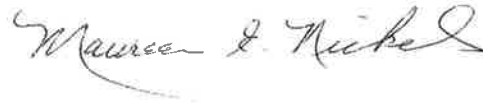


2. Respondent Adams Central Public School's decision to deny the Petitioner's option enrollment application is affirmed and the Petitioner's appeal to this Board is denied.

Dated this 5th day of JUNE, 2020.

NEBRASKA STATE BOARD OF EDUCATION



Maureen Nickels, President
State Board of Education

The vote by the State Board of Education to approve the Final Order in Case No. 20-07 on June 5, 2020, was 8 in favor, ___ against, ___ abstaining, and ___ absent.

Individual State Board members voted as follows:

IN FAVOR: P. KOCH JOHNS, L. FRICKE, R. WISE, J. WITZEL, P. TIMM, M. NICKELS,

R. STEVENS, D. NEARY

ABSTAINING: _____

ABSENT: _____

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Final Order was served upon Paige Chesley, P.O. Box 60, Ayr, NE 68925; Gregory Perry, Esq., Perry, Guthery, Haase & Gessford, 233 South 13th Street, Suite 1400, Lincoln, NE 68508 via United States mail, certified mail, return receipt requested, hand delivered to Scott Summers, General Counsel, Nebraska Department of Education, 301 Centennial Mall South, 6th floor, Lincoln, NE and electronically to paigeazure@gmail.com and gperry@perrylawfirm.com on this 5th day of JUNE, 2020.



BEFORE THE STATE BOARD OF EDUCATION
STATE OF NEBRASKA

PAIGE CHESLEY)	CASE NO. 20-07
P.O. Box 60)	
4090 W. McNair Avenue)	
Ayr, NE 68925)	
)	
Petitioner)	RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION
)	
vs.)	
)	
ADAMS CENTRAL PUBLIC SCHOOLS)	
Shawn Scott, Superintendent)	
1090 S. Adams Central Road)	
Hastings, NE 68901)	
)	
Respondent.)	

INTRODUCTION

Petitioner has filed this appeal, pursuant to Neb. Rev. Stat. § 79-239 (Reissue 2014), and Title 92, NAC, Chapter 61. Petitioner requested that the State Board of Education reverse the Respondent School District's decision denying the application filed by Petitioner to enroll her daughter Teagan Chesley in the Adams Central Public Schools for the 2020-21 school year.

The hearing on this matter was convened pursuant to notice via a video computer conference, where the hearing officer and all the parties and witnesses could see and hear each other, at about 9:00 a.m. on May 19, 2020 before Jim R. Titus, Hearing Officer, appointed by the State Board of Education. Petitioner Paige Chesley appeared pro se. Respondent appeared through its counsel Gregory Perry. The hearing was recorded by Precision Reporting Inc and the transcript of the hearing accompanies this recommendation.

The hearing was conducted pursuant to the Nebraska Department of Education Rules of Practice and Procedure for hearings in contested cases before the Department of Education, Title 92, NAC, Chapter 61. Paige Chesley (Petitioner) and Shawn Scott (superintendent of

Respondent) testified. Exhibit 2, the rules of procedure for special education cases, was not received. Ms Chesley was mistakenly not sworn in, but her testimony was not objected to and was not controverted except as to legal conclusions. Ten exhibits were offered and received, namely:

Exhibit 1: Pleadings in the case, including application and denial letter

Exhibit 2: Larger copies of materials attached to appeal letter

Exhibit 3: Respondent's Board Policy 5006

Exhibit 4: Resolution adopting option capacity dated February 10, 2020

Exhibit 5: Minutes of February 10, 2020 Board Meeting

Exhibit 6: Letter Denying Option Application with certified receipt

Exhibit 7: Option applications spreadsheet

Exhibit 8: Shawn Scott NDE Certificate

Exhibit 9: Title 92 Nebraska Administrative Code Chapter 61

Exhibit 10: Title 92 Nebraska Administrative Code Chapter 19

Having considered the exhibits and testimony provided by the parties, the Hearing Officer makes the following proposed findings of fact, recommended conclusions of law and recommended decision.

PROPOSED FINDINGS OF FACT

1. Paige Chesley is the mother of Teagan Chesley ("student").
2. Adams Central Public Schools is a school district as defined by Neb. Rev. Stat. § 79-101(1) (Cum. Supp. 2018).
3. On or about February 14, 2020, Petitioner submitted an Application for Student Transfer Nebraska Enrollment Option Program to Respondent.

4. The application was denied on March 26, 2020 by letter to the Petitioner.

5. Petitioner appealed the denial of the application by letter filed April 20, 2020, for the stated reasons that: 1) that she and her husband work in Hastings so could drop off the child on their way to work while the resident school is a 21-24 minute bus ride in a different direction; 2) they have not been able to find out if the resident school has an after school program, while at Respondent they do or they could use the daycare program they use now; and 3) all other homes in their area are in the Respondent school district, while their home and an empty lot across the street are the only ones in the Silver Lake School District.

6. Respondent submitted evidence that their kindergarten program was at or over capacity.

7. Respondent filled their capacity for option enrollment students with students who had siblings in their district then with students in the order applications were received in accordance with their school board approved policy at Exhibit 3. The Petitioner's application did not meet either of these criteria or any other priority criteria in the policy.

8. Respondent has adopted specific standards for acceptance and rejection of applications for option students.

RECOMMENDED CONCLUSIONS OF LAW

9. Petitioner perfected her appeal to the State Board of Education in a timely fashion and pursuant to Neb. Rev. Stat. § 79-239 (Reissue 2014), with an attachment submitted later that did not cause the appeal to fail the requirements of the law or rules.. The State Board of Education has jurisdiction over this matter and the parties thereto.

10. 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.

11. Neb. Rev. Stat. § 79-238 (1) (Cum. Supp. 2018) provides as follows:

“(1) Except as provided in this section and sections 79-235.01 and 79-240, the school board of the option school district shall adopt by resolution specific standards for acceptance and rejection of applications and for providing transportation for option students. Standards may include the capacity of a program, class, grade level, or school building or the availability of appropriate special education programs operated by the option school district. For a school district that is not a member of a learning community, capacity shall be determined by setting a maximum number of option students that a district will accept in any program, class, grade level, or school building, based upon available staff, facilities, projected enrollment of resident students, projected number of students with which the option school district will contract based on existing contractual arrangements, and availability of appropriate special education programs. To facilitate option enrollment within a learning community, member school districts shall annually (a) establish and report a maximum capacity for each school building under such district's control pursuant to procedures, criteria, and deadlines established by the learning community coordinating council and (b) provide a copy of the standards for acceptance and rejection of applications and transportation policies for option students to the learning community coordinating council. Except as otherwise provided in this section, the school board of the option school district may by resolution declare a program, a class, or a school unavailable to option students due to lack of capacity. Standards shall not include previous academic achievement, athletic or other extracurricular ability, disabilities, proficiency in the English language, or previous disciplinary proceedings except as provided in section 79-266.01. False or substantively misleading information submitted by a parent or guardian on an application to an option school district may be cause for the option school district to reject a previously accepted application if the rejection occurs prior to the student's attendance as an option student.

12. Respondent's policies provide for the rejection of an application for lack of capacity in a program. The determination of capacity was not challenged.

13. The proximity of Petitioner's home to the district's boundary is not an exception to the Respondent's policy on option enrollment. The Petitioner argued it was not fair that those close to their resident school should get priority over someone with her hardship being on the edge of the Respondent's district with a transportation issue for taking and picking up the student. There is no standard for hardship to be used to determine which applicant's reasons are more persuasive, and the Petitioner did not show the standards adopted by the Respondent were contrary to law.

14. The State Board of Education has consistently held in such appeals that in order for petitioners to prevail, they have the burden to prove by a preponderance of the evidence that the respondent failed to follow procedures of the Nebraska enrollment option program in denying their application. See *Soby v. F. Calhoun Community Schools*, NDE No. 10-03.

15. The State Board of Education has also taken the position that a district's factual determination as to capacity is subject to challenge and that such a factual determination by a school board cannot be upheld if it is unreasonable or arbitrary. *Ibid.* On the other hand, where an action of a public body is within the scope of authority, such body has the presumption that it is valid and reasonable. One who raises the question has the burden of proving the facts showing the invalidity of such act. See *Hansen v. City of Norfolk*, 201 Neb. 532, N.W.2d 537 (1978). This would apply to school board resolutions. *Kolesnick v. Omaha Public School District*, 251 Neb. 575, 558 N.W.2d 807 (1997). Petitioner did not raise the issue of or present evidence on the district's determination of its program capacity, relying instead on hardship in transportation and after school care.

16. There is no basis for a determination that the procedures of Neb. Rev. Stat. §§ 79-234 to 79-241, nor any other requirements of law, were not followed by the Respondent school district in their denial of Petitioners' application. Therefore, the determination of the Respondent school district in denying these applications for option enrollment should be affirmed.

RECOMMENDED DECISION

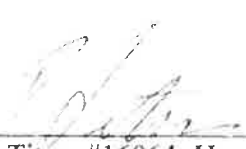
The following is recommended by the Hearing Officer:

(a) That the Respondent School District's decision to deny Petitioner's option enrollment applications 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 May 22, 2020.



Jim R. Titus, #16064, Hearing Officer
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Lincoln, NE 68506
(402) 434-5200 – phone
(402) 434-5209 – fax
jtitus@morristituslaw.com


CERTIFICATE OF SERVICE

I certify that on May 22, 2020 I served a true and correct copy of the foregoing order by email on the following parties:

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Jim R. Titus, #16064, Hearing Officer