

MISSOURI STATE BOARD OF EDUCATION AGENDA ITEM: January 2020

CONSIDERATION OF AN APPEAL OF THE DECISION OF THE COMMISSIONER OF EDUCATION REGARDING A TRANSPORTATION HARDSHIP REASSIGNMENT

STATUTORY AUTHORITY:

Section 168.071, RSMo

Consent Item Action Item Report Item

STRATEGIC PRIORITIES

Efficiency and Effectiveness – Support an internal environment of continuous improvement, effective programming, and efficient business operations.

SUMMARY

Section 167.121, RSMo, authorizes the Commissioner of Education or a designee to reassign a pupil from one district to another based upon a demonstration of an unusual or unreasonable transportation hardship. Department regulation 5 CSR 30-261.050 provides that the decision of the designated review officer may, upon request, be affirmed, rescinded, or modified by the commissioner of education. Decisions of the commissioner of education may be appealed to the State Board of Education.

On July 22, 2019, Andrew M. Duncan, attorney representing Charles and Amy McBroom, requested a transportation hardship reassignment for the McBroom’s daughter from the Holden R-III School District to the Lone Jack C-6 School District. By letter dated August 27, 2019, David Tramel, Coordinator, School Financial and Administrative Services, denied the request. On September 9, 2019, the McBrooms sought review of Mr. Tramel’s decision with the Commissioner of Education. By letter dated October 25, 2019, the Commissioner of Education affirmed the denial of the reassignment. On November 7, 2019, the McBrooms appealed the Commissioner of Education’s decision to the State Board of Education. This agenda item represents that appeal. The following documents relate to this appeal:

1. The original petition received from Mr. Duncan on July 22, 2019, requesting the transportation reassignment on behalf of the McBroom’s daughter.
2. Letter dated August 27, 2019, notifying Charles and Amy McBroom of Mr. Tramel’s denial of the transportation hardship reassignment.
3. The appeal to the Commissioner received from Mr. Duncan on September 9, 2019, seeking review of Mr. Tramel’s decision.
4. Letter dated October 25, 2019, of the findings of the Commissioner of Education upholding the decision of the review officer.
5. The appeal to the State Board received from Mr. Duncan on November 7, 2019, seeking review of the Commissioner’s decision.
6. Section 167.121, RSMo, and rule 5 CSR 30-261.050.

PRESENTERS

Margaret K. Landwehr, Chief Counsel, and David Tramel, Coordinator, Financial and Administrative Services, will participate in the presentation and discussion of this agenda item.

RECOMMENDATION

The Department recommends that the State Board of Education vote to uphold the denial of the transportation hardship reassignment request of Mr. and Mrs. McBroom.

COLANTUONO BJERG GUINN KEPPLER LLC

ANDREW DUNCAN
ad@ksmolaw.com
913.322-7215 DIRECT DIAL

SUITE 375 DEL SARTO BUILDING
7015 COLLEGE BOULEVARD
OVERLAND PARK, KANSAS 66211
(BY APPOINTMENT ONLY)
913.345.2555
913.345-2557 FAX

RECEIVED
ADMITTED IN KANSAS, MISSOURI

JUL 22 2019

SCHOOL FINANCE

July 18, 2019

VIA EMAIL AND USPS

Missouri Department of Elementary and Secondary Education
School Administrative Services
ATTN: David Tramel
P.O. Box 480
Jefferson City, Missouri 65102-0480
David.Tramel@dese.mo.gov

**RE: REQUEST FOR PUPIL ASSIGNMENT PURSUANT TO R.S.Mo. § 167.121 AND
5 C.S.R. § 30-261.050**

***PETITION FOR [REDACTED] McBROOM TO BE ASSIGNED TO LONE JACK C-6
SCHOOL DISTRICT FROM HOLDEN SCHOOL DISTRICT***

Greetings,

My name is Drew Duncan and, along with Cliff Cohen, I represent the family of Charles and Amy McBroom with respect to their petition, pursuant to the above-referenced Missouri statute and regulation, for an assignment of their four-year old daughter [REDACTED] to attend Lone Jack C-6 School District (the "Petitioned District" or "Lone Jack") schools when she begins kindergarten next year in Fall 2020.

The McBrooms meet the criteria established by the statute and regulation in order to be granted an assignment. As will be explained below, the McBrooms and their daughter [REDACTED] would experience an unusual and unreasonable transportation hardship should [REDACTED] be required to attend schools in the Holden School District (the "Resident District" or "Holden"). The McBrooms live on the very boundary between the Petitioned District and the Resident District, with the entrance to the McBrooms' driveway being directly on the Resident District's boundary. However, the distance from the McBrooms' home to the Holden elementary school is approximately 20 miles, while the distance from the McBrooms' home to the Lone Jack elementary school is only approximately 5 miles.

Further, the Lone Jack elementary school is directly on the McBrooms' commute to their jobs in downtown Kansas City, while the Holden school is approximately 20 miles in the opposite direction of the McBrooms' commute. Moreover, the bus pickup and drop-off times for [REDACTED] to attend the Resident District are 7:05AM and 4:15PM, respectively. The McBrooms would not be able to be home with their daughter at either of those times if they wished to maintain their

employment, which is obviously an absolute necessity in order to support their family. Leaving a five-year old child alone to catch the bus in the morning and return to an empty home in the afternoon is not reasonable and very dangerous, which is another reason why the McBrooms meet the criteria established by statute and regulation for their daughter [REDACTED] to be granted an assignment to the Lone Jack district.

FACTUAL BACKGROUND

The McBrooms purchased their dream home on a small parcel of land just outside Lone Jack, Missouri in 2015. The McBrooms' home has a Lone Jack address (523 NW 2001st Rd., Lone Jack, Missouri 64070). The McBrooms wanted to raise their family in a rural and more peaceful setting while still retaining the ability to have a reasonable commute to their jobs in downtown Kansas City (both Mr. and Mrs. McBroom work in downtown Kansas City). The McBrooms felt they found the perfect home to fit both of those goals when they learned of the home which they ultimately purchased in Lone Jack. It had taken the McBrooms years to work hard and save enough money to finally purchase their dream home.

When the McBrooms began seriously considering purchasing their home back in 2015, they were acutely concerned about the school situation. The sellers' agent, Peggy Ragan, originally listed the home as being within the Petitioned District's boundaries. As the negotiations between the McBrooms and the home's sellers advanced, Mr. McBroom learned that, inexplicably, the home was on the boundary between the Petitioned District and the Holden School District and was actually assigned to the Holden District, despite the home being approximately 20 miles from the nearest Holden School District elementary school. This caused great concern to the McBrooms, who expressed their unease to the sellers of the home and their real estate agent.

The sellers of the home, named Sean and Terry Olsen, responded to the McBrooms' concerns and stated that they were allowed to send their children to Lone Jack schools instead of to Holden schools via the Missouri residency waiver statute. Mrs. Olsen informed the McBrooms of RSMo. § 167.121 and claimed that her family and neighboring families whose homes were in the Holden District had been approved by the Lone Jack district to send their children to Lone Jack schools using that statute. Believing that statement by the Olsens, the McBrooms purchased their home, and then earlier this year, as their daughter [REDACTED] approached school-age, they reached out directly to the Lone Jack district to seek a residency waiver and an assignment for [REDACTED] but were declined due to the claim of the Lone Jack district that it did not have the authority to grant such an assignment without approval by DESE, and were referred to this process and instructed to petition DESE directly for an assignment.

TRANSPORTATION HARDSHIP NECESSITATING THE McBROOMS' WAIVER APPLICATION

As mentioned above, the McBrooms work in downtown Kansas City. Below is a helpful map illustrating the commute the McBrooms would have if they are forced to enroll their child in the Holden School District; the red line and arrow indicates the travel route from their home (at 523 NW 2001st Rd. in Lone Jack) to Holden, and then all the way back to Kansas City for work:



As you can see, this makes the McBrooms’ commute nearly 76 miles, one way. Each afternoon/evening, the McBrooms would need to reverse this commute in order to pick up their daughter from the elementary school in Holden, and then drive back to their home, for a total of 152 round-trip miles, each and every day. As the map above makes clear, such a commute would be an hour-and-a-half long, each way, making for a total daily commute of *three hours*.

Attached to this letter are also more detailed maps that show the boundary map for the Petitioned District and the location of the McBrooms’ home directly on the edge of that boundary, a map showing a direct trip (without stops) from the McBrooms’ home to the Holden Elementary School (a distance of 17.6 miles and taking 27 minutes in ideal conditions, without stops as can be expected on any bus route), a map showing the distance from the McBrooms’ home to the Lone Jack Elementary School (a distance of 5.3 miles, taking 8 minutes, and directly on the McBrooms’ way to work), and a map of the Lone Jack School District bus stop closest to the McBrooms’ home per the Lone Jack Superintendent (that bus stop is 0.6 miles and 1 minute away from the McBrooms’ home). Mr. McBroom asked the Resident District and the bus company with which it contracts for the closest stop to the McBrooms’ home, but the only response Mr. McBroom received was an estimate of the pickup (7:05AM) and drop-off (4:15PM) times for his daughter [REDACTED] should she attend Holden Elementary School.

If this assignment petition is denied, the McBrooms would have no choice but to drop off their daughter [REDACTED] (who is, again, a five-year old child) very early in the morning and pick her up from school very late in the afternoon, so that the McBrooms could work full-time at their jobs in downtown Kansas City. As such, [REDACTED] would necessarily be at the Holden Elementary School much longer than if she was attending Lone Jack Elementary, due to being dropped off earlier in the morning and picked up later in the day as a result of the commute to the Holden school. This means she would be spending less time with her family each and every day.

In comparison to the map and description above of the McBrooms' commute should their daughter be required to attend Holden schools, below is a map of the McBrooms' commute should [REDACTED] be allowed to attend the Petitioned District; the red line and arrow indicates the route:



The McBrooms' commute is reduced by forty minutes each way, resulting in a reduction in total commute time every day of eighty minutes; in other words, the McBrooms' commute would be *cut in half* if [REDACTED] is permitted to attend the Lone Jack School District. As you can see in the map immediately above, Lone Jack Elementary School is directly on the route from the McBrooms' home to their jobs in downtown Kansas City. The above route even incorporates the McBrooms dropping off their soon-to-be-newborn child at daycare in Lee's Summit located right off of 50 Hwy on the way into work.

The above travel times and the bus pickup and drop-off times provided by the Holden School District firmly and clearly establish that the McBrooms not only meet the standard of "unusual and unreasonable transportation hardships" and are also "special circumstances" causing extreme hardship to the McBrooms and, more importantly, to their daughter [REDACTED] as referenced in 5 C.S.R. § 30-261.050(4).

FURTHER HARDSHIPS CAUSED BY CURRENT ASSIGNMENT TO
RESIDENT DISTRICT HOLDEN SCHOOL DISTRICT

The McBrooms are a hard-working couple. Mr. and Mrs. McBroom both have good jobs in downtown Kansas City, and like so many of us, require two incomes in order to make ends meet. They are both expected to work full-time, normal shifts at work, including arriving at a standard time in the morning and leaving at a standard time in the afternoon. This means leaving home at a reasonable time in order to make their daily commute.

If this petition is denied and [REDACTED] is forced to attend the Resident District schools in Holden, the McBrooms will not be able to utilize school bus services for their child, because they will have already left home when the school bus comes by in the morning, and will not yet be

home when the bus comes by in the afternoon. Specifically, as discussed above, the McBrooms have been informed by Apple Buses (the contractor employed by the Holden School District) that the bus from Holden schools would pick up ██████ at approximately 7:05AM before school and drop her off after school at approximately 4:15PM every afternoon. On a normal work day, the McBrooms currently leave their home no later than 6:30AM to begin their commute to work, and normally do not arrive home until 5:15PM at the earliest, which permits the McBrooms to work full eight-hour shifts.

Because of this, the Holden school bus is not a viable option for the McBrooms, since leaving their five-year old daughter alone at home to catch the bus in the morning and then having her be dropped off by the bus, alone, is obviously not an option. This means that the McBrooms would need to secure before- and after-school care of some sort at Holden schools, assuming it is even offered, which would unquestionably be an additional cost, and, as mentioned above, deprive the McBrooms and their daughter of quality family time. The before- and after-school care would make the McBrooms responsible for dropping their daughter off extremely early and picking her up very late from Holden schools every day, again, assuming that the Holden schools even offer latchkey programs that operate that early and late in the day. These very long days are almost certain to cause fatigue in a very young child like ██████ and would harm her sleep patterns. Further, the McBrooms would be deprived of the opportunity to participate in, and attend, school-related and extracurricular activities for their daughter if she is required to attend Holden schools.

Further, the McBrooms currently routinely ride the commuter bus from the Lee's Summit, Missouri park and ride lot at 50 Hwy and Chipman Road to their jobs in downtown Kansas City, via the KCATA bus system, instead of actually driving into downtown. This saves the McBrooms commute-related costs, such as fuel and wear-and-tear on their vehicles. Riding the commuter bus is also beneficial for the environment and helps unclog the roads and highways. If the McBrooms' waiver application is approved, they can continue to ride this commuter bus because they would have time to drop their child off at Lone Jack Elementary, and still catch the commuter bus from Lee's Summit to downtown KC, and vice versa in the afternoon. However, if their daughter is forced to attend Holden schools, this commuter bus would not be an option for the McBrooms.

THE LONE JACK DISTRICT BOUNDARY ABUTS THE McBROOMS' HOME AND JUTS OUT TO INCLUDE SOME HOMES EAST OF 2001st ROAD

Below are maps indicating how close the McBrooms' home is to the Lone Jack District's boundary line (it is right on it, with an arrow pointing to it), and showing an "enclave" of the District east of 2001st Road (circled); as you can see, the McBrooms live closer to Lone Jack Elementary than the families in that "enclave" east of 2001st Road:

DISTRICT BOUNDARY:



LOCATION OF McBROOMS' HOME & PROPERTY IN RELATION TO DISTRICT BOUNDARY:



As the above map makes plain, the McBrooms' home and property are literally within viewing distance of the Lone Jack School District boundary; it sits right on it. They are five miles from Lone Jack Elementary School. Requiring them to travel 20 miles away from the direction of their jobs, which allow the McBrooms to provide a home for their family and put food on the table, is

an unreasonable and unusual hardship, and it is for this precise type of situation that the Missouri law and regulation relating to pupil assignment exist.

LEGAL STANDARDS

As you are certainly aware, the governing legal standard in this matter is the Missouri pupil assignment statute, found at RSMo. § 167.121. It reads, in its entirety, as follows:

If the residency of a pupil is so located that attendance in the district of residency constitutes an unusual or unreasonable transportation hardship because of natural barriers, travel time, or distance, the commissioner of education or his designee may assign the pupil to another district. Subject to the provisions of this section, all existing assignments shall be reviewed prior to July 1, 1984, and from time to time thereafter, and may be continued or rescinded. The board of education of the district in which the pupil lives shall pay the tuition of the pupil assigned. The tuition shall not exceed the pro rata cost of instruction.

The language of this statute could not be any clearer: unusual and unreasonable transportation hardship caused by travel time and distance are the criteria for approving a pupil assignment for a public school student in Missouri. Above, it has been made abundantly clear that the McBrooms easily meet and exceed the criteria for the approval of their petition for assignment of [REDACTED] to the Lone Jack School District.

Specifically, they are located five miles from the Lone Jack Elementary School and it is on their normal route to work; in contrast, they are located twenty miles away from the elementary school in Holden, and that elementary school is in the exact opposite direction of the McBrooms' jobs in downtown Kansas City as measured from their home. Further, both the distance and travel time associated with enrolling their daughter in Holden schools is an unusual, unreasonable, and substantial hardship when compared to the distance and travel time that would be associated with their daughter attending Lone Jack Elementary School.

Moreover, approving this petition will cost the Petitioned District nothing. As the statute and regulation which govern this situation makes clear, should this petition and pupil assignment be approved, the Holden School District is required by law to pay the tuition of the McBrooms' child to the Petitioned District. In other words, [REDACTED] attending Lone Jack Elementary School would cost the Lone Jack School District nothing.

The McBrooms are a good, hard-working, young family who have decided to put down roots in Lone Jack. They love their home and they love the Lone Jack community. They contribute to the Lone Jack community and only want what is best for their daughter [REDACTED] which I submit is also what is required by Missouri law. As described at length above, the best interests of the McBrooms' daughter are unquestionably served by her going to school in Lone Jack and not in Holden. I hope that DESE will approve this petition for the reasons cited above, and most importantly, for [REDACTED] sake and wellbeing.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Duncan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Andrew Duncan

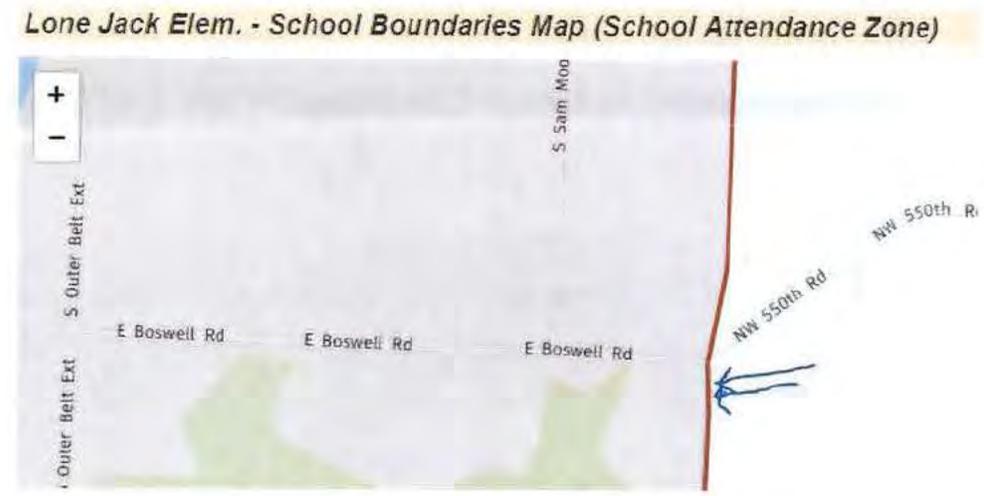
Enclosure

Map information to support request

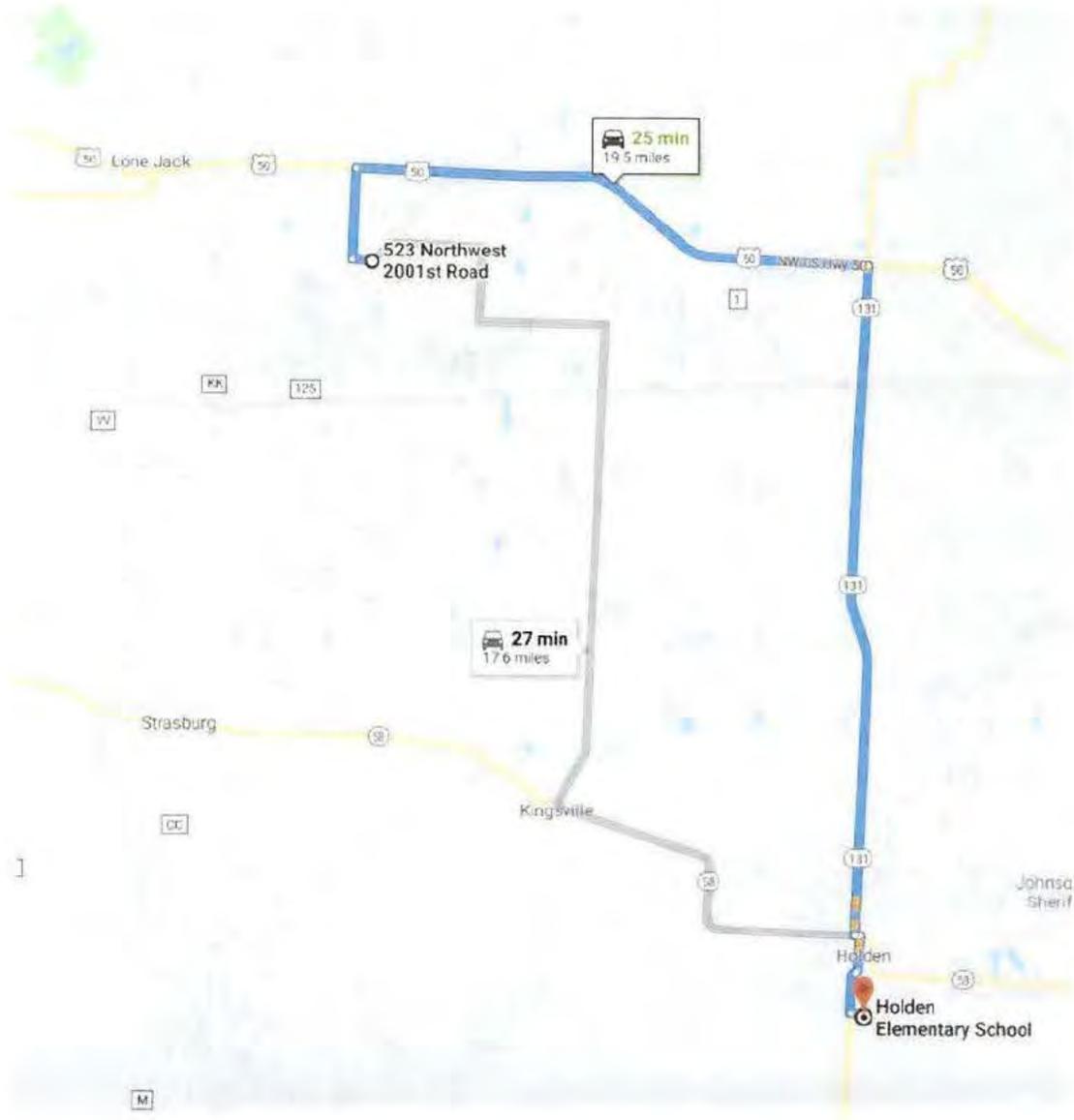
School District Map & Boundary info in relation to residence (blue arrow points to our residence, red shaded area is w/in Lone Jack District)



Zoomed in



Map to Holden Elementary (currently assigned to) in relation to residence





MISSOURI DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
 SCHOOL ADMINISTRATIVE SERVICES *Attn: David Trammel*
 P.O. BOX 480, JEFFERSON CITY MO 65102-0480
REQUEST FOR PUPIL ASSIGNMENT

RECEIVED
15

AUG - 2 2019

SCHOOL FINANCE

Section 167.121 – Assignment of pupil to another district-tuition, how paid, amount. – If the residence of a pupil is so located that attendance in the district of residence constitutes an unusual or unreasonable transportation hardship because of natural barriers, travel time, or distance, the commissioner of education or his designee may assign the pupil to another district. Subject to the provisions of this section, all existing assignments shall be reviewed prior to July 1, 1984, and from time to time thereafter, and may be continued or rescinded. The board of education of the district in which the pupil lives shall pay the tuition of the pupil assigned. The tuition shall not exceed the pro rata cost of instruction.

Section 167.241 – Transportation of pupils to another district. – Transportation for pupils whose tuition the district of residence is required to pay by section 167.131 or who are assigned as provided in section 167.121 shall be provided by the district of residence; however, in the case of pupils covered by section 167.131, the district of residence shall be required to provide transportation only to school districts accredited by the state board of education pursuant to the authority of the state board of education to classify schools as established in section 161.092, RSMo, and those school districts designated by the board of education of the district of residence.

Instructions: Complete all items on the request and mail to School Administrative Services using the above address

I. PARENT OR GUARDIAN DATA

NAME Charles & Amy McBroom		DATE 7/12/2019
ADDRESS 523 NW 2001 St Rd Lone Jack MO 64070		
PHONE NUMBER: HOME 660-864-4991	PHONE NUMBER: BUSINESS 816-516-5184	

II. PUPIL DATA

1. NAME [Redacted] McBroom	AGE 4	GRADE K in Fall 2020
2. NAME	AGE	GRADE
3. NAME	AGE	GRADE
4. NAME	AGE	GRADE

III. DISTRICT OF RESIDENCE

1. NAME OF DISTRICT
Holden

2. BUS ROUTE INFORMATION

A.M. ROUTE: ACTUAL TIME ON BUS _____ ACTUAL MILES CHILD IS ON BUS _____

P.M. ROUTE: ACTUAL TIME ON BUS _____ ACTUAL MILES CHILD IS ON BUS _____

IV. SCHOOL DISTRICT TO WHICH ASSIGNMENT IS REQUESTED

1. NAME OF DISTRICT
Lone Jack

2. HOW WILL TRANSPORTATION BE PROVIDED IF AN ASSIGNMENT IS MADE?

BY DISTRICT OF RESIDENCE CONTRACT WITH SERVING DISTRICT CONTRACT WITH PARENT OTHER _____

3. BUS ROUTE/TRANSPORTATION INFORMATION

A.M. ROUTE: ACTUAL TIME CHILD IS TRAVELING _____ ACTUAL MILES CHILD IS TRANSPORTED _____

P.M. ROUTE: ACTUAL TIME CHILD IS TRAVELING _____ ACTUAL MILES CHILD IS TRANSPORTED _____

V. INFORMATION SUPPORTING THE REQUEST FOR ASSIGNMENT

Please attach a map showing the district boundary line, the location of the home of the pupil(s) involved in the request, the location of the school buildings involved, natural barriers that may impact on this request, and the route the bus travels. Show A.M. and P.M. routes separately, if different. Be specific on time and distance information.

SUPPORTING INFORMATION DOCUMENTING UNUSUAL OR UNREASONABLE TRANSPORTATION HARDSHIP

See attached letter, documentation & maps. Lone Jack District did not provide a bus route map or travel time, but provided location of nearest current stop to our house (.6 miles away), with pick up and drop off time estimates. Holden District did not provide a bus route map or travel times, but only estimated pick up time of 7:05 am, and drop off time of 4:15pm.

SIGNATURE _____ *Amy McBroom*

1. Address of closest stop to 523 NW 2001st Rd, Lone Jack MO 64070.
39407 E Boswell Road, Lone Jack MO 64070

2. Pick up and Drop time to that stop.

6:56am

3:49pm

3. Miles from that stop to the elementary school.

4.8 miles

RECEIVED
AUG - 2 2019
SCHOOL FINANCE



Herndon, Tabitha

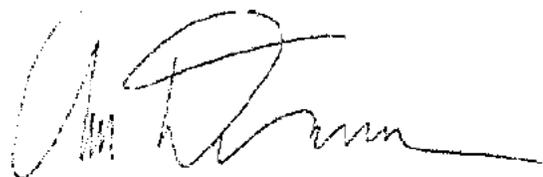
From: Tramel, David
Sent: Friday, July 19, 2019 8:30 AM
To: Herndon, Tabitha
Subject: FW: Request for Pupil Assignment Pursuant to R.S.Mo. 167.121--Filed on behalf of [REDACTED] McBroom and McBroom family
Attachments: Request for Pupil Assignment Pursuant to RSMo. 167.121 [REDACTED] McBroom).pdf; LETTER ACCOMPANYING DESE PUPIL ASSIGNMENT REQUEST-[REDACTED] McBROOM.pdf; Map information to support request.pdf

From: ad@ksmolaw.com <ad@ksmolaw.com>
Sent: Thursday, July 18, 2019 3:57 PM
To: Tramel, David <David.Tramel@dese.mo.gov>
Cc: ad@ksmolaw.com; 'Chuck McBroom' <chuck.mcbroom@gmail.com>
Subject: Request for Pupil Assignment Pursuant to R.S.Mo. 167.121--Filed on behalf of [REDACTED] McBroom and McBroom family

Good afternoon Mr. Tramel,

My name is Drew Duncan and I am an attorney representing the McBroom family with regard to the attached Request for Pupil Assignment. The McBrooms seek an assignment of their daughter [REDACTED] from the Holden School District to the Lone Jack C-6 School District. Please let me know if you have any difficulty opening the attachments or if any further information is required by DESE to consider this request. Hard copies of each of the attached documents will follow in the mail.

Best regards,
Drew



Andrew M. Duncan
COLANTUONO BJERG GUINN KEPPLER LLC
7015 COLLEGE BLVD.
SUITE 375 del SARTO BLDG.
OVERLAND PARK, KANSAS 66211
913-345-2555 FAX 913-345-2557

CONFIDENTIALITY NOTICE: The information in this message may be a confidential and privileged attorney client communication, or may otherwise be confidential information intended solely for the use of the recipient identified above. If this message is received by

someone other than the intended recipient, please notify the sender immediately and delete the message.

Missouri lawyers are required to notify email recipients that (1) email communication is not a secure method of communication; (2) any email that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa; and (3) persons not participating in our communication may intercept our communication by improperly accessing your computer(s) or even some computer unconnected to either of us through which the email passed. If you do not wish to communicate via email, please let me know immediately.

Division of Financial and
Administrative Services

205 Jefferson Street, P.O. Box 480 • Jefferson City, MO 65102-0480 • dese.mo.gov

August 27, 2019

Charles & Amy McBroom
523 NW 2001 St Rd
Lone Jack MO 64070

RETURN RECEIPT REQUESTED

Dear Mr. & Mrs. McBroom,

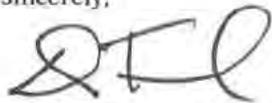
I have received and reviewed your request for transportation hardship reassignment for your child, [REDACTED] McBroom, from the Holden R-III School District to the Lone Jack C-6 School District. The reassignment request was made pursuant to the provisions of Section 167.121 of the Revised Statutes of Missouri which states:

"If the residence of a pupil is so located that the attendance in the district of residence constitutes an unusual or unreasonable transportation hardship because of natural barriers, travel time or distance, the Commissioner of Education or his designee may assign the pupil to another district."

Information in your application indicates that you estimate the ride time for your child would be about 27 minutes in the morning and in the afternoon. Information obtained from the Holden R-III School District indicates the ride time by bus will be approximately 25 – 30 minutes in the morning and in the afternoon. Based upon this information and the information contained in your application, it is my finding that a transportation hardship has not been demonstrated and therefore your request for reassignment to the Lone Jack C-6 School District must be denied. The finding is based upon the requirements of 5 CSR 30-261.050 (4) in which the State Board of Education adopts a seventy-five (75) minute threshold requirement in finding a transportation hardship.

These findings may be appealed to the Commissioner of Education by written notice filed within ten (10) days from the receipt of the notification. That appeal should be directed to Dr. Margie Vandeven, PO Box 480, Jefferson City MO 65102-0480. Enclosed is a copy of the administrative rule 5 CSR 30-261.050 (4) which outlines this appeal process. If you have any further questions, you may contact me at (573) 751-0357.

Sincerely,



David Tramel
Coordinator
School Financial and Administrative Services

Enclosure

c: Dr. Margie Vandeven, Commissioner
Dr. Roger Dorson, Deputy Commissioner
Mr. Tony Stansberry, Area Supervisor
Mrs. Shelly Aubuchon, Area Supervisor
Mrs. Margaret Keate Landwehr, Chief Counsel
Mr. Matthew Tarwater, Superintendent, Lone Jack C-6 School District
Mr. Michael Hough, Superintendent, Holden R-III School District

COLANTUONO BJERG GUINN KEPPLER LLC

ANDREW DUNCAN
ad@ksmolaw.com
913.322-7215 DIRECT DIAL

SUITE 375 DEL SARTO BUILDING
7015 COLLEGE BOULEVARD
OVERLAND PARK, KANSAS 66211
(BY APPOINTMENT ONLY)
913.345.2555
913.345-2557 FAX

Dept. of Elementary
& Secondary Education
ADMITTED IN KANSAS, MISSOURI

SEP 09 2019

Office of the
Commissioner of Education

September 4, 2019

VIA EMAIL AND USPS

Dr. Margie Vandeven
Commissioner, Missouri Department of Elementary and Secondary Education
P.O. Box 480
Jefferson City, Missouri 65102-0480
commissioner@dese.mo.gov

RE: APPEAL OF DENIAL BY REVIEW OFFICER OF REQUEST FOR PUPIL ASSIGNMENT PURSUANT TO R.S.Mo. § 167.121 AND 5 C.S.R. § 30-261.050

PETITION/APPEAL FOR [REDACTED] McBROOM TO BE ASSIGNED TO LONE JACK C-6 SCHOOL DISTRICT FROM HOLDEN SCHOOL DISTRICT

Dear Commissioner Vandeven,

My name is Drew Duncan and, along with Cliff Cohen, I represent the family of Charles and Amy McBroom with respect to their petition, pursuant to the above-referenced Missouri statute and regulation, for an assignment of their four-year old daughter [REDACTED] to attend Lone Jack C-6 School District (the "Petitioned District" or "Lone Jack") schools when she begins kindergarten next year in Fall 2020. The McBrooms' request for pupil assignment was filed with DESE in July 2019, and was subsequently denied by review officer Mr. David Tramel of DESE on August 27, 2019 and the McBrooms received that denial letter on August 29, 2019. Pursuant to the regulation referenced above and the process outlined in Mr. Tramel's letter, my clients are hereby appealing that denial to you, the Commissioner of DESE, and seeking a rescission of Mr. Tramel's decision and the approval of the McBrooms' request for pupil assignment for their daughter, [REDACTED].

The McBrooms meet the criteria established by the statute and regulation in order to be granted an assignment. As will be explained below, the McBrooms and their daughter [REDACTED] would experience an unusual and unreasonable transportation hardship should [REDACTED] be required to attend schools in the Holden School District (the "Resident District" or "Holden"). The McBrooms live on the very boundary between the Petitioned District and the Resident District, with the entrance to the McBrooms' driveway being directly on the Resident District's boundary. However, the distance from the McBrooms' home to the Holden elementary school is approximately 20 miles, while the distance from the McBrooms' home to the Lone Jack elementary school is only approximately 5 miles.

Further, the Lone Jack elementary school is directly on the McBrooms' commute to their jobs in downtown Kansas City, while the Holden school is approximately 20 miles in the opposite direction of the McBrooms' commute. Moreover, the bus pickup and drop-off times for ██████ to attend the Resident District are 7:05AM and 4:15PM, respectively. The McBrooms would not be able to be home with their daughter at either of those times if they wished to maintain their employment, which is obviously an absolute necessity in order to support their family. Leaving a five-year old child alone to catch the bus in the morning and return to an empty home in the afternoon is not reasonable and very dangerous, which is another reason why the McBrooms meet the criteria established by statute and regulation for their daughter ██████ to be granted an assignment to the Lone Jack district.

Finally, special circumstances are further shown in the McBrooms' case due to the material misrepresentations regarding the pupil assignment process and procedure which were made by the former owner of their home and the realtor representing that former owner. In short, the former owners of the McBrooms' current home made false and material statements regarding the pupil assignment process, how such requests were made, who decided such requests, and also falsely claimed that the sellers had been granted such a pupil assignment request for their own children. Based upon these misrepresentations, the McBrooms purchased their home directly on the edge of the Lone Jack school district. The McBrooms uprooted their lives based upon these false statements by the former owner of their home who made these material misrepresentations in the course of negotiations to sell the home to the McBrooms.

FACTUAL BACKGROUND

The McBrooms purchased their dream home on a small parcel of land just outside Lone Jack, Missouri in 2015. The McBrooms' home has a Lone Jack address (523 NW 2001st Rd., Lone Jack, Missouri 64070). The McBrooms wanted to raise their family in a rural and more peaceful setting while still retaining the ability to have a reasonable commute to their jobs in downtown Kansas City (both Mr. and Mrs. McBroom work in downtown Kansas City). The McBrooms felt they found the perfect home to fit both of those goals when they learned of the home which they ultimately purchased in Lone Jack. It had taken the McBrooms years to work hard and save enough money to finally purchase their dream home.

When the McBrooms began seriously considering purchasing their home back in 2015, they were acutely concerned about the school situation. The sellers' agent, Peggy Ragan, originally listed the home as being within the Petitioned District's boundaries. As the negotiations between the McBrooms and the home's sellers advanced, Mr. McBroom learned that, inexplicably, the home was on the boundary between the Petitioned District and the Holden School District and was actually assigned to the Holden District, despite the home being approximately 20 miles from the nearest Holden School District elementary school. This caused great concern to the McBrooms, who expressed their unease to the sellers of the home and their real estate agent.

The sellers of the home, named Sean and Terry Olsen, responded to the McBrooms' concerns and stated that they were allowed to send their children to Lone Jack schools instead of to Holden schools via the Missouri residency waiver statute. Mrs. Olsen informed the McBrooms of RSMo. § 167.121 and claimed that her family and neighboring families whose homes were in the Holden District had been approved by the Lone Jack district to send their children to Lone Jack schools using that statute. Below is what the Olsens stated to the McBrooms during the home sale negotiations:

Also attached, the Lone Jack School Board Policy PDF (Pages 398-402 explains the process) & the Hardship & Missouri Revised Statutes that talks about the legalities around why a school must allow a non-resident to attend there. The reason we used and that the other parents of kids down the street used is: 167.121. 1. If the residence of a pupil is so located that attendance in the district of residence constitutes an unusual or unreasonable transportation hardship because of natural barriers, travel time, or distance, the commissioner of education or his designee may assign the pupil to another district. We told them that we worked in Kansas City and the travel time and distance to go 19 miles one way to take our child to the Holden School then turn around and come back 19 miles and then continue on to work from there was a hardship when we were only a 5 miles from the Lone Jack School and drove right past it every day going to and from work. This allowed for the LJ school to approve the request and submit the appropriate paperwork. They have to have the state of Missouri commissioner of education then transfer the money allotted for those children living at our house from the Holden School District to the Lone Jack School district. Basically, its all politics around money. ☺

Further, the Olsens' realtor stated the following to the McBrooms after the McBrooms asked specific questions about the school district to which the home was assigned, and the ease with which a pupil assignment could be effected:

I am attaching a response from the seller. I also have all the complete ordinances and documents from the school. They both worked at Sprint and sent their kids to school in Lone Jack. No tuition and just had to establish as working parents what a hardship that would be to go to Holden since it's so close to Lone Jack and on their way to work versus going to Holden.

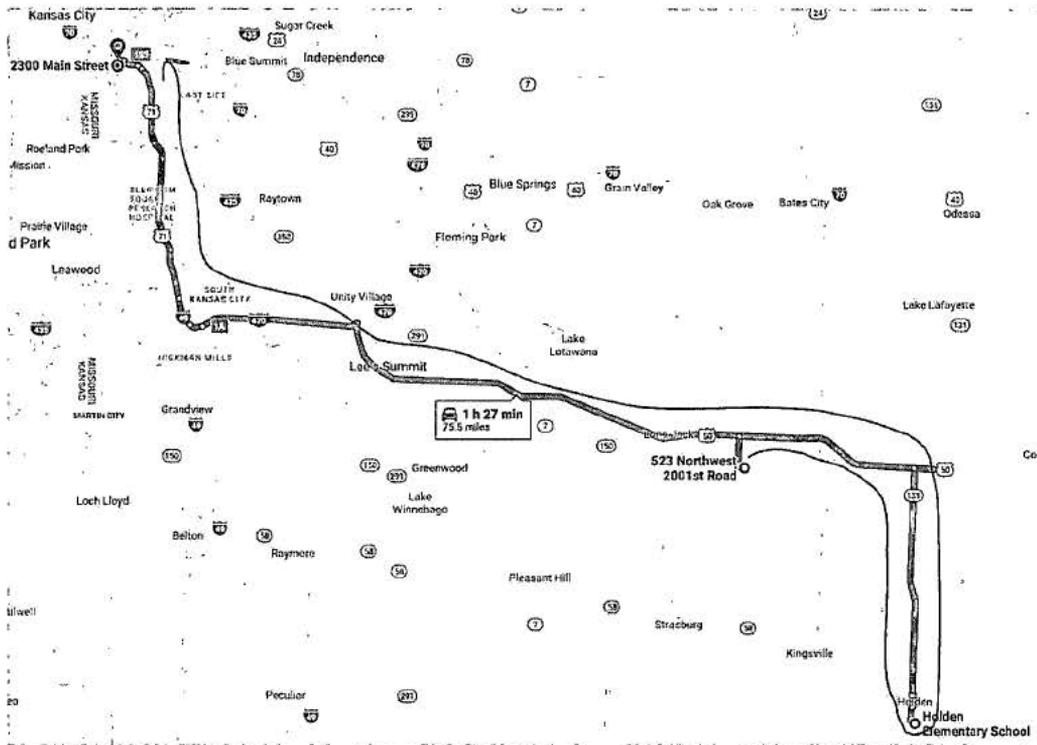
Believing that statement by the Olsens, the McBrooms purchased their home, and then earlier this year, as their daughter [REDACTED] approached school-age, they reached out directly to the Lone Jack district to seek a residency waiver and an assignment for [REDACTED], but were declined due to the claim of the Lone Jack district that it did not have the authority to grant such an assignment without approval by DESE, and were referred to this process and instructed to petition DESE directly for an assignment. The McBrooms then submitted their request for pupil assignment to DESE directly in July 2019. Only later, after retaining me in the late Spring of 2019, did the McBrooms learn that the Olsens did not have school-age children at the time of the sale and apparently had never actually completed the pupil assignment request process and had it approved.

The McBrooms and I certainly understand that the false statements of private individuals are not binding upon the Lone Jack school district or upon DESE, but they are nonetheless illustrative and relevant to this appeal and the McBrooms' situation, because the pertinent regulation references a required finding of "special circumstances" in order to grant a request for pupil assignment in cases where the travel time is less than seventy-five minutes. Here, the McBrooms purchased their home based upon statements by the seller of that home which explicitly stated that securing enrollment with the Lone Jack school district was a simple and guaranteed process which the sellers themselves had previously successfully completed. These statements were false but they induced the McBrooms to purchase their home. Now the McBrooms are in an extremely difficult situation, as will be explained in depth below, because transporting their daughter to Holden Schools will cause significant harm to the employment of Mr. and Mrs. McBroom, and that employment is necessary to support their family. All of the preceding meets

the criteria for “special circumstances” faced by the McBrooms, and thus points toward the granting of their request for pupil assignment for their daughter [REDACTED].

TRANSPORTATION HARDSHIP NECESSITATING THE McBROOMS’ WAIVER APPLICATION

As mentioned above, the McBrooms work in downtown Kansas City. Below is a helpful map illustrating the commute the McBrooms would have if they are forced to enroll their child in the Holden School District; the red line and arrow indicates the travel route from their home (at 523 NW 2001st Rd. in Lone Jack) to Holden, and then all the way back to Kansas City for work:



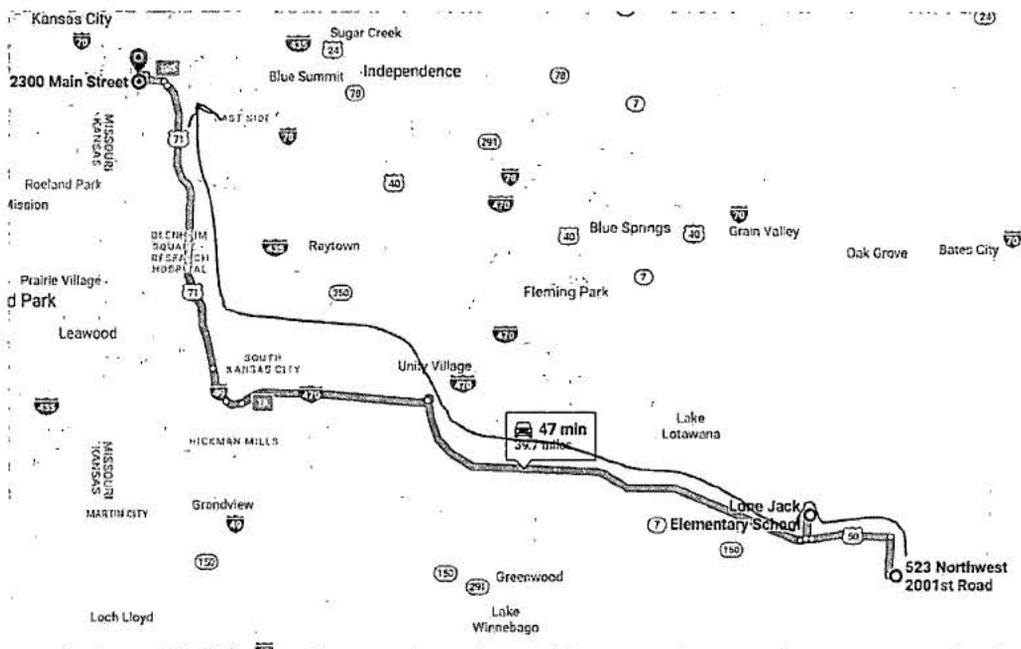
As you can see, this makes the McBrooms’ commute nearly 76 miles, one way. Each afternoon/evening, the McBrooms would need to reverse this commute in order to pick up their daughter from the elementary school in Holden, and then drive back to their home, **for a total of 152 round-trip miles, each and every day.** As the map above makes clear, such a commute would be an hour-and-a-half long, each way, **making for a total daily commute of three hours.** While the relevant regulation defines “travel time” in terms of the time the student spends in transportation to and from school, the “special circumstances” as established in 5 CSR 30-261.050(4) is not so limited, and a daily three-hour commute simply to drop off and pick up their daughter unquestionably meets that “special circumstances” standard.

Attached to this letter are also more detailed maps that show the boundary map for the Petitioned District and the location of the McBrooms’ home directly on the edge of that boundary, a map showing a direct trip (without stops) from the McBrooms’ home to the Holden Elementary School (a distance of 17.6 miles and taking 27 minutes in ideal conditions, without stops as can be expected on any bus route), a map showing the distance from the McBrooms’ home to the Lone Jack Elementary School (a distance of 5.3 miles, taking 8 minutes, and directly on the McBrooms’

way to work), and a map of the Lone Jack School District bus stop closest to the McBrooms' home per the Lone Jack Superintendent (that bus stop is 0.6 miles and 1 minute away from the McBrooms' home). Mr. McBroom asked the Resident District and the bus company with which it contracts for the closest stop to the McBrooms' home, but the only response Mr. McBroom received was an estimate of the pickup (7:05AM) and drop-off (4:15PM) times for his daughter [REDACTED] should she attend Holden Elementary School.

If this appeal is denied, and the McBrooms were left with enrolling their child in the Holden schools, the McBrooms would have no choice but to drop off their daughter [REDACTED] (who is, again, a five-year old child) very early in the morning and pick her up from school very late in the afternoon, so that the McBrooms could work full-time at their jobs in downtown Kansas City. As such, [REDACTED] would necessarily be at the Holden Elementary School much longer than if she was attending Lone Jack Elementary, due to being dropped off earlier in the morning and picked up later in the day as a result of the commute to the Holden school. This means she would be spending less time with her family each and every day.

In comparison to the map and description above of the McBrooms' commute should their daughter be required to attend Holden schools, below is a map of the McBrooms' commute should [REDACTED] be allowed to attend the Petitioned District; the red line and arrow indicates the route:



The McBrooms' commute is reduced by forty minutes each way, resulting in a reduction in total commute time every day of eighty minutes; in other words, the McBrooms' commute would be *cut in half* if [REDACTED] is permitted to attend the Lone Jack School District. As you can see in the map immediately above, Lone Jack Elementary School is directly on the route from the McBrooms' home to their jobs in downtown Kansas City. The above route even incorporates the McBrooms dropping off their soon-to-be-newborn child at daycare in Lee's Summit located right off of 50 Hwy on the way into work.

The above travel times and the bus pickup and drop-off times provided by the Holden School District firmly and clearly establish that the McBrooms not only meet the standard of

“unusual and unreasonable transportation hardships” and are also “special circumstances” causing extreme hardship to the McBrooms and, more importantly, to their daughter [REDACTED], as referenced in 5 C.S.R. § 30-261.050(4). Moreover, the term “travel distance” is specifically defined within the regulation as “The distance traveled to transport a pupil from the pupil's place of residence or other designated pickup point to the site of the pupil's educational placement”, and is thus clearly a factor to be considered in deciding a request for pupil assignment. In the McBrooms’ case, the travel distance from their home to Holden is also significantly more than the travel distance from their home to the elementary school in Lone Jack.

FURTHER HARDSHIPS CAUSED BY CURRENT ASSIGNMENT TO
RESIDENT DISTRICT HOLDEN SCHOOL DISTRICT

The McBrooms are a hard-working couple. Mr. and Mrs. McBroom both have good jobs in downtown Kansas City, and like so many of us, require two incomes in order to make ends meet. They are both expected to work full-time, normal shifts at work, including arriving at a standard time in the morning and leaving at a standard time in the afternoon. This means leaving home at a reasonable time in order to make their daily commute.

If this appeal is denied and [REDACTED] is forced to attend the Resident District schools in Holden, the McBrooms will not be able to utilize school bus services for their child, because they will have already left home when the school bus comes by in the morning, and will not yet be home when the bus comes by in the afternoon. Specifically, as discussed above, the McBrooms have been informed by Apple Buses (the contractor employed by the Holden School District) that the bus from Holden schools would pick up [REDACTED] at approximately 7:05AM before school and drop her off after school at approximately 4:15PM every afternoon. On a normal work day, the McBrooms currently leave their home no later than 6:30AM to begin their commute to work, and normally do not arrive home until 5:15PM at the earliest, which permits the McBrooms to work full eight-hour shifts. Because of those significant bus pick-up and drop-off timing issues, the Holden school bus is not a viable option for the McBrooms, since leaving their five-year old daughter alone at home to catch the bus in the morning and then having her be dropped off by the bus, alone, is obviously not an option. This means that the McBrooms would need to secure before- and after-school care of some sort at Holden schools, assuming it is even offered, which would unquestionably be an additional cost, and, as mentioned above, deprive the McBrooms and their daughter of quality family time. The before- and after-school care would make the McBrooms responsible for dropping their daughter off extremely early and picking her up very late from Holden schools every day, again, assuming that the Holden schools even offer latchkey programs that operate that early and late in the day. These very long days are almost certain to cause fatigue in a very young child like [REDACTED] and would harm her sleep patterns. Further, the McBrooms would be deprived of the opportunity to participate in, and attend, school-related and extracurricular activities for their daughter if she is required to attend Holden schools.

Within his denial letter, DESE’s review officer, Mr. Tramel, states as follows:

Information in your application indicates that you estimate the ride time for your child would be about 27 minutes in the morning and in the afternoon. Information obtained from the Holden R-III School District indicates the ride time by bus will be approximately 25 - 30 minutes in the morning and in the afternoon. Based upon this information and the information contained in your application, it is my finding that a transportation hardship has not been demonstrated and therefore your request for reassignment to the Lone Jack C-6 School District must be denied. The

A copy of Mr. Tramel’s denial letter is enclosed herewith as **Exhibit 1**.

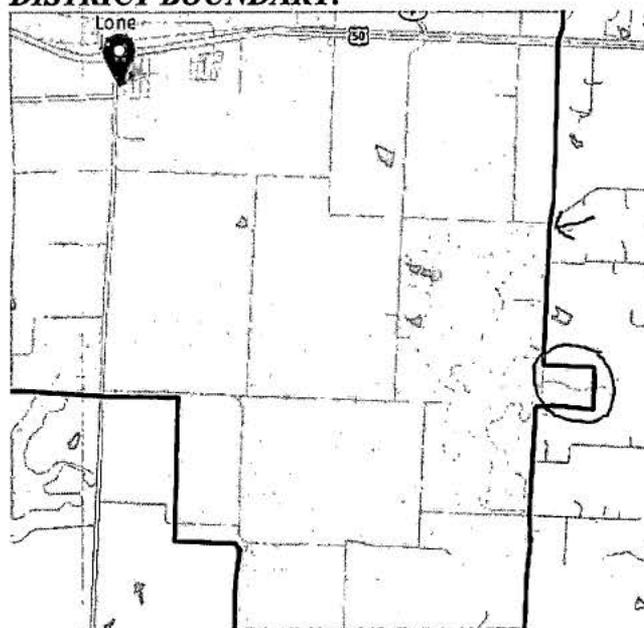
Respectfully, Mr. Tramel has ignored the above bus pick-up and drop-off timing issues, which were raised in the McBroom’s request filed with DESE. All of the transportation issues discussed above clearly meet the “special circumstances” standard set forth in 5 CSR 30-261.050(4). Moreover, it is not at all clear that the bus ride for the McBrooms’ daughter to and from Holden would only be approximately 27 minutes each way; I have every reason to believe that such a bus ride would be longer considering the twenty-mile distance from the McBrooms’ home to the Holden Elementary School.

Further, the McBrooms currently routinely ride the commuter bus from the Lee’s Summit, Missouri park and ride lot at 50 Hwy and Chipman Road to their jobs in downtown Kansas City, via the KCATA bus system, instead of actually driving into downtown. This saves the McBrooms commute-related costs, such as fuel and wear-and-tear on their vehicles. Riding the commuter bus is also beneficial for the environment and helps unclog the roads and highways. If the McBrooms’ waiver application is approved, they can continue to ride this commuter bus because they would have time to drop their child off at Lone Jack Elementary, and still catch the commuter bus from Lee’s Summit to downtown KC, and vice versa in the afternoon. However, if their daughter is forced to attend Holden schools, this commuter bus would not be an option for the McBrooms.

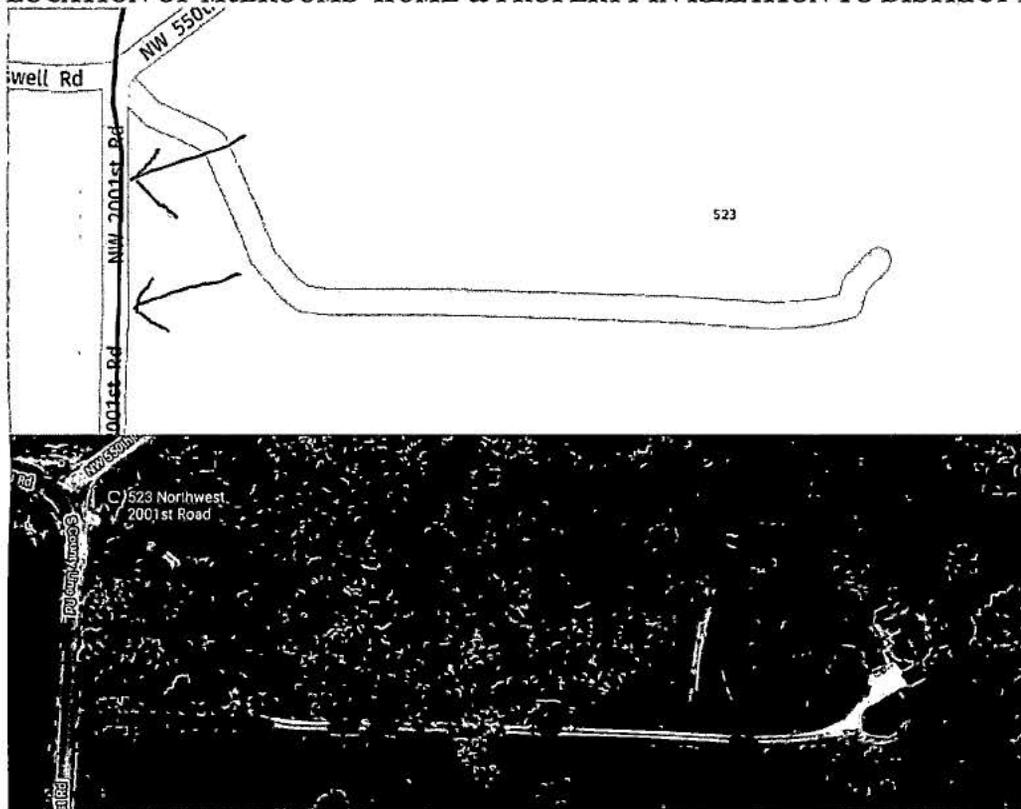
THE LONE JACK DISTRICT BOUNDARY ABUTS THE McBROOMS’ HOME AND JUTS OUT TO INCLUDE SOME HOMES EAST OF 2001st ROAD

Below are maps indicating how close the McBrooms’ home is to the Lone Jack District’s boundary line (it is right on it, with an arrow pointing to it), and showing an “enclave” of the District east of 2001st Road (circled); as you can see, the McBrooms live closer to Lone Jack Elementary than the families in that “enclave” east of 2001st Road:

DISTRICT BOUNDARY:



LOCATION OF McBROOMS' HOME & PROPERTY IN RELATION TO DISTRICT BOUNDARY:



As the above map makes plain, the McBrooms' home and property are literally within viewing distance of the Lone Jack School District boundary; it sits right on it. They are five miles from Lone Jack Elementary School. Requiring them to travel 20 miles away from the direction of their jobs, which allow the McBrooms to provide a home for their family and put food on the table, is an unreasonable and unusual hardship, and it is for this precise type of situation that the Missouri law and regulation relating to pupil assignment exist. The McBrooms have met and exceeded the "special circumstances" criteria established in the relevant regulation for pupil assignment, 5 CSR 30-261.050(4).

LEGAL STANDARDS

As you are certainly aware, the governing legal standard in this matter is the Missouri pupil assignment statute, found at RSMo. § 167.121. It reads, in its entirety, as follows:

If the residency of a pupil is so located that attendance in the district of residency constitutes an unusual or unreasonable transportation hardship because of natural barriers, travel time, or distance, the commissioner of education or his designee may assign the pupil to another district. Subject to the provisions of this section, all existing assignments shall be reviewed prior to July 1, 1984, and from time to time thereafter, and may be continued or rescinded. The board of education of the district in which the pupil lives shall pay the tuition of the pupil assigned. The tuition shall not exceed the pro rata cost of instruction.

Further, the regulation, 5 CSR 30-261.050(4), states in relevant part as follows: “Assignment requests based upon documented travel time of less than seventy-five (75) minutes shall be granted only upon the demonstration of special circumstances[.]”

The language of this statute and regulation could not be any clearer: unusual and unreasonable transportation hardship caused by travel time and distance are the criteria for approving a pupil assignment for a public school student in Missouri. Above, it has been made abundantly clear that the McBrooms easily meet and exceed the criteria for the approval of their request for assignment of [REDACTED] to the Lone Jack School District. Moreover, for all of the reasons described in detail above, the McBrooms have clearly demonstrated special circumstances with regard to their request for pupil assignment and the unreasonable (and frankly insurmountable) difficulty which transporting their daughter [REDACTED] to the Holden School District would represent.

Specifically, they are located five miles from the Lone Jack Elementary School and it is on their normal route to work; in contrast, they are located twenty miles away from the elementary school in Holden, and that elementary school is in the exact opposite direction of the McBrooms’ jobs in downtown Kansas City as measured from their home. Both the distance and travel time associated with enrolling their daughter in Holden schools is an unusual, unreasonable, and substantial hardship when compared to the distance and travel time that would be associated with their daughter attending Lone Jack Elementary School.

Missouri law states as follows:

1. The state board shall, in consultation with the boards of education of school districts, educational personnel, local associations, and organizations of parents whose children are enrolled in public schools throughout this state and individual parents and legal guardians whose children are enrolled in public schools throughout this state, adopt a policy by December 1, 2005, which encourages effective involvement by parents and families in support of their children and the education of their children. The policy adopted by the state board must be considered when the board:

...

- (2) Interacts with school districts, public schools, educational personnel, parents and legal guardians of pupils, and members of the general public in carrying out its duties pursuant to this title.

R.S.Mo. § 167.700. The statute continues, discussing the importance of the following when DESE makes decisions implementing education laws:

- (1) Promotion of regular, two-way, meaningful communication between home and school;
- (2) Promotion and support of responsible parenting;
- (3) Recognition of the fact that parents and families play an integral role in assisting their children to learn;
- (4) Promotion of a safe and open atmosphere for parents and families to visit the school that their children attend and active solicitation of parental and familial support and assistance for school programs;

- (5) Inclusion of parents as full partners in decisions affecting their children and families; and
- (6) Availability of community resources to strengthen and promote school programs, family practices, and the achievement of pupils.

In the McBrooms' case, approving their appeal and request for assignment of their daughter [REDACTED] to Lone Jack will accomplish and further each of the items discussed in the aforementioned statute, as discussed at length above.

Moreover, approving this request will cost the Petitioned District nothing. As the statute and regulation which govern this situation makes clear, should this petition and pupil assignment be approved, the Holden School District is required by law to pay the tuition of the McBrooms' child to the Petitioned District. In other words [REDACTED] attending Lone Jack Elementary School would cost the Lone Jack School District nothing. However, if the McBrooms were to try to enroll their daughter in the Lone Jack School District and pay tuition out of pocket, it has come to their attention recently that such tuition amounts to approximately \$10,000 per year; that is far in excess of what the McBrooms could afford.

The McBrooms are a good, hard-working, young family who have decided to put down roots in Lone Jack. They love their home and they love the Lone Jack community. They contribute to the Lone Jack community and only want what is best for their daughter [REDACTED], which I submit is also what is required by Missouri law. As described at length above, the best interests of the McBrooms' daughter are unquestionably served by her going to school in Lone Jack and not in Holden. I hope that you will exercise your power to rescind the review officer's denial of the McBrooms' request for pupil assignment for their daughter [REDACTED], and that DESE will approve this request for the reasons cited above, and most importantly, for [REDACTED]'s sake and wellbeing.

Sincerely,



Andrew Duncan

Enclosure



Roger Dorson, Ed.D. • Deputy Commissioner

Division of Financial and
Administrative Services

205 Jefferson Street, P.O. Box 480 • Jefferson City, MO 65102-0480 • dese.mo.gov

August 27, 2019

Charles & Amy McBroom
523 NW 2001 St Rd
Lone Jack MO 64070

RETURN RECEIPT REQUESTED

Dear Mr. & Mrs. McBroom,

I have received and reviewed your request for transportation hardship reassignment for your child, [REDACTED] McBroom, from the Holden R-III School District to the Lone Jack C-6 School District. The reassignment request was made pursuant to the provisions of Section 167.121 of the Revised Statutes of Missouri which states:

"If the residence of a pupil is so located that the attendance in the district of residence constitutes an unusual or unreasonable transportation hardship because of natural barriers, travel time or distance, the Commissioner of Education or his designee may assign the pupil to another district."

Information in your application indicates that you estimate the ride time for your child would be about 27 minutes in the morning and in the afternoon. Information obtained from the Holden R-III School District indicates the ride time by bus will be approximately 25 - 30 minutes in the morning and in the afternoon. Based upon this information and the information contained in your application, it is my finding that a transportation hardship has not been demonstrated and therefore your request for reassignment to the Lone Jack C-6 School District must be denied. The finding is based upon the requirements of 5 CSR 30-261.050 (4) in which the State Board of Education adopts a seventy-five (75) minute threshold requirement in finding a transportation hardship.

These findings may be appealed to the Commissioner of Education by written notice filed within ten (10) days from the receipt of the notification. That appeal should be directed to Dr. Margie Vandeven, PO Box 480, Jefferson City MO 65102-0480. Enclosed is a copy of the administrative rule 5 CSR 30-261.050 (4) which outlines this appeal process. If you have any further questions, you may contact me at (573) 751-0357.

Sincerely,

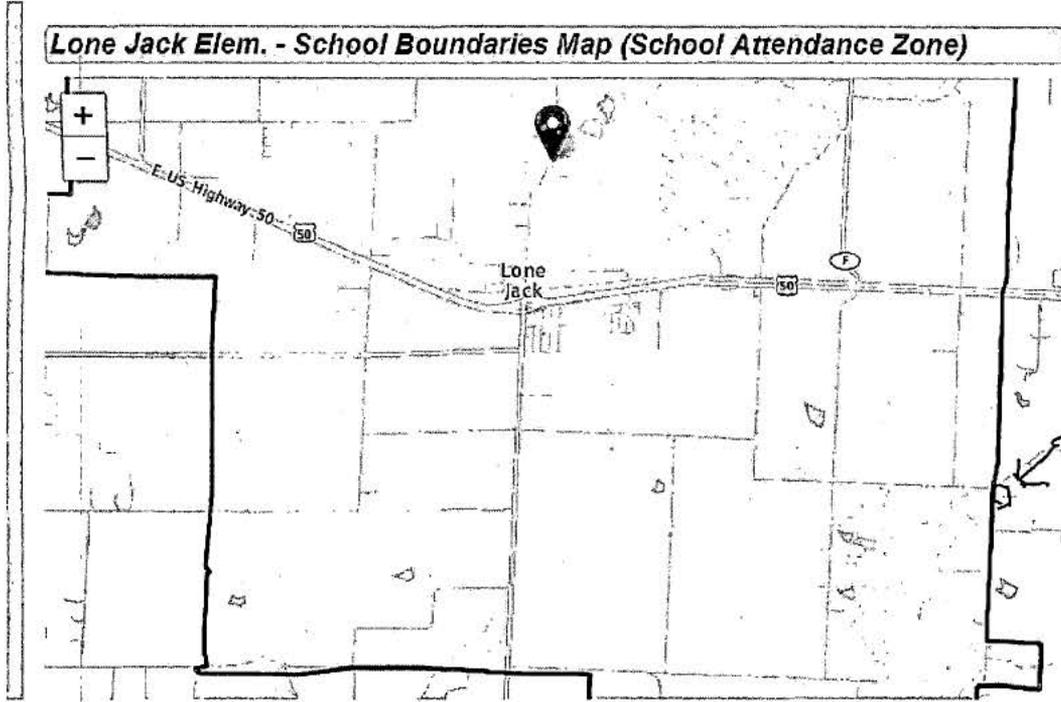
David Tramel
Coordinator
School Financial and Administrative Services

Enclosure

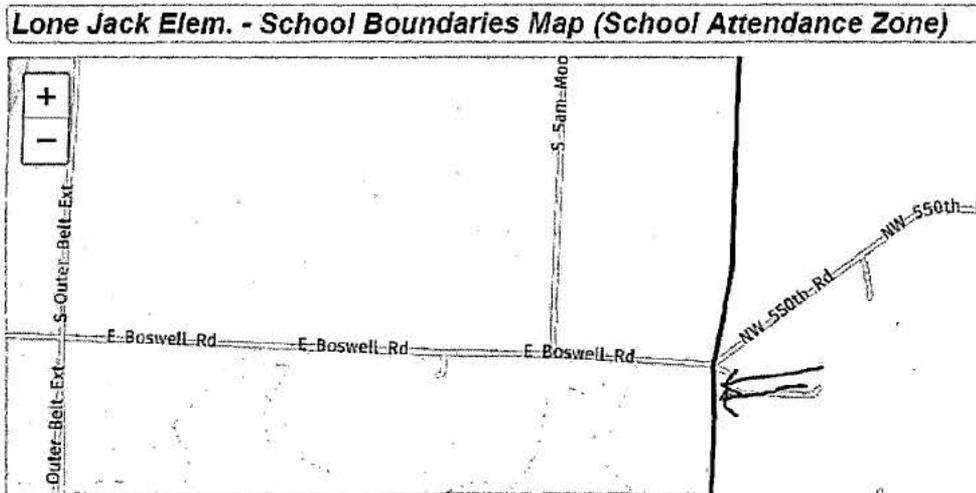
- c: Dr. Margie Vandeven, Commissioner
Dr. Roger Dorson, Deputy Commissioner
Mr. Tony Stansberry, Area Supervisor
Mrs. Shelly Aubuchon, Area Supervisor
Mrs. Margaret Keate Landwehr, Chief Counsel
Mr. Matthew Tarwater, Superintendent, Lone Jack C-6 School District
Mr. Michael Hough, Superintendent, Holden R-III School District

Map information to support request

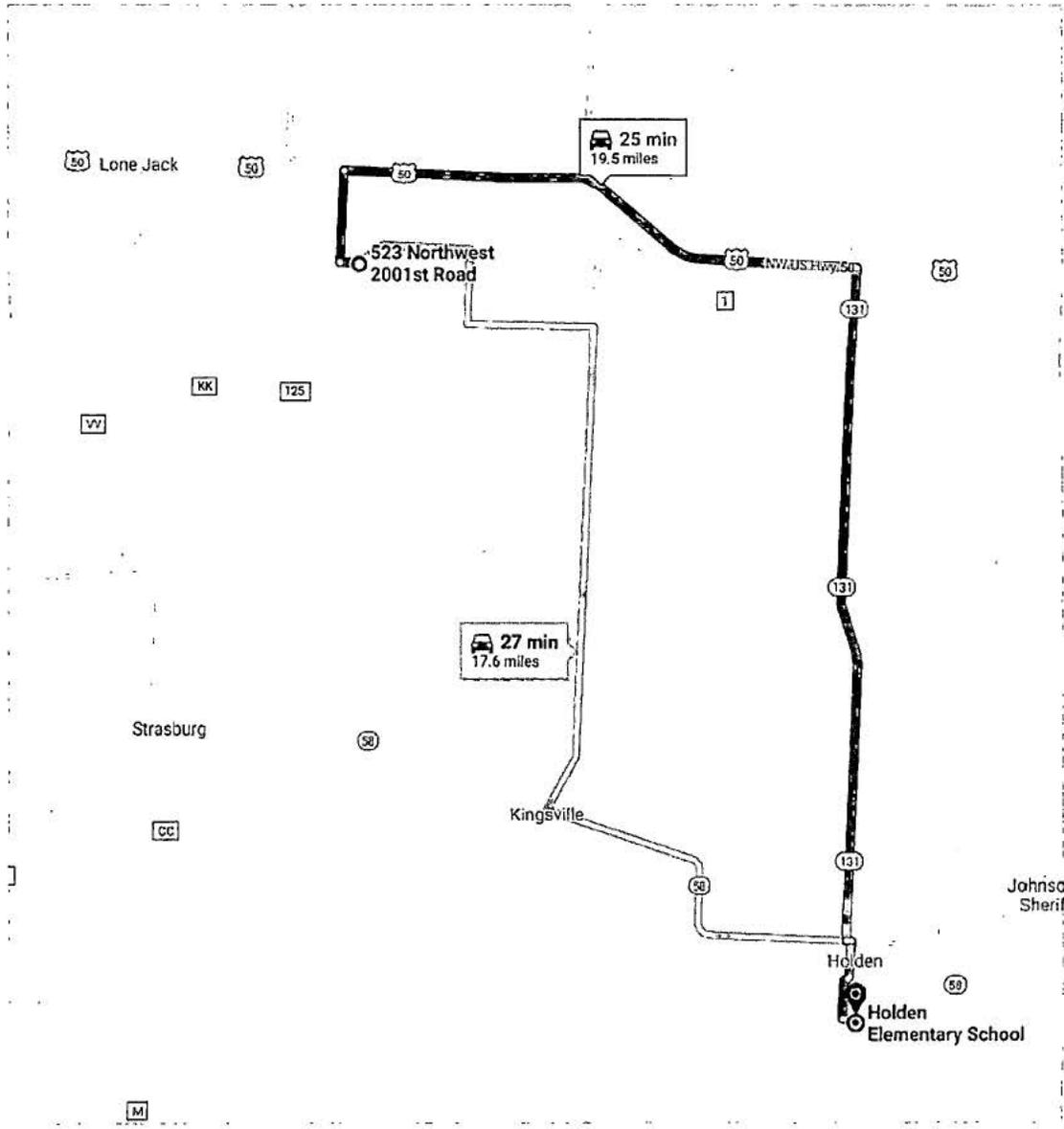
School District Map & Boundary info in relation to residence (blue arrow points to our residence, red shaded area is w/in Lone Jack District)



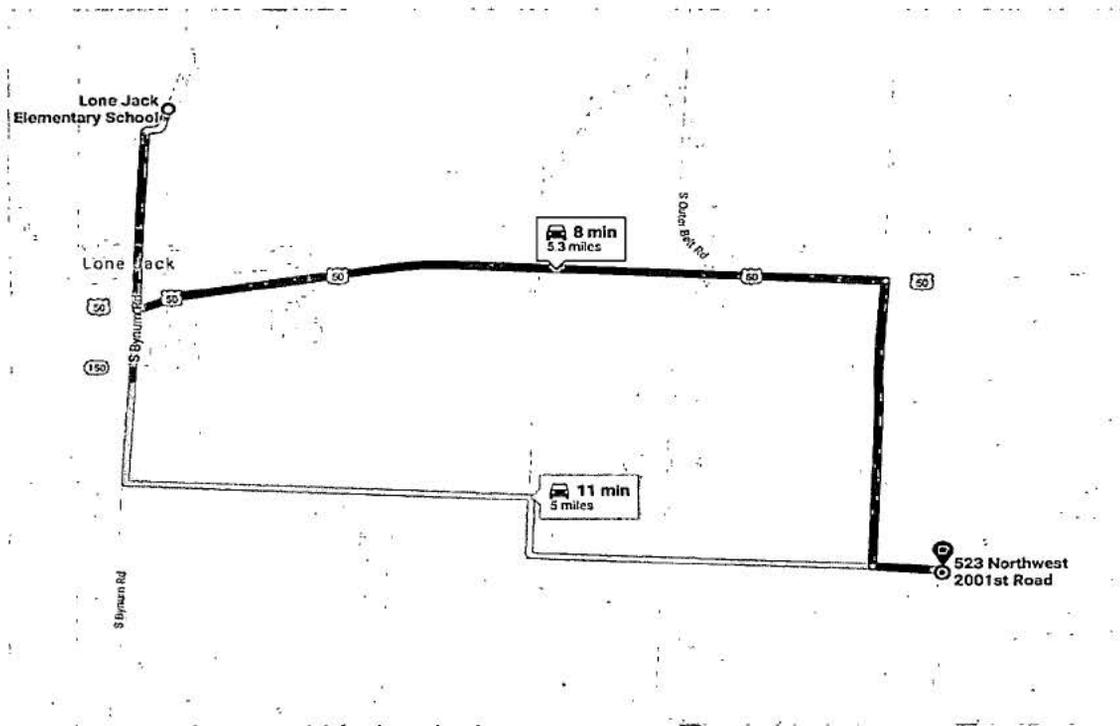
Zoomed in



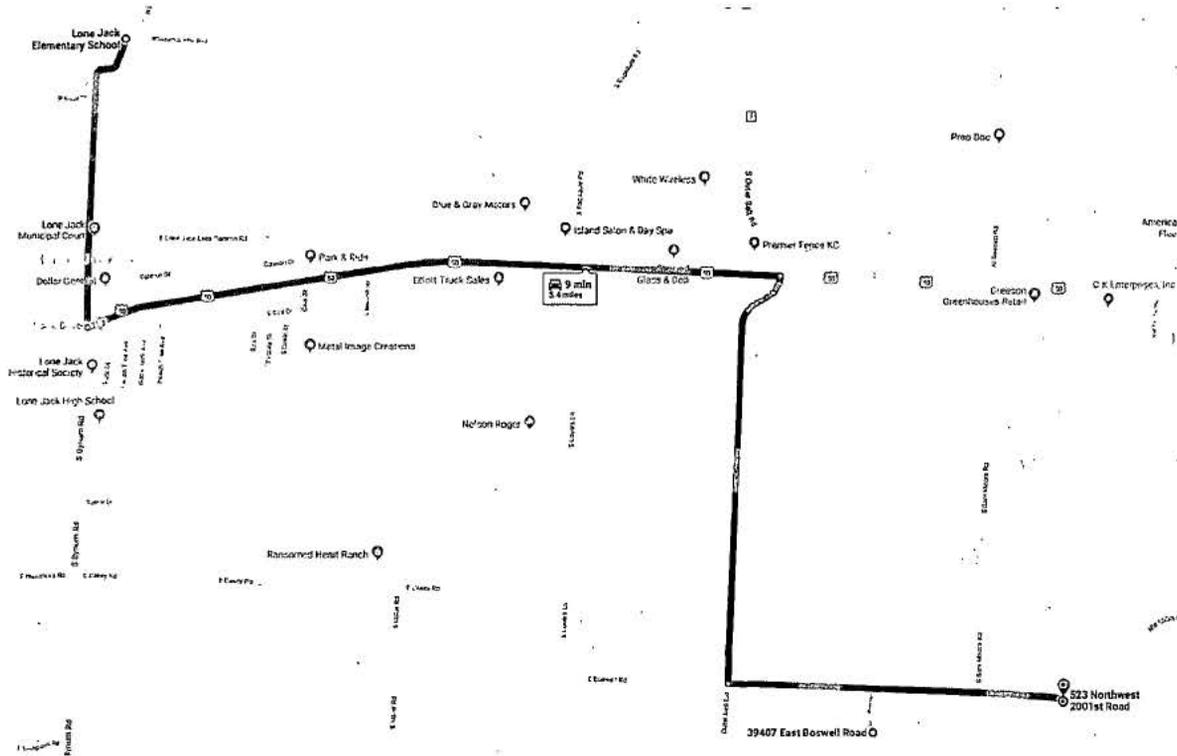
Map to Holden Elementary (currently assigned to) in relation to residence



Map to Lone Jack Elementary (requesting re assignment to) in relation to residence



Map showing distance of our house from closest current Lone Jack bus stop address referenced in Dr. Tarwater's email – (.6 miles or 1 minute away)



Zoomed in





MISSOURI DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
 SCHOOL ADMINISTRATIVE SERVICES Attn: David Trammel
 P.O. BOX 480, JEFFERSON CITY MO 65102-0480
REQUEST FOR PUPIL ASSIGNMENT

Section 167.121 – Assignment of pupil to another district-tuition, how paid, amount. – If the residence of a pupil is so located that attendance in the district of residence constitutes an unusual or unreasonable transportation hardship because of natural barriers, travel time, or distance, the commissioner of education or his designee may assign the pupil to another district. Subject to the provisions of this section, all existing assignments shall be reviewed prior to July 1, 1984, and from time to time thereafter, and may be continued or rescinded. The board of education of the district in which the pupil lives shall pay the tuition of the pupil assigned. The tuition shall not exceed the pro rata cost of instruction.

Section 167.241 – Transportation of pupils to another district. – Transportation for pupils whose tuition the district of residence is required to pay by section 167.131 or who are assigned as provided in section 167.121 shall be provided by the district of residence; however, in the case of pupils covered by section 167.131, the district of residence shall be required to provide transportation only to school districts accredited by the state board of education pursuant to the authority of the state board of education to classify schools as established in section 161.092, RSMo, and those school districts designated by the board of education of the district of residence.

Instructions: Complete all items on the request and mail to School Administrative Services using the above address.

I. PARENT OR GUARDIAN DATA

NAME **Charles & Amy McBroom** DATE **7/12/2019**

ADDRESS **523 NW 2001 St Rd Lone Jack MO 64070**

PHONE NUMBER: HOME **660-864-4991** PHONE NUMBER: BUSINESS **816-516-5184**

II. PUPIL DATA

1. NAME	AGE	GRADE
McBroom	4	K in Fall 2020
2. NAME	AGE	GRADE
3. NAME	AGE	GRADE
4. NAME	AGE	GRADE

III. DISTRICT OF RESIDENCE

1. NAME OF DISTRICT **Holden**

2. BUS ROUTE INFORMATION
 A.M. ROUTE: ACTUAL TIME ON BUS _____ ACTUAL MILES CHILD IS ON BUS _____
 P.M. ROUTE: ACTUAL TIME ON BUS _____ ACTUAL MILES CHILD IS ON BUS _____

IV. SCHOOL DISTRICT TO WHICH ASSIGNMENT IS REQUESTED

1. NAME OF DISTRICT **Lone Jack**

2. HOW WILL TRANSPORTATION BE PROVIDED IF AN ASSIGNMENT IS MADE?
 BY DISTRICT OF RESIDENCE CONTRACT WITH SERVING DISTRICT CONTRACT WITH PARENT OTHER _____

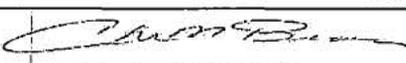
3. BUS ROUTE/TRANSPORTATION INFORMATION
 A.M. ROUTE: ACTUAL TIME CHILD IS TRAVELING _____ ACTUAL MILES CHILD IS TRANSPORTED _____
 P.M. ROUTE: ACTUAL TIME CHILD IS TRAVELING _____ ACTUAL MILES CHILD IS TRANSPORTED _____

V. INFORMATION SUPPORTING THE REQUEST FOR ASSIGNMENT

Please attach a map showing the district boundary line, the location of the home of the pupil(s) involved in the request, the location of the school buildings involved, natural barriers that may impact on this request, and the route the bus travels. Show A.M. and P.M. routes separately, if different. Be specific on time and distance information.

SUPPORTING INFORMATION DOCUMENTING UNUSUAL OR UNREASONABLE TRANSPORTATION HARDSHIP

See attached letter, documentation & maps. Lone Jack District did not provide a bus route map or travel time, but provided location of nearest current stop to our house (.6 miles away), with pick up and drop off time estimates. Holden District did not provide a bus route map or travel times, but only estimated pick up time of 7:05 am, and drop off time of 4:15pm.

SIGNATURE  **Amy McBroom**



Margaret M. Vandeven, Ph.D. • Commissioner of Education

205 Jefferson Street, P.O. Box 480 • Jefferson City, MO 65102-0480 • dese.mo.gov

October 25, 2019

Mr. Andrew Duncan
 Colantuono, Bjerg, Guinn, Keppler LLC
 Suite 375 Del Sarto Building
 7015 College Boulevard
 Overland Park, KS 66211

SENT VIA EMAIL: ad@ksmolaw.com
 AND CERTIFIED MAIL RETURN
 RECEIPT REQUESTED #7006 0100
 0005 2170 4762

RE: Appeal of Denial by Review Officer of Request for Pupil Assignment Pursuant to
 § 167.121, RSMo, and 5 CSR 30-261.050

Dear Mr. Duncan:

I have received the request for a review of the decision of David Tramel, Coordinator and Review Officer, School Financial and Administrative Services, that you filed on behalf of your clients Charles and Amy McBroom. Mr. Tramel denied your request for the McBroom child to be reassigned from the Holden R-III School District to the Lone Jack C-6 School District based upon a transportation hardship.

You have cited § 167.121, RSMo, and 5 CSR 30-261.050 as references for your appeal. Section 167.121, RSMo, states: "If the residence of a pupil is so located that the attendance in the district of residence constitutes an unusual or unreasonable transportation hardship because of natural barriers, travel time, or distance, the commissioner of education or his or her designee may assign the pupil to another district."

Merriam-Webster defines "pupil" as "a child or young person in school." By this definition, the McBroom's four-year-old child is not yet a pupil in a school of the district of residence. Therefore, your application for transfer is premature.

Even though your request is premature, I would like to point out that the circumstances outlined in § 167.121, RSMo, and in 5 CSR 30-261.050, that constitute an unusual or unreasonable transportation hardship refer to the transportation of a pupil to school. For example, 5 CSR 30-261.050 (1)(G) and (H) define travel distance and travel time of the pupil—not the parent.

Mr. Andrew Duncan
Page 2
October 25, 2019

Given that the statute and the rule speak specifically to the residence of a pupil and the resulting travel time to school, it is my decision to uphold the denial of the transportation hardship request dated August 27, 2019.

If your client disagrees with this decision, then under 5 CSR 30-261.050(8), your client may file an appeal with the State Board of Education within ten days from the receipt of this letter.

Sincerely,



Margie Vandeven
Commissioner of Education

c: Roger Dorson, Deputy Commissioner, Division of Financial and Administrative Services
✓ David Tramel, Coordinator, Financial and Administrative Services
John Ruddy, Area Supervisor
Shelly Aubuchon, Area Supervisor
Margaret Landwehr, Chief Counsel
Charles and Amy McBroom, Parents
Matthew Tarwater, Superintendent, Lone Jack C-6 School District
Michael Hough, Superintendent, Holden R-III School District

COLANTUONO BJERG GUINN KEPPLER LLC

ANDREW DUNCAN
ad@ksmolaw.com
913.322-7215 DIRECT DIAL

SUITE 375 DEL SARTO BUILDING
7015 COLLEGE BOULEVARD
OVERLAND PARK, KANSAS 66211
(BY APPOINTMENT ONLY)
913.345.2555
913.345-2557 FAX

Dept. of Elementary
& Secondary Education
ADMITTED IN KANSAS

NOV 07 2019

Office of the
Commissioner of Education

November 4, 2019

VIA EMAIL AND USPS

Dr. Margie Vandeven
Commissioner, Missouri Department of Elementary and Secondary Education
P.O. Box 480
Jefferson City, Missouri 65102-0480
commissioner@dese.mo.gov

RE: SECOND-LEVEL APPEAL TO MISSOURI STATE BOARD OF EDUCATION OF DENIAL BY DESE COMMISSIONER OF APPEAL REQUESTING PUPIL ASSIGNMENT PURSUANT TO R.S.Mo. § 167.121 AND 5 C.S.R. § 30-261.050(8)

PETITION/APPEAL FOR ██████████ McBROOM TO BE ASSIGNED TO LONE JACK C-6 SCHOOL DISTRICT FROM HOLDEN SCHOOL DISTRICT

Dear Commissioner Vandeven,

Pursuant to 5 C.S.R. § 30-261.050(8), and your letter dated October 25, 2019, I am hereby timely appealing to the State Board of Education your denial of my clients' previous appeal of the denial of their petition for pupil assignment. Below is the appeal addressed to the State Board of Education. Please ensure that this appeal is placed on the agenda of the State Board of Education, as set forth in 5 C.S.R. § 30-261.050(9) and please notify me of the date and time that this matter will be placed before the State Board of Education.

To the members of the State Board of Education:

My name is Drew Duncan and, along with Cliff Cohen, I represent the family of Charles and Amy McBroom with respect to their petition, pursuant to the above-referenced Missouri statute and regulation, for an assignment of their four-year old daughter ██████████ to attend Lone Jack C-6 School District (the "Petitioned District" or "Lone Jack") schools when she begins kindergarten next year in Fall 2020. The McBrooms' request for pupil assignment was filed with DESE in July 2019, and was subsequently denied by review officer Mr. David Tramel of DESE on August 27, 2019 and the McBrooms received that denial letter on August 29, 2019. Thereafter, my clients timely appealed that initial denial to DESE Commissioner Margie Vandeven, who subsequently denied that appeal via a letter dated October 25, 2019, which was received by me and my clients on October 28. A copy of Commissioner Vandeven's October 25 letter is attached as **Exhibit 1**. Pursuant to the regulation referenced above and the process outlined in

Commissioner Vandeven's October 25 letter, my clients are hereby timely appealing the aforementioned denials of their request for pupil assignment to you, the Missouri State Board of Education, and respectfully seeking the approval of the McBrooms' request for pupil assignment for their daughter, [REDACTED].

[REDACTED] McBroom, the pupil, and her parents each meet the criteria established by the statute and regulation in order to be granted an assignment. As will be explained below, [REDACTED] McBroom and her parents each would experience an unusual and unreasonable transportation hardship should [REDACTED] be required to attend schools in the Holden School District (the "Resident District" or "Holden"). The McBrooms live on the very boundary between the Petitioned District and the Resident District, with the entrance to the McBrooms' driveway being directly on the Resident District's boundary. However, the distance from the McBrooms' home to the Holden elementary school is approximately 20 miles, while the distance from the McBrooms' home to the Lone Jack elementary school is only approximately 5 miles.

Further, the Lone Jack elementary school is directly on the McBrooms' commute to their jobs in downtown Kansas City, while the Holden school is approximately 20 miles in the opposite direction of the McBrooms' commute. Moreover, the bus pickup and drop-off times for [REDACTED] to attend the Resident District are 7:05AM and 4:15PM, respectively. The McBrooms would not be able to be home with their daughter at either of those times if they wished to maintain their employment, which is obviously an absolute necessity in order to support their family. Leaving a five-year old child alone to catch the bus in the morning and return to an empty home in the afternoon is obviously not reasonable and very dangerous, and thus impossible, which is another reason why [REDACTED] McBroom, as the pupil in question, meets the criteria established by statute and regulation for their daughter [REDACTED] to be granted an assignment to the Lone Jack district.

Moreover, special circumstances are further shown in the McBrooms' case due to the material misrepresentations regarding the pupil assignment process and procedure which were made by the former owner of their home and the realtor representing that former owner. In short, the former owners of the McBrooms' current home made false and material statements regarding the pupil assignment process, how such requests were made, who decided such requests, and also falsely claimed that the sellers had been granted such a pupil assignment request for their own children. Based upon these misrepresentations, the McBrooms purchased their home directly on the edge of the Lone Jack school district. The McBrooms uprooted their lives based upon these false statements by the former owner of their home who made these material misrepresentations in the course of negotiations to sell the home to the McBrooms.

Finally, this appeal will address and rebut the reasoning provided by Commissioner Vandeven in her October 25 appeal denial letter. This request for pupil assignment is not premature, since [REDACTED] will start kindergarten in the Fall 2020 term, which is rapidly approaching, and it is frankly illogical to read the regulation and statute in question as requiring a student to actually have to experience the transportation hardship before the student and her family can request an assignment to another district, particularly when all of the relevant facts and the law in question are known regarding the student's hardship and can be avoided by a proactive assignment of the pupil to another district which has schools much closer to the pupil's residence. Second, Commissioner Vandeven's appeal denial disregards that hardship *has* been demonstrated for the pupil in this matter, [REDACTED], and the hardship is not simply borne by her parents. Further, the Commissioner's denial decision ignores that the statute and regulation's language are not solely

focused on the pupil's hardship, and that the hardship experienced by [REDACTED]'s parents will necessarily cause hardship for [REDACTED], as explained in detail below.

FACTUAL BACKGROUND

The McBrooms purchased their dream home on a small parcel of land just outside Lone Jack, Missouri in 2015. The McBrooms' home has a Lone Jack address (523 NW 2001st Rd., Lone Jack, Missouri 64070). The McBrooms wanted to raise their family in a rural and more peaceful setting while still retaining the ability to have a reasonable commute to their jobs in downtown Kansas City (both Mr. and Mrs. McBroom work in downtown Kansas City). The McBrooms felt they found the perfect home to fit both of those goals when they learned of the home which they ultimately purchased in Lone Jack. It had taken the McBrooms years to work hard and save enough money to finally purchase their dream home.

When the McBrooms began seriously considering purchasing their home back in 2015, they were acutely concerned about the school situation. The sellers' agent, Peggy Ragan, originally listed the home as being within the Petitioned District's boundaries. As the negotiations between the McBrooms and the home's sellers advanced, Mr. McBroom learned that, inexplicably, the home was on the boundary between the Petitioned District and the Holden School District and was actually assigned to the Holden District, despite the home being approximately 20 miles from the nearest Holden School District elementary school. This caused great concern to the McBrooms, who expressed their unease to the sellers of the home and their real estate agent.

The sellers of the home, named Sean and Terry Olsen, responded to the McBrooms' concerns and stated that they were allowed to send their children to Lone Jack schools instead of to Holden schools via the Missouri residency waiver statute. Mrs. Olsen informed the McBrooms of RSMo. § 167.121 and claimed that her family and neighboring families whose homes were in the Holden District had been approved by the Lone Jack district to send their children to Lone Jack schools using that statute. Below is what the Olsens stated to the McBrooms during the home sale negotiations:

Also attached, the Lone Jack School Board Policy PDF (Pages 398-402 explains the process) & the Hardship & Missouri Revised Statutes that talks about the legalities around why a school must allow a non-resident to attend there. The reason we used and that the other parents of kids down the street used is: 167.121. 1. If the residence of a pupil is so located that attendance in the district of residence constitutes an unusual or unreasonable transportation hardship because of natural barriers, travel time, or distance, the commissioner of education or his designee may assign the pupil to another district. We told them that we worked in Kansas City and the travel time and distance to go 19 miles one way to take our child to the Holden School then turn around and come back 19 miles and then continue on to work from there was a hardship when we were only a 5 miles from the Lone Jack School and drove right past it every day going to and from work. This allowed for the LJ school to approve the request and submit the appropriate paperwork. They have to have the state of Missouri commissioner of education then transfer the money allotted for those children living at our house from the Holden School District to the Lone Jack School district. Basically, its all politics around money. ☺

Further, the Olsens' realtor stated the following to the McBrooms after the McBrooms asked specific questions about the school district to which the home was assigned, and the ease with which a pupil assignment could be effected:

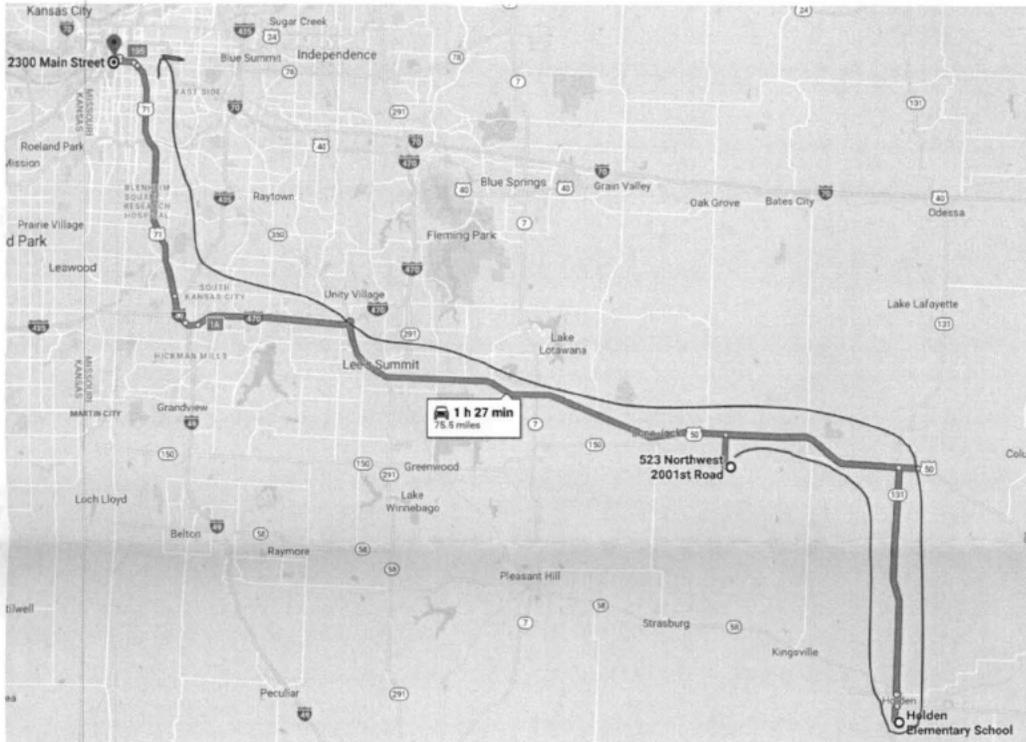
I am attaching a response from the seller. I also have all the complete ordinances and documents from the school. They both worked at Sprint and sent their kids to school in Lone Jack. No tuition and just had to establish as working parents what a hardship that would be to go to Holden since it's so close to Lone Jack and on their way to work versus going to Holden.

Believing that statement by the Olsens, the McBrooms purchased their home, and then earlier this year, as their daughter [REDACTED] approached school-age, they reached out directly to the Lone Jack district to seek a residency waiver and an assignment for [REDACTED], but were declined due to the claim of the Lone Jack district that it did not have the authority to grant such an assignment without approval by DESE, and were referred to this process and instructed to petition DESE directly for an assignment. The McBrooms then submitted their request for pupil assignment to DESE directly in July 2019. Only later, after retaining me in the late Spring of 2019, did the McBrooms learn that the Olsens did not have school-age children at the time of the sale and apparently had never actually completed the pupil assignment request process and had it approved.

The McBrooms and I certainly understand that the false statements of private individuals are not binding upon the Lone Jack school district or upon DESE, but they are nonetheless illustrative and relevant to this appeal and the McBrooms' situation, because the pertinent regulation references a required finding of "special circumstances" in order to grant a request for pupil assignment in cases where the travel time is less than seventy-five minutes. Here, the McBrooms purchased their home based upon statements by the seller of that home which explicitly stated that securing enrollment with the Lone Jack school district was a simple and guaranteed process which the sellers themselves had previously successfully completed. These statements were false but they induced the McBrooms to purchase their home. Now the McBrooms are in an extremely difficult situation, as will be explained in depth below, because transporting their daughter to Holden Schools will cause significant harm to the employment of Mr. and Mrs. McBroom, and that employment is necessary to support their family. All of the preceding meets the criteria for "special circumstances" faced by the McBrooms, and thus points toward the granting of their request for pupil assignment for their daughter [REDACTED].

TRANSPORTATION HARDSHIP NECESSITATING THE McBROOMS' WAIVER APPLICATION

As mentioned above, the McBrooms work in downtown Kansas City. Below is a helpful map illustrating the commute the McBrooms would have if they are forced to enroll their child in the Holden School District; the red line and arrow indicates the travel route from their home (at 523 NW 2001st Rd. in Lone Jack) to Holden, and then all the way back to Kansas City for work:



As you can see, this makes the McBrooms' commute nearly 76 miles, one way. Each afternoon/evening, the McBrooms would need to reverse this commute in order to pick up their daughter from the elementary school in Holden, and then drive back to their home, **for a total of 152 round-trip miles, each and every day.** As the map above makes clear, such a commute would be an hour-and-a-half long, each way, **making for a total daily commute of three hours.** While the relevant regulation defines "travel time" in terms of the time the student spends in transportation to and from school, the "special circumstances" as established in 5 CSR 30-261.050(4) is not so limited, and a daily three-hour commute simply to drop off and pick up their daughter unquestionably meets that "special circumstances" standard.

Attached to this letter are also more detailed maps that show the boundary map for the Petitioned District and the location of the McBrooms' home directly on the edge of that boundary, a map showing a direct trip (without stops) from the McBrooms' home to the Holden Elementary School (a distance of 17.6 miles and taking 27 minutes in ideal conditions, without stops as can be expected on any bus route), a map showing the distance from the McBrooms' home to the Lone Jack Elementary School (a distance of 5.3 miles, taking 8 minutes, and directly on the McBrooms' way to work), and a map of the Lone Jack School District bus stop closest to the McBrooms' home per the Lone Jack Superintendent (that bus stop is 0.6 miles and 1 minute away from the McBrooms' home). Mr. McBroom asked the Resident District and the bus company with which it contracts for the closest stop to the McBrooms' home, but the only response Mr. McBroom received was an estimate of the pickup (7:05AM) and drop-off (4:15PM) times for his daughter [REDACTED] should she attend Holden Elementary School.

If this appeal is denied, and the McBrooms were left with enrolling their child in the Holden schools, the McBrooms would have no choice but to drop off their daughter [REDACTED] (who is, again, a five-year old child) very early in the morning and pick her up from school very late in the afternoon, so that the McBrooms could work full-time at their jobs in downtown Kansas City. As

such, ██████ would necessarily be at the Holden Elementary School much longer than if she was attending Lone Jack Elementary, due to being dropped off earlier in the morning and picked up later in the day as a result of the commute to the Holden school. This means she would be spending less time with her family each and every day.

In comparison to the map and description above of the McBrooms' commute should their daughter be required to attend Holden schools, below is a map of the McBrooms' commute should ██████ be allowed to attend the Petitioned District; the red line and arrow indicates the route:



The McBrooms' commute is reduced by forty minutes each way, resulting in a reduction in total commute time every day of eighty minutes; in other words, the McBrooms' commute would be *cut in half* if ██████ is permitted to attend the Lone Jack School District. As you can see in the map immediately above, Lone Jack Elementary School is directly on the route from the McBrooms' home to their jobs in downtown Kansas City. The above route even incorporates the McBrooms dropping off their soon-to-be-newborn child at daycare in Lee's Summit located right off of 50 Hwy on the way into work.

The above travel times and the bus pickup and drop-off times provided by the Holden School District firmly and clearly establish that the McBrooms not only meet the standard of "unusual and unreasonable transportation hardships" and are also "special circumstances" causing extreme hardship to the McBrooms and, more importantly, to their daughter ██████, as referenced in 5 C.S.R. § 30-261.050(4). Moreover, the term "travel distance" is specifically defined within the regulation as "The distance traveled to transport a pupil from the pupil's place of residence or other designated pickup point to the site of the pupil's educational placement", and is thus clearly a factor to be considered in deciding a request for pupil assignment. In the McBrooms' case, the travel distance from their home to Holden is also significantly more than the travel distance from their home to the elementary school in Lone Jack.

FURTHER HARDSHIPS CAUSED BY CURRENT ASSIGNMENT TO
RESIDENT DISTRICT HOLDEN SCHOOL DISTRICT

The McBrooms are a hard-working couple. Mr. and Mrs. McBroom both have good jobs in downtown Kansas City, and like so many of us, require two incomes in order to make ends meet. They are both expected to work full-time, normal shifts at work, including arriving at a standard time in the morning and leaving at a standard time in the afternoon. This means leaving home at a reasonable time in order to make their daily commute.

If this appeal is denied and [REDACTED] is forced to attend the Resident District schools in Holden, the McBrooms will not be able to utilize school bus services for their child, because they will have already left home when the school bus comes by in the morning, and will not yet be home when the bus comes by in the afternoon. Specifically, as discussed above, the McBrooms have been informed by Apple Buses (the contractor employed by the Holden School District) that the bus from Holden schools would pick up [REDACTED] at approximately 7:05AM before school and drop her off after school at approximately 4:15PM every afternoon. On a normal work day, the McBrooms currently leave their home no later than 6:30AM to begin their commute to work, and normally do not arrive home until 5:15PM at the earliest, which permits the McBrooms to work full eight-hour shifts. Because of those significant bus pick-up and drop-off timing issues, the Holden school bus is not a viable option for the McBrooms, since leaving their five-year old daughter alone at home to catch the bus in the morning and then having her be dropped off by the bus, alone, is obviously not an option. This means that the McBrooms would need to secure before- and after-school care of some sort at Holden schools, assuming it is even offered, which would unquestionably be an additional cost, and, as mentioned above, deprive the McBrooms and their daughter of quality family time. The before- and after-school care would make the McBrooms responsible for dropping their daughter off extremely early and picking her up very late from Holden schools every day, again, assuming that the Holden schools even offer latchkey programs that operate that early and late in the day. These very long days are almost certain to cause fatigue in a very young child like [REDACTED] and would harm her sleep patterns. Further, the McBrooms would be deprived of the opportunity to participate in, and attend, school-related and extracurricular activities for their daughter if she is required to attend Holden schools.

Within his denial letter, DESE's review officer, Mr. Tramel, states as follows:

Information in your application indicates that you estimate the ride time for your child would be about 27 minutes in the morning and in the afternoon. Information obtained from the Holden R-III School District indicates the ride time by bus will be approximately 25 - 30 minutes in the morning and in the afternoon. Based upon this information and the information contained in your application, it is my finding that a transportation hardship has not been demonstrated and therefore your request for reassignment to the Lone Jack C-6 School District must be denied. The

A copy of Mr. Tramel's denial letter is enclosed herewith as **Exhibit 2**.

Respectfully, Mr. Tramel has ignored the above bus pick-up and drop-off timing issues, which were raised in the McBroom's request filed with DESE. All of the transportation issues discussed above clearly meet the "special circumstances" standard set forth in 5 CSR 30-261.050(4). Moreover, it is not at all clear that the bus ride for the McBrooms' daughter to and from Holden would only be approximately 27 minutes each way; I have every reason to believe that such a bus ride would be longer considering the twenty-mile distance from the McBrooms' home to the Holden Elementary School.

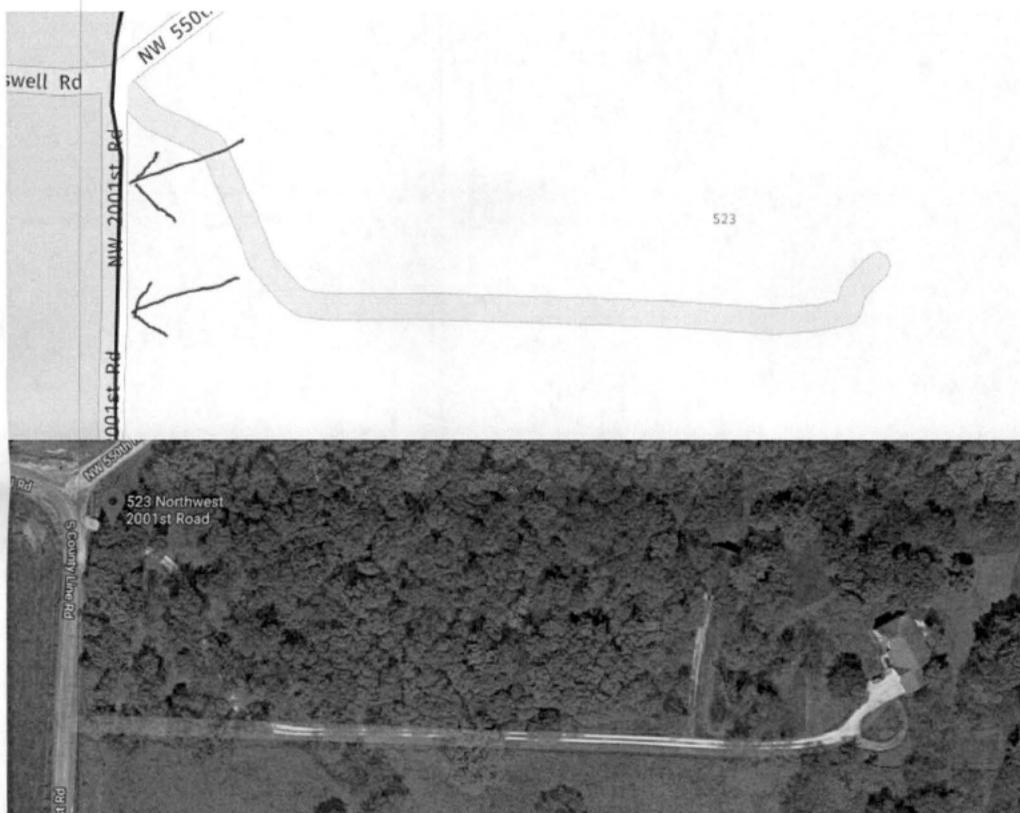
Further, the McBrooms currently routinely ride the commuter bus from the Lee's Summit, Missouri park and ride lot at 50 Hwy and Chipman Road to their jobs in downtown Kansas City, via the KCATA bus system, instead of actually driving into downtown. This saves the McBrooms commute-related costs, such as fuel and wear-and-tear on their vehicles. Riding the commuter bus is also beneficial for the environment and helps unclog the roads and highways. If the McBrooms' waiver application is approved, they can continue to ride this commuter bus because they would have time to drop their child off at Lone Jack Elementary, and still catch the commuter bus from Lee's Summit to downtown KC, and vice versa in the afternoon. However, if their daughter is forced to attend Holden schools, this commuter bus would not be an option for the McBrooms.

THE LONE JACK DISTRICT BOUNDARY ABUTS THE McBROOMS' HOME AND JUTS OUT TO INCLUDE SOME HOMES EAST OF 2001st ROAD

Below are maps indicating how close the McBrooms' home is to the Lone Jack District's boundary line (it is right on it, with an arrow pointing to it), and showing an "enclave" of the District east of 2001st Road (circled); as you can see, the McBrooms live closer to Lone Jack Elementary than the families in that "enclave" east of 2001st Road:

DISTRICT BOUNDARY:



LOCATION OF McBROOMS' HOME & PROPERTY IN RELATION TO DISTRICT BOUNDARY:

As the above map makes plain, the McBrooms' home and property are literally within viewing distance of the Lone Jack School District boundary; it sits right on it. They are five miles from Lone Jack Elementary School. Requiring them to travel 20 miles away from the direction of their jobs, which allow the McBrooms to provide a home for their family and put food on the table, is an unreasonable and unusual hardship, and it is for this precise type of situation that the Missouri law and regulation relating to pupil assignment exist. The McBrooms have met and exceeded the "special circumstances" criteria established in the relevant regulation for pupil assignment, 5 CSR 30-261.050(4).

REBUTTAL OF REASONING SET FORTH IN COMMISSIONER VANDEVEN'S APPEAL
DENIAL DATED OCTOBER 25, 2019

First, Commissioner Vandeven's denial letter states that because [REDACTED] is not yet a pupil, because she is scheduled to start kindergarten next fall, she is not a "pupil" and therefore not covered by the assignment statute and regulation. Respectfully, that is legally incorrect. The statute in question, RSMo. § 167.121, does not define "pupil" and neither does the relevant regulation, 5 CSR 30-261.050(4). However, the statute does state that if the pupil's "attendance in the district of residency constitutes an unusual or unreasonable transportation hardship because of natural barriers, travel time, or distance, the commissioner of education or his designee may assign the pupil to another district." Here, each and every one of the facts regarding [REDACTED]'s residence and her transportation hardship are clearly known, and it is unquestionable she will be a pupil in only ten short months, therefore DESE may assign [REDACTED] to another district. The Supreme Court of Missouri, sitting *en banc*, has ruled in similar legal circumstances that matters are ripe for adjudication "when (1) the facts necessary to adjudicate the underlying claims are fully

developed and (2) the laws at issue are affecting the plaintiffs in a manner that gives rise to an immediate, concrete dispute.” *Foster v. State*, 352 S.W.3d 357, 360 (Mo. 2011); *see also Planned Parenthood of Kansas v. Nixon*, 220 S.W.3d 732, 738–39 (Mo. 2007) (holding in a similar context, “There can be a ripe controversy before [harm is suffered by a plaintiff]. Parties need not subject themselves to [foreseeable harm before seeking relief] ... [o]nce the gun has been cocked and aimed and the finger is on the trigger, it is not necessary to wait until the bullet strikes to [seek relief].”).

Here, as noted above, all of the facts are known regarding the hardship ██████ and her family will experience if she is forced to attend Holden School District, and the law in question and how it affects ██████ and her family is likewise known. Under Missouri law, there is no requirement that ██████ and her family must wait until they actually experience the harm of her attendance at the Holden schools to request a pupil assignment. Moreover, such a requirement is fundamentally at odds with the very purpose of the pupil assignment statute and regulation, which are designed to *prevent* that type of harm to children and their families. ██████’s assignment request is ripe for decision on the merits by the State Board of Education.

Second, Commissioner Vandeven’s denial of ██████’s prior appeal states the following:

Even though your request is premature, I would like to point out that the circumstances outlined in § 167.121, RSMo, and in 5 CSR 30-261.050, that constitute an unusual or unreasonable transportation hardship refer to the transportation of a pupil to school. For example, 5 CSR 30-261.050 (1)(G) and (H) define travel distance and travel time of the pupil—not the parent.

See Exhibit 1.

Respectfully, Commissioner Vandeven has ignored that the harms cited above, which were likewise cited to Commissioner Vandeven, are harms which will be suffered by ██████, the pupil, and not just her family. The entire focus of this request for assignment on ██████’s behalf is to avoid harm to ██████. Specific harms ██████ will suffer due to her current assignment to Holden School District are discussed at significant length above. Moreover, keep in mind that harms which her parents will experience will likewise cause ██████ harm too, either directly or indirectly. For example, the discussion above of the McBrooms’ commute times if ██████ is required to attend Holden schools makes clear that such an extended commute has a direct impact and harm upon ██████, because she will be stuck at school before and after the regular school term for a longer period than if she were assigned to Lone Jack schools, and further, she would be deprived of significant time with her parents if she were forced to attend Holden schools, which is a direct harm upon her, as it goes without saying that a child spending time with her parents is key to developing and maintaining not only a healthy and loving family relationship, but also in helping ██████ develop into a well-adjusted child and young woman.

Further, Commissioner Vandeven’s sole focus on whether the harms in question are applicable to the pupil ignores the actual language in the statute and regulation. Again, here is the relevant language of the statute:

If the residence of a pupil is so located that attendance in the district of residence **constitutes an unusual or unreasonable transportation hardship because of natural barriers, travel time, or distance**, the commissioner of education or his or her designee may assign the pupil to another district[.] (emphasis supplied)

As you can see, there is nothing in the statute that says the unusual or unreasonable transportation hardship is limited to that experienced by the student alone; if that were the case, the legislature would have added such limiting language after the word hardship, for example by writing the statute to read, "If the residence of a pupil is so located that attendance in the district of residence constitutes an unusual or unreasonable transportation hardship **for the pupil** because of natural barriers, travel time, or distance..." It is apparent that the hardship referenced in the statute applies to hardships experienced by the pupil or her parents. That interpretation is reinforced by the relevant language in the regulation in question:

(1)(G) Travel distance—The distance traveled to transport a pupil from the pupil's place of residence or other designated pickup point to the site of the pupil's educational placement; and

(H) Travel time—That period of time required to transport a pupil from the pupil's place of residence or other designated pickup point to the site of the pupil's educational placement.

...

(2) A petition may be filed with the commissioner of education to assign a pupil to another district based upon the existence of an unusual or unreasonable transportation hardship. This petition must outline the basis for the request for assignment and be signed by the petitioning party.

Those relevant provisions are *not* limited to the distance traveled by a pupil or the experience of a hardship by the pupil alone. In fact, the definitions of "travel distance" and "travel time" refer explicitly to what a non-pupil must do "to transport a pupil", and not "the distance traveled by a pupil" or "that period of time a pupil travels...", which would be the case if the focus on hardship was exclusively pupil-centric.

Here, ██████ McBroom and her parents have demonstrated that they all will suffer significant hardships if ██████ is not given an assignment to Lone Jack, which again, will cost DESE and Lone Jack nothing, but would mean everything to ██████ and her family.

LEGAL STANDARDS

As you are certainly aware, the governing legal standard in this matter is the Missouri pupil assignment statute, found at RSMo. § 167.121. It reads, in its entirety, as follows:

If the residency of a pupil is so located that attendance in the district of residency constitutes an unusual or unreasonable transportation hardship because of natural barriers, travel time, or distance, the commissioner of education or his designee may assign the pupil to another district. Subject to the provisions of this section, all existing assignments shall be reviewed prior to July 1, 1984, and from time to time thereafter, and may be continued or rescinded. The board of education of the district in which the pupil lives shall pay the tuition of the pupil assigned. The tuition shall not exceed the pro rata cost of instruction.

Further, the regulation, 5 CSR 30-261.050(4), states in relevant part as follows: "Assignment requests based upon documented travel time of less than seventy-five (75) minutes shall be granted only upon the demonstration of special circumstances[.]"

The language of this statute and regulation could not be any clearer: unusual and unreasonable transportation hardship caused by travel time and distance are the criteria for approving a pupil assignment for a public school student in Missouri. Above, it has been made abundantly clear that the McBrooms easily meet and exceed the criteria for the approval of their request for assignment of [REDACTED] to the Lone Jack School District. Moreover, for all of the reasons described in detail above, the McBrooms have clearly demonstrated special circumstances with regard to their request for pupil assignment and the unreasonable (and frankly insurmountable) difficulty which transporting their daughter [REDACTED] to the Holden School District would represent.

Specifically, they are located five miles from the Lone Jack Elementary School and it is on their normal route to work; in contrast, they are located twenty miles away from the elementary school in Holden, and that elementary school is in the exact opposite direction of the McBrooms' jobs in downtown Kansas City as measured from their home. Both the distance and travel time associated with enrolling their daughter in Holden schools is an unusual, unreasonable, and substantial hardship when compared to the distance and travel time that would be associated with their daughter attending Lone Jack Elementary School.

Missouri law states as follows:

1. The state board shall, in consultation with the boards of education of school districts, educational personnel, local associations, and organizations of parents whose children are enrolled in public schools throughout this state and individual parents and legal guardians whose children are enrolled in public schools throughout this state, adopt a policy by December 1, 2005, which encourages effective involvement by parents and families in support of their children and the education of their children. The policy adopted by the state board must be considered when the board:

...

- (2) Interacts with school districts, public schools, educational personnel, parents and legal guardians of pupils, and members of the general public in carrying out its duties pursuant to this title.

R.S.Mo. § 167.700. The statute continues, discussing the importance of the following when DESE makes decisions implementing education laws:

- (1) Promotion of regular, two-way, meaningful communication between home and school;
- (2) Promotion and support of responsible parenting;
- (3) Recognition of the fact that parents and families play an integral role in assisting their children to learn;
- (4) Promotion of a safe and open atmosphere for parents and families to visit the school that their children attend and active solicitation of parental and familial support and assistance for school programs;

- (5) Inclusion of parents as full partners in decisions affecting their children and families; and
- (6) Availability of community resources to strengthen and promote school programs, family practices, and the achievement of pupils.

In the McBrooms' case, approving their appeal and request for assignment of their daughter [REDACTED] to Lone Jack will accomplish and further each of the items discussed in the aforementioned statute, as discussed at length above.

Moreover, approving this request will cost the Petitioned District nothing. As the statute and regulation which govern this situation makes clear, should this petition and pupil assignment be approved, the Holden School District is required by law to pay the tuition of the McBrooms' child to the Petitioned District. In other words, [REDACTED] attending Lone Jack Elementary School would cost the Lone Jack School District nothing. However, if the McBrooms were to try to enroll their daughter in the Lone Jack School District and pay tuition out of pocket, it has come to their attention recently that such tuition amounts to approximately \$10,000 per year; that is far in excess of what the McBrooms could afford.

The McBrooms are a good, hard-working, young family who have decided to put down roots in Lone Jack. They love their home and they love the Lone Jack community. They contribute to the Lone Jack community and only want what is best for their daughter [REDACTED], which I submit is also what is required by Missouri law. As described at length above, the best interests of the McBrooms' daughter are unquestionably served by her going to school in Lone Jack and not in Holden. I hope that you will exercise your power to rescind the review officer's denial of the McBrooms' request for pupil assignment for their daughter [REDACTED], and that DESE will approve this request for the reasons cited above, and most importantly, for [REDACTED]'s sake and wellbeing.

Sincerely,



Andrew Duncan

Enclosure



Margaret M. Vandeven, Ph.D. • Commissioner of Education

205 Jefferson Street, P.O. Box 480 • Jefferson City, MO 65102-0480 • dese.mo.gov

October 25, 2019

Mr. Andrew Duncan
Colantuono, Bjerg, Guinn, Keppler LLC
Suite 375 Del Sarto Building
7015 College Boulevard
Overland Park, KS 66211

SENT VIA EMAIL: ad@ksmolaw.com
AND CERTIFIED MAIL RETURN
RECIEPT REQUESTED #7006 0100
0005 2170 4762

RE: Appeal of Denial by Review Officer of Request for Pupil Assignment Pursuant to
§ 167.121, RSMo, and 5 CSR 30-261.050

Dear Mr. Duncan:

I have received the request for a review of the decision of David Tramel, Coordinator and Review Officer, School Financial and Administrative Services, that you filed on behalf of your clients Charles and Amy McBroom. Mr. Tramel denied your request for the McBroom child to be reassigned from the Holden R-III School District to the Lone Jack C-6 School District based upon a transportation hardship.

You have cited § 167.121, RSMo, and 5 CSR 30-261.050 as references for your appeal. Section 167.121, RSMo, states: "If the residence of a pupil is so located that the attendance in the district of residence constitutes an unusual or unreasonable transportation hardship because of natural barriers, travel time, or distance, the commissioner of education or his or her designee may assign the pupil to another district."

Merriam-Webster defines "pupil" as "a child or young person in school." By this definition, the McBroom's four-year-old child is not yet a pupil in a school of the district of residence. Therefore, your application for transfer is premature.

Even though your request is premature, I would like to point out that the circumstances outlined in § 167.121, RSMo, and in 5 CSR 30-261.050, that constitute an unusual or unreasonable transportation hardship refer to the transportation of a pupil to school. For example, 5 CSR 30-261.050 (1)(G) and (H) define travel distance and travel time of the pupil—not the parent.

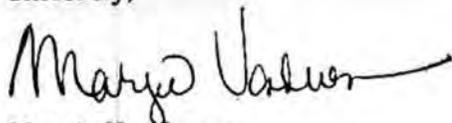
Phone 573-751-4446 • Fax 573-751-1179 • commissioner@dese.mo.gov

Mr. Andrew Duncan
Page 2
October 25, 2019

Given that the statute and the rule speak specifically to the residence of a pupil and the resulting travel time to school, it is my decision to uphold the denial of the transportation hardship request dated August 27, 2019.

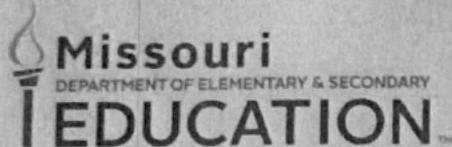
If your client disagrees with this decision, then under 5 CSR 30-261.050(8), your client may file an appeal with the State Board of Education within ten days from the receipt of this letter.

Sincerely,



Margie Vandeven
Commissioner of Education

c: Roger Dorson, Deputy Commissioner, Division of Financial and Administrative Services
David Tramel, Coordinator, Financial and Administrative Services
John Ruddy, Area Supervisor
Shelly Aubuchon, Area Supervisor
Margaret Landwehr, Chief Counsel
Charles and Amy McBroom, Parents
Matthew Tarwater, Superintendent, Lone Jack C-6 School District
Michael Hough, Superintendent, Holden R-III School District



Roger Dorson, Ed.D. • Deputy Commissioner

Division of Financial and
Administrative Services

205 Jefferson Street, P.O. Box 480 • Jefferson City, MO 65102-0480 • dese.mo.gov

August 27, 2019

Charles & Amy McBroom
523 NW 2001 St Rd
Lone Jack MO 64070

RETURN RECEIPT REQUESTED

Dear Mr. & Mrs. McBroom,

I have received and reviewed your request for transportation hardship reassignment for your child, [REDACTED] McBroom, from the Holden R-III School District to the Lone Jack C-6 School District. The reassignment request was made pursuant to the provisions of Section 167.121 of the Revised Statutes of Missouri which states:

"If the residence of a pupil is so located that the attendance in the district of residence constitutes an unusual or unreasonable transportation hardship because of natural barriers, travel time or distance, the Commissioner of Education or his designee may assign the pupil to another district."

Information in your application indicates that you estimate the ride time for your child would be about 27 minutes in the morning and in the afternoon. Information obtained from the Holden R-III School District indicates the ride time by bus will be approximately 25 - 30 minutes in the morning and in the afternoon. Based upon this information and the information contained in your application, it is my finding that a transportation hardship has not been demonstrated and therefore your request for reassignment to the Lone Jack C-6 School District must be denied. The finding is based upon the requirements of 5 CSR 30-261.050 (4) in which the State Board of Education adopts a seventy-five (75) minute threshold requirement in finding a transportation hardship.

These findings may be appealed to the Commissioner of Education by written notice filed within ten (10) days from the receipt of the notification. That appeal should be directed to Dr. Margie Vandeven, PO Box 480, Jefferson City MO 65102-0480. Enclosed is a copy of the administrative rule 5 CSR 30-261.050 (4) which outlines this appeal process. If you have any further questions, you may contact me at (573) 751-0357.

Sincerely,

David Tramel
Coordinator
School Financial and Administrative Services

Enclosure

- c: Dr. Margie Vandeven, Commissioner
Dr. Roger Dorson, Deputy Commissioner
Mr. Tony Stansberry, Area Supervisor
Mrs. Shelly Aubuchon, Area Supervisor
Mrs. Margaret Keate Landwehr, Chief Counsel
Mr. Matthew Tarwater, Superintendent, Lone Jack C-6 School District
Mr. Michael Hough, Superintendent, Holden R-III School District

Title XI EDUCATION AND LIBRARIES

167.121. Assignment of pupil to another district, when — tuition, how paid, amount. — If the residence of a pupil is so located that attendance in the district of residence constitutes an unusual or unreasonable transportation hardship because of natural barriers, travel time, or distance, the commissioner of education or his or her designee may assign the pupil to another district, except as provided in section 167.125. Subject to the provisions of this section, all existing assignments shall be reviewed prior to July 1, 1984, and from time to time thereafter, and may be continued or rescinded. Any assignment granted to a pupil under this section prior to August 28, 2018, shall remain in effect until the pupil completes his or her course of study in the receiving district or until the parent or guardian withdraws the pupil from the assignment. Any assignment granted to a pupil under this section prior to August 28, 2018, shall also be applicable to any sibling of the pupil and shall remain in effect until the pupil completes his or her course of study in the receiving district or until the parent or guardian withdraws the pupil from the assignment. The board of education of the district in which the pupil lives shall pay the tuition of the pupil assigned. The tuition shall not exceed the pro rata cost of instruction.

(L. 1963 p. 200 § 8-12, A.L. 1973 H.B. 158, A.L. 1979 H.B. 280, A.L. 1983 H.B. 815, A.L. 2007 S.B. 64, A.L. 2018 S.B. 603, et al., A.L. 2018 H.B. 1606 merged with S.B. 603, et al.)

(Source: RSMo 1959 § 161.093)

Effective 8-28-18 (S.B. 603, et al.); 7-01-19 (H.B. 1606)

(1973) Accessibility is sole consideration and financial effect on school district is not an item to be considered. Haymart v. Freiburger (A.), 498 S.W.2d 590.

buses to be used for transportation of students. This rule establishes standards for transportation in other than approved school buses.

(1) Requirements for transportation of students in vehicles designed for transporting more than ten (10) passengers including the driver.

(A) After July 1, 2001, newly purchased, newly leased, newly placed into service, newly contracted vehicles or vehicles replaced under contracted services with a rated capacity, as defined by the manufacturer, to carry more than ten (10) passengers including the driver that are used to transport students to or from school or to transport students to or from any place for educational purposes or school purposes shall meet state and federal specification and safety standards applicable to school buses. Contract common carriers meeting federal Department of Transportation standards may be used for field trips as outlined in section (3) of this rule.

(2) Requirements for transportation of students in vehicles designed for transporting ten (10) passengers or less including the driver.

(A) The number of passengers, including students and driver, that may be transported at any one (1) time shall be limited to the number the manufacturer suggests as appropriate for that vehicle in accordance with section 304.060, RSMo, or if not posted in the vehicle, then limited to the number of seat belts in the vehicle.

(B) The driver and each passenger shall be properly secured with the appropriate seat restraint at all times while the vehicle is in motion.

(C) Motor vehicles designed for enclosed passenger transportation may be used subject to approval by the local board of education.

(D) Motor vehicles shall be licensed according to law and shall display a current state safety inspection sticker.

(E) The driver of a district owned or district contracted vehicle shall have a valid Missouri operator's license for the motor vehicle and comply with section 302.272, RSMo, and 5 CSR 30 261.010(2)(A)1. 3., not to include a parent or guardian transporting only their children under a written contract with the district and who is not compensated by the district. The parent or guardian shall have a valid Missouri operator's license for the vehicle operated as per 5 CSR 30 261.010(2)(A).

(F) The driver of a privately owned vehicle who is not compensated by the school district to transport students to and from school or school related events shall have a valid Missouri operator's license for the vehicle oper-

ated as per 5 CSR 30 261.010(2)(A). This shall include any person who transports school children as an incident to employment with a school or school district, such as a teacher, coach, administrator, secretary, school nurse, or janitor unless such person is under contract with or employed by a school or school district as a school bus operator as per section 302.010 (19), RSMo. Compensation shall be defined for the purpose of this section as any reimbursement received by the driver that exceeds the average cost of operating a car per mile as established by the American Automobile Association.

(G) Motor vehicles shall have liability insurance coverage in accordance with section 537.610, RSMo, and as required by the local board of education.

(H) When transportation service in motor vehicles other than those licensed as school buses is contracted, there shall be a written contract between the district and the individual or firm providing the service.

(3) Requirements for Transportation of Students in Authorized Common Carriers.

(A) Authorized common carriers shall only be used to transport students to and from field trips or other special trips for educational purposes and shall not be used to transport students to and from school. Authorized common carriers, as used in this rule, are over the road intercity type coaches equipped with reclining seats, air conditioning and restroom facilities, and holding authority from the Missouri Department of Economic Development, Division of Motor Carrier and Railroad Safety or the Federal Motor Carrier Safety Administration.

(B) There shall be a written contract between the district and individual or firm providing the vehicle.

(C) All contracts with authorized common carriers shall include:

1. Proof of liability insurance in the amount of five (5) million dollars per accident; and

2. Proof of safety inspection and compliance with applicable Federal Motor Carrier Safety Regulations.

(D) The driver of an authorized common carrier shall hold a valid Missouri commercial driver's license or a similar license valid in any other state and shall comply with all applicable driver qualifications of the Federal Motor Carrier Safety Regulations.

AUTHORITY: section 304.060, RSMo 1994. This rule was previously filed as 5 CSR 40 261.045. Original rule filed Sept. 15, 1977, effective Jan. 16, 1978. Amended: Filed July 23, 1987, effective Oct. 25, 1987. Amended: Filed May 23, 1991, effective Dec. 9, 1991.*

Amended: Filed Aug. 31, 1992, effective April 8, 1993. Emergency rule filed June 26, 1996, effective July 6, 1996, expired Jan. 1, 1997. Amended: Filed July 9, 1996, effective Feb. 28, 1997. Rescinded and readopted: Filed March 22, 2000, effective Oct. 30, 2000.

**Original authority: 304.060, RSMo 1949, amended 1977, 1987, 1992.*

5 CSR 30-261.050 Pupil Transportation Hardships

PURPOSE: This rule establishes guidelines for the assignment of pupils based upon the finding of an unusual or unreasonable transportation hardship pursuant to section 167.121, RSMo.

(1) For the purpose of this rule, the following terms shall mean:

(A) Information request The forms submitted to the designated review officer by the petitioner or the affected districts to document the existence of an unusual or unreasonable transportation hardship;

(B) Natural barriers Obstructions to school bus routes, for students who are required by law to be transported or students who are transported as a result of school district practice or policy, caused by streams, rivers, lakes and multilane highways with limited access;

(C) Petitioned district That district to which the pupil will be assigned should the petition for assignment be granted;

(D) Petitioner A parent or guardian of a pupil or, if eighteen (18) years of age or otherwise emancipated, the pupil who has petitioned for assignment pursuant to section 167.121, RSMo;

(E) Resident district The district where the pupil resides at the time a petition for assignment is submitted;

(F) Review officer That individual designated by the commissioner of education to review the request for assignment based upon the finding of an unusual or unreasonable transportation hardship;

(G) Travel distance The distance traveled to transport a pupil from the pupil's place of residence or other designated pickup point to the site of the pupil's educational placement; and

(H) Travel time That period of time required to transport a pupil from the pupil's place of residence or other designated pickup point to the site of the pupil's educational placement.



(2) A petition may be filed with the commissioner of education to assign a pupil to another district based upon the existence of an unusual or unreasonable transportation hardship. This petition must outline the basis for the request for assignment and be signed by the petitioning party.

(3) Upon receipt of a petition for assignment, the commissioner of education shall designate a review officer to make findings and a decision as to the existence of an unusual or unreasonable transportation hardship. The designated review officer shall notify both the resident district and the petitioned district of the contents of the petition and shall forward to those districts relevant information requests.

(4) The review officer shall make findings and a decision relating to the existence of a transportation hardship based upon the petition for assignment and responses to the information request submitted by the affected districts. In addition, the review officer, at his/her discretion, may elect to make a visual inspection of the transportation routes in question and use those findings in his/her determination. Assignment requests based upon documented travel time of less than seventy five (75) minutes shall be granted only upon the demonstration of special circumstances or transportation hardships caused by natural barriers.

(5) The findings and decision of the review officer relating to the petition for assignment shall be made in writing and submitted to the petitioner, the resident district and the petitioned district. If it is the decision of the review officer that an unusual or unreasonable transportation hardship exists, then the pupil shall be assigned to the petitioned school district. The board of education of the resident district shall be responsible for paying the tuition and, when appropriate, transportation costs of the pupil assigned consistent with the provisions of sections 167.121 and 167.241, RSMo.

(6) Not later than thirty (30) days from receipt of notice of the decision of the review officer, the petitioned district shall provide information to the resident district indicating the tuition amount and, if appropriate, transportation costs to be paid by the resident district consistent with the provisions of sections 167.121 and 167.241, RSMo for the pupil that has been assigned. If the resident district disagrees to the amount of the tuition or the transportation costs to be paid, the resident district shall indicate this disagreement to the

review officer no later than forty five (45) days from the date of notice that the pupil was assigned to the petitioned district. The review officer shall determine the appropriate amount of tuition cost to be paid by the resident district and, if appropriate, transportation costs, within fifteen (15) days, and shall notify the resident district and the petitioned district.

(7) Findings, decisions, or both, of the review officer as described in sections (5) and (6) may be affirmed, rescinded or modified by the commissioner of education upon request of the petitioner, resident district or petitioned district. Requests to affirm, rescind or modify the finding, decision, or both, of the review officer shall be placed before the commissioner of education by the petitioner, resident district or petitioned district within ten (10) days from notification of the findings and decisions of the review officer as described in sections (5) and (6).

(8) Decisions of the commissioner of education, as provided in section (7), may be appealed to the State Board of Education upon a written notice of intent to appeal by the petitioner, resident district or petitioned district. These appeals to the State Board of Education shall be limited to written information provided by the petitioner, resident district or petitioned district as to why the decision of the commissioner of education was in error. The intent to appeal shall be indicated in writing to the commissioner of education within ten (10) days from receipt of the commissioner of education's decisions as provided in section (7).

(9) As soon as reasonably possible after the commissioner of education receives the intent to appeal as provided in section (8), the appeal shall be placed on the agenda of the State Board of Education. The commissioner of education shall notify the petitioner, resident district and petitioned district of the date the appeal is to be considered by the State Board of Education. Upon an adjudication of the appeal, the State Board of Education shall notify the petitioner, resident district and petitioned the district of its decision.

(10) Should the resident district refuse or otherwise fail to make payment of the tuition amount and, if appropriate, transportation costs for the pupil that has been assigned consistent with the provisions of sections 167.121 and 167.241, RSMo, as of June 30 following the date the pupil was assigned to the petitioned district, and if requested by the petitioned district, and assuming the peti-

tioned district has provided accurate and complete attendance data to the resident district for the pupil as determined by the Department of Elementary and Secondary Education, the department shall be authorized to withhold that amount from subsequent state aid payments to the resident district and transfer the amount withheld to the petitioned district.

(11) Any final decision of assignment made during the course of any school semester, or any other term in which classes are held, shall remain in place until the end of that semester or term. Any petition for review of an existing assignment must be received by the commissioner of education thirty (30) days prior to the beginning of the semester in which rescinding of the assignment would take place.

AUTHORITY: section 167.121, RSMo 1986. Original rule filed Dec. 24, 1991, effective June 25, 1992. Amended: Filed April 28, 1993, effective Nov. 8, 1993.*

**Original authority: 167.121, RSMo 1963, amended 1973, 1979, 1983.*