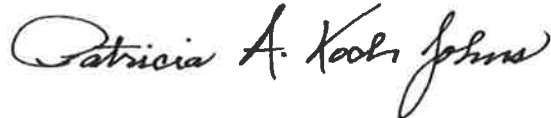


2. Respondent Northwest Public School's decision to deny the Petitioner's option enrollment application is affirmed and the Petitioner's appeal to this Board is denied.

Dated this 4th day of MARCH, 2022.

NEBRASKA STATE BOARD OF EDUCATION



Patsy Koch Johns, President
State Board of Education

The vote by the State Board of Education to approve the Final Order in Case No. 22-03 on March 4, 2022 was 7 in favor, ___ against, ___ abstaining, and 1 absent.

Individual State Board members voted as follows:

IN FAVOR: P. KOCH JOHNS, R. STEVENS, L. FRICKE, M. NICKELS, K. PENNER,
J. MORRISON, D. NEARY

ABSTAINING: _____

ABSENT: P. GUBBELS _____

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Final Order was served upon
Dr. Jeff E. Edwards, Superintendent,
Northwest Public Schools, 2710 N. North Road, Grand Island, NE 68803 via United States mail,
certified mail, return receipt requested, hand delivered to Juan Román, General Counsel, Nebraska
Department of Education, 500 S. 84th Street, 2nd floor, Lincoln, NE and electronically to
jedwards@ginorthwest.org on this 7TH day of MARCH, 2022.



BEFORE THE STATE BOARD OF EDUCATION
STATE OF NEBRASKA

CASE NO. 22-03

)	
)	
)	
)	
Petitioner,)	HEARING OFFICER'S PROPOSED
)	FINDINGS OF FACT, CONCLUSIONS OF
vs.)	LAW AND RECOMMENDED DECISION
)	
NORTHWEST PUBLIC SCHOOLS)	
Dr. Jeff E. Edwards, Superintendent)	
2710 N. North Road)	
Grand Island, NE 68806)	
)	
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 denying the application filed by Petitioner to enroll in the Northwest Public Schools for the 2022-23 school year.

The hearing on this matter was convened pursuant to notice and consent of the parties by Zoom video conferencing at about 8:55 a.m. on February 14, 2022 before Jim R. Titus, Hearing Officer, appointed by the State Board of Education. Petitioner appeared pro se. Respondent appeared through superintendent Dr. Jeff E. Edwards. 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. and Dr. Jeff E. Edwards testified. Three exhibits were

offered and received without objection, namely:

- Exhibit 1: 1/24/22 Letter to the Department of Education appealing the decision of Respondent, with attached application for student transfer (including denial) and the 1/13/22 letter of denial.
- Exhibit 2: Respondent's Policy No. 5006 on Option Enrollment and appendix 1.
- Exhibit 3: 2/8/22 Statement of Services for

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.
2. Northwest Public Schools is a school district as defined by Neb. Rev. Stat. § 79-101(1).
3. On or about September 21, 2021, submitted an Application for Student Transfer Nebraska Enrollment Option Program to Respondent on behalf of . The question on the form that asked whether the student has an Individualized Education Program ("IEP") was marked 'yes'.
4. The application was denied on January 13, 2022 by a letter that included the application form with the signed denial.
5. Respondent established that their special education program was at or over capacity at the high school by appendix 1 to its Option Enrollment Policy, showing numbers as of December 1, 2021.
6. Petitioner testified that did not want special education services, that the student did not need them, and only required 10 minutes of per day. also testified that

has had the IEP removed, but did not have any documentation from the school.

7. A student who declines special education services may later demand such services, which the school district must provide and cannot then dismiss the student from its district.

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

RECOMMENDED CONCLUSIONS OF LAW

9. Petitioner perfected 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.

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. 2020) 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. While Petitioner's asserts does not need special education services, did have an IEP at the time of the application and a student who declines special education services may later demand such services, which the school district must provide and cannot then dismiss the student from its district.

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 the Petitioner's belief that

did not need an IEP.

16. There is no basis for a determination that the procedures of Neb. Rev. Stat. §§ 79-234 to 79-241 (Reissue 2014), nor any other requirements of law, were not followed by the Respondent school district in this denial of Petitioner's application, nor that this denial was arbitrary or unreasonable. Therefore, the determination of the Respondent school district in denying this application for option enrollment should be affirmed.

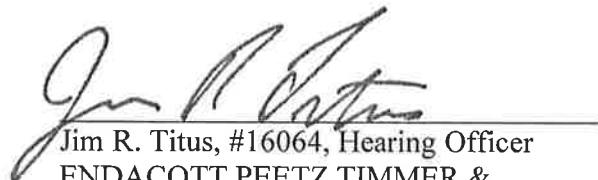
RECOMMENDED DECISION

The following is recommended by the Hearing Officer:

(a) That the Respondent School District's decision to deny Petitioner's option enrollment 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 18th day of February, 2022.



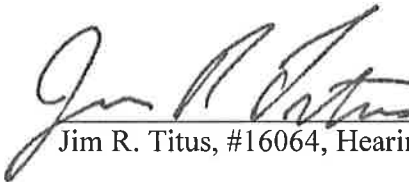
Jim R. Titus, #16064, Hearing Officer
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Lincoln, NE 68512
(402) 434-5203 - phone
(402) 904-7097 - fax
jtitus@eptlawfirm.com

CERTIFICATE OF SERVICE

I certify that on February 18, 2022, I served a true and correct copy of the foregoing document by email on the following parties:

Dr. Jeff E. Edwards, Superintendent
Northwest Public Schools
2710 N. North Road
Grand Island, NE 68803
jedwards@ginorthwest.org

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Jim R. Titus, #16064, Hearing Officer