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Dr. Deena Horst District 6
Dennis Hershberger District 7
Betty J. Arnold District 8
Jim Porter District 9
Jim McNiece District 10

Special Meeting Agenda Friday 10 a.m. May 24, 2024

TIME	ITEM	PRESENTER
10:00 a.m.	1. Call to order and Roll Call 2. To consider the request of USD 113 and USD 115 for the June State Board of Education meeting	Melanie Haas, Chair

BEFORE THE KANSAS STATE BOARD OF EDUCATION

In the Matter of the	**)**	
Petition to Transfer Territory	**)**	**File No. 24-PTT-01**
from USD 113 (Prairie Hills)	**)**	
to USD 115 (Nemaha Central)	**)**	

PETITIONER'S MOTION FOR ORAL ARGUMENT BEFORE THE STATE BOARD OF EDUCATION

COMES NOW Petitioner USD 115 (Nemaha Central) and respectfully requests the Kansas Board of Egducation ("State Board") grant oral argument by parties on USD 115's Petition for Land Transfer at the State Board's June 11 and 12, 2024 meeting after submission of the Hearing Officer's report. In support thereof, the Petitioner submits the following:

INTRODUCTION

USD 115 (Nemaha Central) filed a Petition for Transfer of Territory pursuant to K.S.A. 72-532 on February 15, 2024. A hearing allowing public comment before the Hearing Officer was held in Bern, Kansas on March 22, 2024. An initial motion for oral argument before the State Board was denied by the Hearing Officer on the same day. The Hearing Officer has indicated that the Hearing Officer report, recommendations, and voluminous record in this matter will be provided to the State Board and parties approximately two weeks prior to the State Board meeting on June 11 and 12, 2024. The Hearing Officer has also instructed legal counsel for both parties to direct their district clients not to individually speak with State Board members about this matter.

Petitioner seeks oral argument in front of the State Board at its June 2024 meeting, or at such other time as may be ordered by the State Board, prior to a final vote by the Board regarding the matter of land transfer between USD 115 and USD 113, the subject of the Petition, the Hearing Officer's recommendations, and the complete written record.

ARGUMENTS AND AUTHORITIES

1. *The Kansas State Board of Education has general administrative authority over Kansas schools and their districting.*

The elected Kansas State Board of Education receives its authority from the people of Kansas through the Kansas Constitution. See Ks. Const. Art. 6. The State Board of Education has "general supervision of public schools, educational institutions and all the educational interests of the state…" Ks. Const. Art. 6 § 2(a). Additionally, the State Board of Education performs "such other duties as may be provided by law". *Id.* Providing the law, the Legislature outlines the State Board's authority in more detail in K.S.A. 72-243 through 263. Specifically, the general powers granted to the State Board are found in K.S.A. 72-255. Relevant to this case generally, K.S.A. 72-532 empowers the State Board to transfer school territory pursuant to law. And relevant to a particular portion of this case, K.S.A. 72-262 gives the State Board authority to appoint hearing officers.

Based upon its foundation in the Kansas Constitution, the authority of the State Board can only be seen as fundamental to the purpose and operation of the state. As educators, the Petitioners and Respondents are part of that fundamental function but disagree regarding the equitable allocation of resources in the region based on enrolled student trends and other factors. As such, their disagreement is being brought to the State Board for a resolution, as intended by K.S.A. 72-262. See Quinn Yeargain, *Shadow Districts*, 45 Cardozo L. Rev. 405, 467 (2023) (citing K.S.A. 72-262 and -263 as an example of statutes empowering a state board of education to serve as a tribunal for appeals of decisions made by local school boards.). USD 115 has petitioned the State Board to resolve the dispute lawfully and equitably.

2. ***Petitioner's case is particularly well-formed with detailed facts suitable for a precedential decision, so presentation of the Petition before the State Board, after presentation to a hearing officer, is fitting.***

Statutes authorizing the State Board of Education to appoint hearing officers and refer matters to those officers for hearing and reports date back to the early 1960s. Today, that power is found in K.S.A. 72-262. The State Board may, for most matters, "appoint one or more hearing officers…to a particular hearing or to a set or class of hearings as specified by the state board of education in making such appointment." K.S.A. 72-262(a). And, "[a]ny matter determined by the state board of education in accordance with this section shall be valid to the same extent as if the matter were fully heard by the state board of education without a hearing officer." K.S.A. 72-263. There is no requirement that the State Board appoint a hearing officer or rely solely on an appointed hearing officer's report of a hearing in making its determination regarding land transfer pursuant to K.S.A. 72-532.

Pursuant to updated scheduling correspondence from the Hearing Officer in this matter, the hearing officer will produce a report of the hearing to the State Board approximately two weeks prior to its June 2024 meeting, at which time the State Board will consider and vote on the matter of land transfer at its June 2024 meeting, with the assistance of separate legal counsel for the State Board.

Petitioner respectfully requests oral argument before the State Board for two reasons. First, the facts, records, and data supporting the Petition have been extensively compiled and summarized for presentation. Due to voluminous record including specific contested facts upon which the State Board will make its determination concerning this matter, Petitioner believes limited oral argument by the parties before the State Board will assist in narrowing the issues and factual disputes for State Board consideration, similar to a case on appeal before an appellate court. As such, Petitioner seeks the opportunity for parties to present "closing arguments" to the elected State Board.

Second, and perhaps more importantly, the determination requires a consideration of factors before the State Board based on the Petition and land transfer dispute are matters of great public interest and statewide public policy. The State Board's decision in this case has the potential to set precedent in the state as guidance to other districts, future petitioning districts, and future review by the legislature and courts. Since the potential impact of a decision in this matter is of great magnitude, it is appropriate for the State Board to develop the best record possible before making a decision. Oral argument by the parties will assist the State Board in narrowing the issues, resolving questions particularly relevant to individual considerations of State Board members, afford opportunity to Parties to clarify or object to findings of fact or conclusions of law by the Hearing Officer, and summarize voluminous records for the purpose of narrowing the State Board's consideration of the statutory factors informing land transfer decisions pursuant to K.S.A. 72-532(d).

Additionally, oral argument will provide the State Board with the opportunity to ask clarifying questions regarding various possible alternative decisions of the board, including an "order either approving or disapproving such transfer petition or agreement, *or approving the same with such amendments as it deems appropriate*." *See* K.S.A. 72-532(e) (emphasis added). Oral arguments will assist the public in determining the precedential value of the nature of the board's deliberations in this matter and will inform public policy considerations in the years to come.

CONCLUSION

The Kansas State Board of Education has general authority over education and schools in the State of Kansas. It has specific statutory legal functions granted to it by the Legislature, including the authority to determine school districting borders, to conduct hearings, and make determinations on land transfer disputes between school districts. Based upon the specific facts

gathered and the implications for statewide public policy of a decision in the petitioned matter, Petitioner respectfully moves the State Board of Education to allow for oral argument on the Petition, the Hearing Officer recommendations, and the complete written record, during its June 2024 scheduled meeting.

REQUEST FOR ORAL ARGUMENT (30 minutes)

Petitioner requests **thirty minutes** for oral argument at the June 11 and 12, 2024 meeting of the Kansas State Board of Education, with equal time given to Respondent.

Respectfully submitted,

KRIEGSHAUSER NEY LAW GROUP

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ATTORNEYS FOR USD 115 (NEMAHA CENTRAL)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I have filed and sent the foregoing Petitioner's Motion for Oral Argument via email and for e-filing on May 14, 2024 to:

Scott Gordon, General Counsel
Office of General Counsel, State Department of Education
sgordon@ksde.org
KANSAS STATE BOARD OF EDUCATION

and a copy served by email to:

David Cooper, Attorney
Fisher Patterson Sayler & Smith, LLP
dcooper@fpsslaw.com
COUNSEL FOR USD 113 (PRAIRIE HILLS)

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/s/ Joshua A. Ney
Joshua A. Ney, #24077

BEFORE THE KANSAS STATE BOARD OF EDUCATION

In the Matter of the	**)**	
Petition to Transfer Territory	**)**	**File No. 24-PTT-01**
From USD 113 (Prairie Hills)	**)**	
To USD 115 (Nemaha Central)	**)**	

USD 113's Response to Petitioner's Motion for Oral Argument before the State Board of Education

Unified School District No. 113, Nemaha County, State of Kansas (USD 113) submits this response to Petitioner's Motion for Oral Argument before the State Board of Education.

USD 113 takes no position on the motion for oral argument and leaves that issue to the sound discretion of the Board other than to note the finding by the Hearing Officer for Petitioner's previous motion for oral argument to the Board that: "Petitioner provides no rationale as to why this case is so different from previous cases for which a hearing officer has been appointed that the State Board should break its own precedent and change its process for conducting such hearings."

The Board is vested with broad powers of supervision under Article 6 of the Kansas Constitution. *See* Kan. Const. Art. 6, § 2; *Board of Education of USD No. 443, Ford County, v. Kansas State Board of Education*., 266 Kan. 75, 96, 966 P.2d 68 (1998) (Art. 6 vests broad powers of supervision in the Board). Kansas statutes empower this Board to appoint a hearing officer (as the Board did for this matter), K.S.A. 72-262, and for the Board to consider the recommendation of the hearing officer and determine the matter. In that case, the Board's determination "shall be valid to the same extent as if the matter were fully heard by the state board of education without a hearing officer." K.S.A. 72-263.

USD 113 notes that this matter is not about a "disagreement regarding the equitable allocation of resources in the region based on enrolled student trends and other factors" as

suggested by Petitioner. This is a unilateral petition for the transfer of land from another school district—a land grab. The unilateral petition for transfer file by USD 115 (1) lacks the material change in circumstances required by this Board's Guidelines, (2) does not add to the general improvement of public schools, and (3) does not improve the equalization of the benefits and burdens of education. *KSDE Guideline V, Land Transfers*, § II.1-2.[1]

USD 113 further suggests the "narrowing the issues and factual disputes" for consideration by this Board should occur well before the meeting at which the Board's decision must be made. The process for narrowing issues and fact disputes is spelled out in statute and this Board's Guidelines. That process consists first of a mediation, then a petition, an answer, the supporting evidence for both the petition and answer, a hearing, the parties' respective findings of fact and conclusions of law, followed by the hearing officer's findings, conclusions and recommendation, and (finally) consideration by the Board for decision.

The motion for additional oral argument serves only to increase costs to the affected districts without demonstrating how oral argument will better aid the Board's consideration of the record in light of the Board's own guidelines and statutory factors required to be considered.

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[1] KSBE Guideline V, § II provides:

> 1) The ultimate consideration must be the long-term effect a transfer would have on students living in: (1) the petitioned area, (2) the receiving district, and (3) the giving district. It also must include ***whether the transfer would add to the general improvement of the public schools in the state and the equalization of the benefits and burdens of education throughout the affected communities.***
> 2) To justify taking land, by petition, from one school district and giving it to another, ***a material change in circumstances of a substantial and weighty nature must exist*** so that a reasonable person would recognize that the educational interests of all affected children (inside and outside of the transfer area) could be better served by adjusting district boundaries, without any serious detrimental effect upon students or upon the district from which the land will be transferred.

(Emphasis added.)

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Attorney for USD 113 (Prairie Hills)

Certificate of Service

This certifies that on the 21st day of May, 2024, a true and correct copy of the foregoing was submitted via email to
:

Deborah Bremer, Secretary
Kansas State Board of Education
dbremer@ksde.org

R. Scott Gordon, General Counsel
Office of the General Counsel
KANSAS STATE DEPARTMENT OF EDUCATION
900 S.W. Jackson Street, Suite 102
Topeka, Kansas 66612-1212
sgordon@ksde.org (cc to: Cheryl D. Austin caustin@ksde.org)
Kansas State Board of Education

and a copy served via email to:

Joshua A. Ney, KS #24077
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