

BEFORE THE STATE BOARD OF EDUCATION
STATE OF NEBRASKA

SHANNAN F.)	
)	
)	CASE NO. 15-01
)	
Petitioner,)	
)	
v.)	FINAL ORDER
)	
HEARTLAND COMMUNITY SCHOOLS)	
Brad Best, Superintendent)	
1501 Front Street)	
Henderson, NE 68371)	
)	
Respondent.)	

Petitioner filed this appeal pursuant to Neb. Rev. Stat. § 79-239 (R.R.S. 2014) 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 her children, Bailee, Hunter and Alexander the Heartland Community Schools for the 2015-2016 school year.

The hearing on this matter was convened pursuant to notice at 3:00 p.m. on April 23, 2015, 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 Shannan peared on her own behalf and testimony was presented by Shannan The Respondent appeared through Brad Best, Superintendent of Heartland Community Schools, who also provided testimony.

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 and

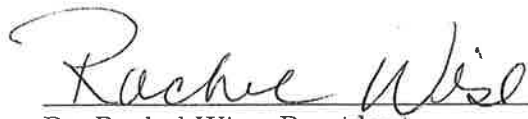
Decision, the Hearing Officer's Findings of Fact and Conclusions of Law and Recommended Decision.

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

1. The Hearing Officer's Proposed Findings of Fact, Recommended Conclusion of Law and Recommended Decision 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, Conclusions of Law and Decision were fully set forth verbatim herein.
2. Respondent Heartland Community Schools' decision to deny the Petitioners' option enrollment application is affirmed.

Dated this 8th day of May, 2015.

NEBRASKA STATE BOARD OF EDUCATION



Dr. Rachel Wise, President
State Board of Education

The vote by the State Board of Education to approve the Final Order in Case No. 15-01 on May 8, 2015, was 7 in favor, 1 against, 0 abstaining, and 0 absent.

Individual State Board members voted as follows:

IN FAVOR: L. LARSEN, R. WISE, J. WITZEL, P. TIMM, M. NICKELS,

M. O'HOLLERAN, P. MCPHERSON

AGAINST: G. FLINT

ABSTAINING: _____

ABSENT: _____

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Final Order was served upon Shannan _____ and Heartland Community Schools, c/o Brad Best, Superintendent, 1501 Front Street, Henderson, NE 68371; 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 May, 2015.

Brenda L. Wild

BEFORE THE STATE BOARD OF EDUCATION
STATE OF NEBRASKA

SHANNAN F)	Case No. 15-01
)	
)	
)	
Petitioner,)	HEARING OFFICER'S PROPOSED
v.)	FINDINGS OF FACT, RECOMMENDED
)	CONCLUSIONS OF LAW AND
HEARTLAND COMMUNITY SCHOOLS)	RECOMMENDED DECISION
Brad Best, Superintendent)	
1501 Front Street)	
Henderson, NE 68371)	
)	
Respondent.)	

INTRODUCTION

Petitioner has filed this appeal, pursuant to Neb. Rev. Stat. § 79-239 (Reissue 2014), 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 children, Bailee Hunter and Alexander in the Heartland Community Schools District for the 2015-16 school year.

The hearing on this matter was convened pursuant to notice at 3:00 p.m. on April 23, 2015 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 Shannan appeared on her own behalf and testimony was presented by Shannan. The Respondent appeared through Brad Best, Superintendent of Heartland Community Schools, who also provided testimony. 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, Title 92, NAC, Chapter 61. Three exhibits were offered and received without objection, namely, Exhibit 1, the petition/letter of the Petitioner, with 11 pages of attachments, including the Applications for Student Transfer for each student; Exhibit 2, consisting of the case docket and pleadings in this case after the petition; and Exhibit 3, an April 17, 2015 letter from Brad Best to the hearing officer, with one attachment.

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 High Plains 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 children transferred to the Respondent school district, which application was approved. At the end of July in 2014, Petitioner withdrew her children from the Respondent school district and placed them in a parochial school within the High Plains school district, which has grades up to the eighth grade. The children are currently in eighth, fifth and third grades. After a few weeks, the Petitioner decided the parochial school was not meeting the special needs of Bailee, the oldest, so the children started attending the public schools in the High Plains district, after conversations with Mr. Best and the Department of Education indicated she could not return to Heartland Community Schools.
3. Petitioner felt the educational opportunities and development needs were best served in the Heartland Community Schools District. So, on February 9, 2015 Petitioner applied

to have her children transferred to the Heartland Community Schools. The Respondent denied the applications on February 12, 2015 on the basis that each student had exercised the option once before and a second option enrollment request was not permitted under the Nebraska Department of Education Rule 19.

4. Petitioner filed her appeal on March 16, 2015. In her petition she stated as her opinion that Bailee's IEP is not being met completely as it was at Respondent and her and Hunter's grades and progress are down substantially. Also, she is an employee of the Respondent and she states her work schedule often conflicts with High Plains, which causes her to find care for her younger children.

5. Respondent school district has no other objection to the transfer of these students other than the statutory restriction limiting a student to one option enrollment prior to graduation.

6. Petitioner does not know of any facts to meet the exceptions in Neb. Rev. Stat. § 79-234 to allow an additional exercise of the option.

RECOMMENDED CONCLUSIONS OF LAW

7. Petitioner perfected her appeal to the State Board of Education in a timely fashion and pursuant to Neb. Rev. Stat. § 79-239 (Reissue 2014). The State Board of Education has jurisdiction over this matter and the parties thereto.

8. Pursuant to Neb. Rev. Stat. § 79-239 (Reissue 2014), the hearing on appeal shall determine whether the procedures of Neb. Rev. Stat. §§ 79-234 to 79-241 have been followed.

9. Neb. Rev. Stat. § 79-234 (1) (Reissue 2014) provides in part as follows:

“The option shall be available only once to each student prior to graduation, except that the option does not count toward such limitation if such option meets, or met at the time of the option, one of the following criteria:

- (a) The student relocates to a different resident school district,
- (b) the option school district merges with another district,
- (c) the option school district is a Class I district,

- (d) the student will have completed either the grades offered in the school building originally attended in the option school district or the grades immediately preceding the lowest grade offered in the school building for which a new option is sought,
- (e) the option would allow the student to continue current enrollment in a school district, or
- (f) the option would allow the student to enroll in a school district in which the student was previously enrolled as a resident student.”

10. Neb. Rev. Stat. § 79-237 (9) (Reissue 2014) provides as follows:

“(9) An option student who subsequently chooses to attend a private or parochial school shall be automatically accepted to return to either the resident school district or option school district upon the completion of the grade levels offered at the private or parochial school. If such student chooses to return to the option school district, the student's parent or legal guardian shall submit another application to the school board of the option school district which shall be automatically accepted, and the deadlines prescribed in this section shall be waived.”

11. The facts are not in dispute.

12. The Petitioner had previously exercised the option enrollment procedures for her children in 2011 and none of the exceptions in Neb. Rev. Stat. § 79-234 (1) are applicable. In addition, the oldest child did not complete the eighth grade at the parochial school for Neb. Rev. Stat. § 79-237(9) to apply and the other two children are far from such completion, and all three have returned to their resident school district. The statutes set out the exceptions to the limitation and none apply.

13. The Respondent School District correctly applied the existing law, Neb. Rev. Stat. § 79-234 (1), which provides that the option is available only once to each student prior to graduation, in denying the Petitioners option enrollment application.

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 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 28 day of April, 2015.



Jim R. Titus, #16064, Hearing Officer
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Lincoln, NE 68506
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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 April 28, 2015, and a true and correct copy of the foregoing was served by first-class United States mail, postage prepaid on April 28, 2015 to the following parties:

Shannan

Heartland Community Schools
c/o Brad Best, Superintendent
1501 Front Street
Henderson, NE 68371



Jim R. Titus, #16064
Hearing Officer