

Non-optional Option Enrollment: Let's Get It Right



Karen Haase

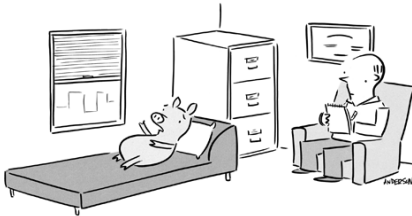
[KSB School Law](#)
[@KarenHaase](#)



We Have to Start with "Residence"

© MARK ANDERSON

WWW.ANDERSTOONS.COM



"So I'm walking home and for no reason I just start crying uncontrollably. Wee! Wee! Wee!"

The Joy of 79-215

79-215.

Students; admission; tuition; persons exempt; department; duties.

- (1) Except as otherwise provided in this section, a student is a resident of the school district where he or she resides and shall be admitted to any such school district upon request without charge.
- (2) A school board shall admit a student upon request without charge if at least one of the student's parents resides in the school district.
- (3) A school board shall admit any homeless student upon request without charge if the district is the district in which the student (a) is currently located, (b) attended when permanently housed, or (c) was last enrolled.
- (4) A school board may allow a student whose residency in the district ceases during a school year to continue attending school in such district for the remainder of that school year.
- (5) A school board may admit nonresident students to the school district pursuant to a contract with the district where the student is a resident and shall collect tuition pursuant to the contract.
- (6) A school board may admit nonresident students to the school district pursuant to the enrollment option program as authorized by sections 79-232 to 79-246, and such admission shall be without charge.

Residents

- Students are residents of the district in which they reside
- Students are residents of any district where one of their biological parents reside

79-215(1) and (2)

B.M. v. Hershey NDE Case No. 13-02 (2013)

- Marital separation
 - Mom had an apartment in Hershey
 - Reconciled with husband
 - Sought to enroll son in Hershey

B.M. v. Hershey NDE Case No. 13-02 (2013)

- Hearing officer:
 - Residence is "that place in which a person is actually domiciled, which is one's established home and the place to which one intends to return when absent therefrom and is the place where a person is actually living full time, as opposed to vacationing or visiting.
 - Statutes and case law confirm that a person may have many residences, but only one domicile.

Kid who moves during year

- "A school board *may* allow a student whose residency in the district ceases during a school year to continue attending school in such district for the remainder of that school year"

79-215(4) (emphasis added)

Option as Nebraska's Charter Schools



"IF WE HAD SCHOOL CHOICE, I WOULD CHOOSE NOT TO GO TO SCHOOL."

The General Program Neb. Rev. Stat. § 79-234

"An enrollment option program is hereby established 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 subject to the limitations prescribed in section 79-238."

One Per Customer
Neb. Rev. Stat. § 79-234

- The option shall be available only once to each student prior to graduation, **except** that the option does not count toward such limitation if:
 - Student moves to a different resident district
 - the option school district merges
 - 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

One Per Customer
Neb. Rev. Stat. § 79-234

- The option shall be available only once to each student prior to graduation, **except** that the option does not count toward such limitation if:
 - the option would allow the student to continue current enrollment in a school district
 - the option would allow the student to enroll in a school district in which the student was previously enrolled as a student
 - the student is an open enrollment option student

R. and L. W. v. Papillion LaVista
NDE Case No. 09-09 (2009)

- Parents sought to option 8th grade daughter into PLV
- PLV denied application because family optioned child out of South Sarpy 46 and into Millard as a kindergartner
- Parents appealed because they didn't know about the "one per customer" rule
- Hearing Officer: school correctly applied the limitations in 79-234(1)

Capacity



Capacity

- "Capacity shall be determined by setting a maximum number of option students the district will accept" 79-238(1)
- Does that mean schools have to set a number?

G. and D. S. v. Pierce NDE Case 16-01 (NDE 2016)

- School denied option application on basis that special ed program lacked capacity
- Parent appealed, arguing that school had failed to comply with "maximum number" requirement of 79-238(1)

**G. and D. S. v. Pierce
NDE Case 16-01 (NDE 2016)**

▪Hearing officer:

- The Petitioners interpret the option enrollment statutes as requiring a school district to give specific maximum student numbers for every program, class, grade level, or school building, without any flexibility for the specific needs of option students who may increase the operating costs or staff needs of the school district. This is too narrow of an interpretation of the statute, as shown by previous decisions of the State Board of Education and by the language of the statute, which also allows the school board to simply by resolution declare a program unavailable to option students due to lack of capacity, which authority was in this instance delegated to the superintendent.

Capacity

▪Board cannot:

- Declare all buildings closed (Schwab et al v. Lincoln P.S.)
- Set capacity arbitrarily (Cooksley v. Cedar Hollow)
- Inflate projected resident enrollment (Colburn v. Bennington)

Capacity

▪Board can:

- Set a classroom maximum that is lower than state rule or law (Schwab et al v. Lincoln P.S.)
- Change its capacity levels from year to year (Tekolste v. .Norris P.S.)
- Deny siblings' option application and/or change sibling policy (Rettele v. Norris P.S.)
- Determine where option students attend

L.S. v. Hemingford Pub. Sch.
NDE Case 08-08 (NDE 2008)

- Mother sought to option two special ed sons into Hemingford
 - Sons verified OHI
 - Both had resource support and BIPs
- District denied based on capacity
- Mom appealed

Capacity

- Factors may **not** include:
 - Academic achievement
 - Extracurricular ability
 - Disabilities
 - Proficiency in English
 - Previous disciplinary proceedings
 - Except -- under current order of expulsion

Capacity

- Factors limited to things like:
 - Available staff
 - Facilities
 - Projected resident enrollment
 - Projected contracted students
 - Availability of appropriate special ed programs

L.S. v. Hemingford Pub. Sch.
NDE Case 08-08 (NDE 2008)

▪Hearing Officer:
•“Their [superintendent and sped dir] professional analysis and opinion is that the special education teacher assigned to the junior high/high school building could not handle the addition of two students with the special education requirements of the Petitioner’s children without hiring an additional para-educator.”

L.S. v. Hemingford Pub. Sch.
NDE Case 08-08 (NDE 2008)

▪Hearing Officer:
•“In doing so, they explained the specific requirements of the special education teacher and the existing para-educators, as well as the needs of the present special education students. . . . They also explained that the elementary special education teacher’s schedule could also not presently meet the needs of the S- children, and that it would be inappropriate from the standpoint of the least restrictive alternative to attempt to meet the special education needs of the Petitioner’s high school age children in the grade school building.

L.S. v. Hemingford Pub. Sch.
NDE Case 08-08 (NDE 2008)

▪Hearing Officer:
•“In doing so, they explained the specific requirements of the special education teacher and the existing para-educators, as well as the needs of the present special education students. . . . They also explained that the elementary special education teacher’s schedule could also not presently meet the needs of the S- children, and that it would be inappropriate from the standpoint of the least restrictive alternative to attempt to meet the special education needs of the Petitioner’s high school age children in the grade school building.

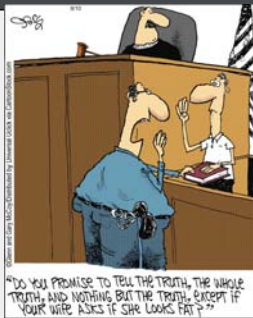
Changes to Capacity Analysis: LB 1066

- Boards required to have "specific" standards for acceptance or rejection for release of a resident or option student.
 - What is a "specific" standard?

Standards for Acceptance "By Resolution"

- A policy will qualify
- Be sure you can produce board minutes showing adoption "by resolution" if you are relying on a policy alone

False Applications



Liar, Liar, Pants on Fire Neb. Rev. Stat. § 79-238(1)

- 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.

Deadlines



Deadlines Neb. Rev. Stat. § 79-237(1)

- Parents must submit application between September 1 and March 15
- Option district must act within 45 days
- Option district notify resident district by April 1 (or 60 days for late applications)
 - May set capacity and criteria after March 15 (Schwab v. Lincoln P. S.)
 - May waive deadline for some and not others in "unique circumstances" (Newhouse v. Lincoln P.S.)

Deadlines and LB 1066

- Boards may no longer refuse to allow students to option **out of** the district when the application is submitted after March 15 *based only on the fact* that the application was submitted late.
- Districts may still deny applications to **opt into** the school district after March 15 based only on the fact that the application was submitted late.
- NDE would prefer schools not use the "late is late" approach to option applications.

D. and H. W. v. North Platte NDE Case No. 14-03 (2014)

- Parents of kindergartner with immune deficiency
 - Had planned to enroll in elementary school in NP because it would have a small class
 - Informed by NP on April 7 that there would be no kindergarten class at their neighborhood building
- NP refused to release because application after the March 15 deadline
- H.O.: NP properly denied

Ending the Option



Ending the Option
Neb. Rev. Stat. § 79-237

- Options may be “cancelled” using forms from NDE
- Applications for students who do not actually attend the option school district may be “withdrawn in good standing” if
 - Student did not attend option district
 - Both resident and option school districts agree

Ending the Option
Neb. Rev. Stat. § 79-237

- No option student shall attend an option school district for less than one school year unless:
 - Student moves
 - Student graduates
 - Student transfers to a private or parochial school
 - Schools agree

Ending the Option
Neb. Rev. Stat. § 79-237

(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.

Transportation



Transportation Neb. Rev. Stat. § 79-241

- District can charge a fee "sufficient to recover additional costs"
 - Use a written agreement
 - Consequence for lack of payment is no transportation – not no enrollment
- District can provide to some and not to others
- Special Ed students: resident district pays transportation

Transportation Neb. Rev. Stat. § 79-241

- Free (not Reduced) Lunch Students
 - Option students who qualify for free lunches shall be eligible for either free transportation or transportation reimbursement . . . from the option school district pursuant to policies established by the school district in compliance with this section, except that they shall be reimbursed at the rate of one hundred forty-two and one-half percent of the mandatorily established mileage rate provided in section [81-1176](#) for each mile actually and necessarily traveled on each day of attendance by which the distance traveled one way from the residence of such student to the schoolhouse exceeds three miles.

Non-optional Option Enrollment: Let's Get It Right

Karen Haase



(402) 804-8000
karen@ksbschoollaw.com
www.ksbschoollaw.com
KSB School Law @KarenHaase
