

BEFORE THE STATE BOARD OF EDUCATION  
STATE OF NEBRASKA

BETH L. O'DEA	)	Case No. 99-16
1519 WEST THIRD STREET	)	
McCOOK, NE 69001	)	
Parent and Natural Guardian	)	
of BRANDON S. FICHTNER,	)	
	)	
Petitioner,	)	
	)	
vs.	)	<b>FINAL ORDER</b>
	)	
REPUBLICAN VALLEY SCHOOLS	)	
COUNTY DISTRICT NO. 109	)	
INDIANOLA, NE 69034	)	
BRENT McMURTREY,	)	
Superintendent,	)	
LARRY RANDOLPH, President	)	
	)	
Respondents.	)	

The Petitioner filed this appeal pursuant to Title 92, Chapter 61 of the Nebraska Administrative Code, and Neb. Rev. Stat § 79-232 et. seq. The Petitioner seeks a review of the decision of the Republican Valley Schools County District No. 109 rejecting the application of the Petitioner to transfer and enroll her son, Brandon S. Fitchner, in the Republican Valley Schools County District No. 109, under the Nebraska Enrollment Option Program.

On September 7, 1999, this matter came on for hearing before Richard A. Birch, the Administrative Hearing Officer duly appointed by the Nebraska State Board of Education, on the Motion to Dismiss or Motion for Summary Judgment filed by the Respondent. The Petitioner was represented by her attorney Maurice A. Green. The Respondent was represented by its attorney, Larry R. Baumann. Evidence was adduced by stipulation.

The State Board of Education having considered the evidence adduced at the hearing and the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommendation and proposed order, and having been fully advised in this


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. State Board of Education further finds that the Motion to Dismiss filed by the Respondent should be sustained and that it should dismiss the appeal of the Petitioner.

WHEREFORE, the State Board of Education finds, decrees, and orders as follows:

1. That the Petitioner's appeal was properly perfected pursuant to Nebraska law, and proper notice was given to all parties.
2. That the Motion to Dismiss filed by the Respondent is hereby sustained.
3. That the Petitioner's appeal is hereby dismissed.
4. That as part of this order, the Hearing Officer's Findings of Fact and Conclusions of Law are adopted in all respects, and that such are hereby 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 therein.

Dated this 5<sup>th</sup> day of November, 1999.

BY: NEBRASKA STATE BOARD OF  
EDUCATION

  
Beverly J. Peterson, President  
State Board of Education

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing

Final Order was served on the following:

Maurice A. Green  
Attorney at Law  
P.O. Box 1236  
McCook, NE 69001-1236

Larry Baumann  
Attorney at Law  
P.O. Box 1669  
North Platte, NE 69103-1669

Richard A. Birch  
Hearing Officer  
P.O. Box 1006  
North Platte, NE 69103-1006

by placing the same in the United States mail, postage prepaid, on this 5<sup>th</sup> day of November, 1999.

Brenda L. Nolan

BEFORE THE STATE BOARD OF EDUCATION  
STATE OF NEBRASKA

BETH L. O'DEA	)	Case No. 99-16
1519 WEST THIRD STREET	)	
McCOOK, NE 69001	)	
Parent and Natural Guardian	)	
of BRANDON S. FICHTNER,	)	
	)	
Petitioner,	)	
	)	
vs.	)	<b>HEARING OFFICER'S</b>
	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
REPUBLICAN VALLEY SCHOOLS	)	<b>AND RECOMMENDATION</b>
COUNTY DISTRICT NO. 109	)	
INDIANOLA, NE 69034	)	
BRENT McMURTREY,	)	
Superintendent,	)	
LARRY RANDOLPH, President	)	
	)	
Respondents.	)	

On September 7, 1999, by agreement of the parties, a hearing was held on the Motion to Dismiss or Motion for Summary Judgment filed by the Respondent. The hearing was held by conference telephone call. The Petitioner appeared by and through her attorney, Maurice A. Green. The Respondents appeared by and through their attorney, Larry R. Baumann. The parties agreed and stipulated that as of this date the Petitioner is a resident of the Respondent school district. Arguments were made and the matter was taken under advisement by the Hearing Officer.

Now on this 13 day of September, 1999, the Hearing Officer, having previously taken the matter under advisement makes the following Findings of Fact, Conclusions of Law, and Recommendation:

**FINDINGS OF FACT**

Pursuant to the stipulation of the parties, the Hearing Officer finds that as of September 7, 1999, the Petitioner was a resident of the Respondent school district.

### CONCLUSIONS OF LAW

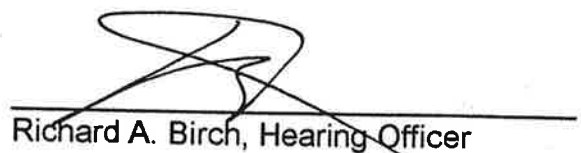
The Enrollment Option Program was established by the state of Nebraska to "enable any kindergarten through twelfth grade Nebraska student to attend a school in a Nebraska public school district in which the student does not reside..." Neb. Rev. Stat. § 79-234(1). As the Petitioner is currently a resident of the Respondent school district, the provisions of the Enrollment Option Program, Neb. Rev. Stat. § 79-232 et. seq. do not apply to the Petitioner and the Petitioner's action is moot.

### RECOMMENDATION

1. That the State Board of Education find that the Petitioner's appeal was properly perfected pursuant to Nebraska law, and proper notice was given to all parties.
2. That the State Board of Education sustain the Motion to Dismiss filed by the Respondent.
3. That the State Board of Education dismiss the appeal of the Petitioner.
4. That the State Board of Education as part of its order 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 affect as though such Findings of Fact and Conclusions of Law were lawfully set forth therein.

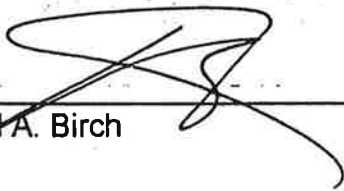
Dated this 13 day of September, 1999.

Respectfully submitted,

  
Richard A. Birch, Hearing Officer

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Order was served on Maurice A. Green, Attorney for Petitioner, P. O. Box 1236, McCook, NE 69001-1236; Larry R. Baumann, Attorney for Respondent, P. O. Box 1669, North Platte, NE 69103-1669; and upon David C. Rasmussen, Agency Legal Counsel, Nebraska Department of Education, P. O. Box 94987, Lincoln, NE 68509-4987 by depositing in the U.S. First Class Mail, postage prepaid, on September 3, 1999.

  
Richard A. Birch