

BEFORE THE STATE BOARD OF EDUCATION
STATE OF NEBRASKA

John Donahoe, Parent and Legal Guardian)
of Chance Donahoe)
145 Mill Park Drive)
North Platte NE 69101)

CASE NO. 15-05

Petitioner,)

FINAL ORDER

vs.)

North Platte Public Schools; Dr. Larry)
Ramaekers, Interim Superintendent; and)
Tami Eshleman, Associate Superintendent)
P O Box 1557, 301 West F Street)
North Platte, NE 69101)

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 disapproving the application filed by Petitioner to enroll his son, Chance Donahoe, in the Maxwell Public School District for the 2015-2016 school year.

The hearing on this matter was convened pursuant to notice at 3:45 p.m. on May 27, 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 John Donahoe appeared and testified on his own behalf. The Respondent appeared through Gregory H. Perry, its attorney.

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 North Platte Public Schools' decision to deny the Petitioners' option enrollment application is affirmed.

Dated this 5th day of June, 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. 15-05 on June 2, 2105, was 6 in favor, 1 against, 1 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

AGAINST: G. FLINT

ABSTAINING: P. McPHERSON

ABSENT: _____

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Final Order was served upon John Donahoe, 145 Mill Park Drive, North Platte, NE 69101; North Platte Public Schools, c/o Dr. Larry Ramaekers, Interim Superintendent, P.O. Box 1557, North Platte, NE 69101; and, Gregory Perry, Attorney, 233 S. 13th Street, Suite 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 5th day of June, 2015.

Brenda L. Wild



BEFORE THE STATE BOARD OF EDUCATION
STATE OF NEBRASKA

John Donahoe, Parent and Legal Guardian)
of Chance Donahoe)
145 Mill Park Dr.)
North Platte, NE 69101)

NDE Case No. 15-05

Petitioner)

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

vs.)

North Platte Public Schools; Dr. Larry)
Ramaekers, Interim Superintendent; and)
Tami Eshleman, Associate Superintendent,)
P.O. Box 1557, 301 West F Street,)
North Platte, NE 69101,)

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 his son, Chance Donahoe, in the Maxwell Public School District for the 2015-16 school year.

The hearing on this matter was convened pursuant to notice at 3:45 a.m. on May 27, 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 John Donahoe appeared and testified on his own behalf. The Respondent appeared through Gregory H. Perry, its attorney. 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. Two exhibits were offered and received without objection, namely, Exhibit 1, the Department's file with pleadings, including the petition of the Petitioner, with attachments including the application for option enrollment and the letter of denial, and Respondent's answer, and Exhibit 2, a copy of an option enrollment application for the 2007-08 school year.

Having considered the sworn testimony of the witness 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 and his son are residents of the North Platte Public School District and have been at all times relevant to these proceedings.

2. In 2007, the Petitioner and his wife, pursuant to the Nebraska Enrollment Option Program, applied to have their son, Chance Donahoe, enrolled in the Stapleton Public School District, which application was accepted. Their son was of kindergarten age at the time of the election. He is now going into the 8th grade next fall.

3. Petitioner believes the curriculum of the Maxwell Public School District provides greater opportunities for his son to complete and enhance his future education. This finding as to Petitioner's belief only finds in fact that this is the belief of Petitioner.

4. Petitioner's application to transfer his son to the Maxwell Public School District is part of exhibit 1 and shows denial by the associate superintendent of the Respondent, who also wrote a February 23, 2015 letter explaining the denial to be on the basis that the application is a second option enrollment request. Petitioner filed his appeal on March 30, 2015.

5. Respondent school district has no other objection to the transfer of this student

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, but instead argues that parents should have the right to choose where their children go to school. Testimony adduced that none of the exceptions applied.

RECOMMENDED CONCLUSIONS OF LAW

7. Petitioner perfected his 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. The facts are not in dispute.

11. The Petitioner had previously exercised the option enrollment procedures for his child in 2007 and none of the exceptions in Neb. Rev. Stat. § 79-234 (1) are applicable.

12. 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 Petitioner's option enrollment application.


RECOMMENDED DECISION

13. 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;

(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 29TH day of May, 2015.




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 Margaret Worth, General Counsel, Nebraska Department of Education, 301 Centennial Mall South, Lincoln, Nebraska on June 1, 2015, and a true and correct copy of the foregoing was served by email on June 1, 2015 to the following parties:

John Donahoe
johnohoejr@yahoo.com

Gregory H. Perry
gperry@perrylawfirm.com



Jim R. Titus, #16064
Hearing Officer