursuant to Neb. Rev. Stat. § 79-239 (Cumm. Supp. 2012), 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) (Cumm. 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.”

11. The facts are not in dispute.

12. The Petitioners did not meet the March 15, 2014 deadline for the application for option enrollment. The Petitioners did not have a reason for the untimely filing that would fall within any exception under the policy adopted by the Respondent and did not present any extenuating circumstances.

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 Petitioners’ 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 20th day of November, 2014.



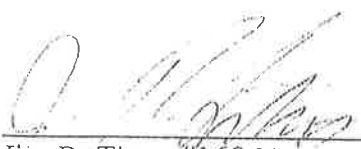
Jim R. Titus, #16064, Hearing Officer
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CERTIFICATE OF SERVICE

The undersigned, Jim R. Titus, hereby certifies that the original of the foregoing with attached transcript was hand delivered to Margaret D. Worth, general counsel, Nebraska Department of Education, 301 Centennial Mall South, Lincoln, Nebraska on November 20, 2014, and a true and correct copy of the foregoing was served by first-class United States mail, postage prepaid on November 20, 2014 to the following parties:

John Morgan
Attorney at Law
309 Broadway
PO Box 549
Fullerton, NE 78638

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



Jim R. Titus, #16064
Hearing Officer