

**BEFORE HEARING OFFICER PAMELA S. WRIGHT
EMPOWERED BY THE MISSOURI STATE BOARD OF EDUCATION
PURSUANT TO SECTION 162.961 RSMo.**

WESTRAN R-I SCHOOL DISTRICT,)
)
 Petitioner,)
)
vs.)
)
 ,)
)
 Respondent.)

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

The Hearing Officer, after conducting an expedited due process hearing in this matter on May 29, 2008, issues the following Findings of Fact, Conclusions of Law, Decision and Order:

FINDINGS OF FACT

The Hearing Officer makes the following Findings of Fact:

The Parties

1. The Student attends school in the Westran R-I School District (“Westran”). At all times relevant to this due process proceeding, the Student has lived with his Parents who reside within the boundaries of Westran. The primary mode of communication of the Student and Parents is written and spoken English.

2. Westran is a Missouri Public School district organized pursuant to statutes. According to recent data published in the Missouri Public School Directory, Westran has enrollment of 779 students.

3. The Student and Parents were represented by Lisa M. Sutherland with Missouri Protection and Advocacy Services, 3100 Main Street, Suite 207, Kansas City, MO 64111.

4. Westran was represented by Ernest G. Trakas, Tueth, Keeney, Cooper, Mohan & Jackstadt, PC, 34 N. Meramec Avenue, Suite 600, St. Louis, MO 63105.

5. The Hearing Officer for the expedited due process proceeding was Pamela S. Wright.

6. During all times relevant to this proceeding the following persons were employed by Westran:

Carl Brown	K-8 Principal
Michael Aulber	Middle School Administrator for 2007-08; Middle School Principal for 2008-2009
Beth Andrews	Director of Special Services
Wendy Kitchen	Special Education teacher for grades 6-8

7. Carol Tipton is employed by Randolph County Juvenile Office as a Deputy Juvenile Officer and has formal and informal case management. (Tr. pg. 22). Student was one of her cases beginning in July 2005. (Tr. pg 23).

8. Debbie Young, an employee of the Moberly School District, is the Director of the North Central Regional Middle School (“NCRMS”), North Central Regional High School, the Early Childhood Special Ed, and Title I preschools and the OSS program. (Tr. pg. 108).

Procedural Background

9. Westran filed an expedited due process hearing complaint with the Department of Elementary and Secondary Education (“DESE”) on May 1, 2008 seeking an order placing Student at an Interim Alternate Education Setting (“IAES”) for forty-five school days, beginning with the 2008-2009 school year. (Tr. pg. 264). Westran identified the proposed setting as NCRMS operated by the School District of Moberly, Missouri. DESE notified the Hearing Officer on the same date that she had been selected to serve as the Hearing Officer for the expedited due process complaint.

10. On May 2, 2008, Student filed a Motion to Dismiss Petitioner’s Request for Expedited Due Process Hearing. Westran filed a Response on May 14, 2008 and Student submitted a Reply on May 16, 2008. The Hearing Officer issued an Order on May 20, 2008 denying the Motion to Dismiss and setting the matter for hearing on May 29, 2008.

11. The hearing in this matter was held on May 29, 2008 in the Music Room at Westran High School. Both parties appeared and were represented by counsel.

12. During the hearing, the following exhibits were identified and admitted as evidence in this proceeding: Petitioner’s Exhibits 1-32 (pages 1-127) and Respondent’s Exhibit 1 – Handbook for NCMRS.

Time Line Information

13. Westran filed an expedited due process hearing complaint with DESE on May 1, 2008. The deadline for holding the hearing was 20 school days after the filing date. The hearing was held on May 29, 2008 which satisfied the deadline.

14. The deadline for mailing this decision is 10 school days after the hearing. The opinion was sent to the attorneys for the parties and DESE by e-mail and US Mail on June 9, 2008, which meets this time line.

Issues

15. The following issues were presented to the Hearing Officer: (a) whether the Student is substantially likely to injure himself and/or others in his current placement of homebound instruction and (b) if so, is the proposed Interim Alternate Education Setting (“IAES”) at NCRMS an appropriate placement for the Student.

Background Facts

16. Student is a 12 year-old student who has been enrolled as a special education student in Westran since October 2006. (Tr. pg. 226-227).

17. Prior to enrolling at Westran, Student was enrolled in the Moberly School District. (Tr. pg. 227; 267).

18. At the time of his enrollment, Westran adopted the Individualized Education Plan (“IEP”) Student had brought with him from the Moberly School District. (Tr. pg. 228; 232-233).

19. Student has received a number of medical diagnoses, including: Mood Disorder NOS; Attention Deficit Disorder (“ADD”); Adjustment Disorder with Mixed Disturbance of Emotions and Conduct; Depression, and; Anxiety Disorder. (Ex. P-24; P-26; P-31; P-32).

20. Student was admitted to Mid-Missouri Mental Health Center at age 10 for threatening to kill himself.

21. Student first became involved with the Randolph County Juvenile Office in July 2005, a month before his 10th birthday, when he pushed another juvenile off a bike, grabbed his arm and threw the bike into a wall. (Tr. pg. 25-26). He was put on an informal 6 months supervision by the Deputy Juvenile Officer. (Tr. pg. 26).

22. Student's current educational diagnosis is Emotionally Disturbed. (Ex. P-31).

23. Beth Andrews, Director of Special Services for Westran, testified that almost from the beginning of his enrollment at Westran she was required to intervene in Student's instructional settings due to disturbances caused by Student's behavior. This behavior included refusing to participate, snapping pencils, picking at his clothes. (Tr. pg. 225-230). Ms. Andrews further testified that Student evidenced these types of behaviors numerous times between October and December 2006, often several times a week, sometimes as much as twice a day, and, when he did so, it was necessary to physically restrain Student to prevent him from injuring himself. (Tr. pg. 230-232).

24. The IEP from the Moberly School District as adopted by Westran in October 2006, included a behavior plan which required that, when Student evidenced disruptive and/or self injurious behavior, the police and/or Student's parent(s) were to be contacted, and Student sent home. (Tr. pg. 232-233).

25. Within Student's first month at Westran, Carl Brown, the Principal at Westran Elementary School was called into Student's classroom because Student was causing injury to himself. (Tr. pg. 140). It was necessary for Mr. Brown and other staff members to restrain Student to prevent him from injuring himself. *Id.*

26. Carl Brown and others at Westran hoped the change from the Moberly School District to Westran, a more intimate school setting, would be a positive change for Student. (Tr. pg. 192-193). He chose not to move to rapid suspensions for Student. Westran did not document all of Student's initial behaviors in the fall of 2006 because the school wanted to work with him so that he might get to the next level. *Id.* Mr. Brown was a highly credible witness.

27. Student's mother ("Parent") told Carl Brown that Student had times when he would self-injure, and would require restraint. (Tr. pg. 151)

28. On October 18, 2006, Student physically assaulted a student, cutting the student's lip requiring treatment from the school nurse. (Tr. pg. 152-153; Ex. P-1).

29. On November 9, 2006, Student physically assaulted another student. As a result of this assault, Student was suspended for the remainder of that day and the following day. (Tr. pg. 154-155; Ex. P-2).

30. Student's IEP team determined that Student was using the operation of the behavior plan in the Moberly IEP as a mechanism to facilitate his removal from school. (Tr. pg. 233-235).

31. In November 2006, a new IEP was developed for Student that did not result in his removal from school for disruptive and/or self injurious behavior. (Tr. pg. 235).

32. After development of a new IEP in November 2006, incidents of Student's disruptive and/or self injurious behavior decreased. (Tr. pg. 235-236).

33. On February 7, 2007, Student assaulted a student in the gymnasium, and had to be physically removed from the student. Student was suspended from school for

three days as a result of this assault. In addition, the matter was referred to the Randolph County Juvenile Office. (Tr. 155-156; Ex. P-3).

34. Carol Tipton, Deputy Juvenile Officer for the Randolph County Juvenile Office, testified that in March 2007, Student was involved in an assault/peace disturbance, stealing and fighting, which resulted in another referral to the Randolph County Juvenile Office. (Tr. pg. 28).

35. As a result of the March 2007 incidents and faced with the threat of court ordered commitment, Student's parents agreed to voluntarily commit Student to Royal Oaks Hospital in Windsor, Missouri, for psychiatric evaluation. Student was hospitalized at Royal Oaks from March 2, 2007-March 9, 2007. (Tr. pg. 28-30); (Ex. P-32).

36. Medical records from Royal Oaks Hospital indicate that, upon admission, the history provided by Student himself indicates that his behavior included screaming, cursing, hitting himself in the face, banging his head on walls, and pulling his hair. (Tr. pg. 31-32; Ex. P-32). The Royal Oaks records further indicate that Student was admitted because of "anger outbursts, hitting himself, banging his head, getting into fights, cursing teachers," and "He has out of control behaviors. He has to be restrained at school for banging his head on walls." (Ex. P-32).

37. Carol Tipton, Deputy Juvenile Officer, a very credible witness, described his behaviors as very impulsive; cursing; lot of head banging; a lot of nervousness; pinching and injurious-to-himself behavior from 2005 up until October 2007. (Tr. pg. 46). Six months after October 2007 when the last referral occurred to her office, Student ceased being on probation. (Tr. pg. 53-54).

38. During the 2007-2008 school year Student was a student at the Westran Middle School. (Tr. pg. 197).

39. On September 17, 2007, Michael Aulber, Middle School Administrator at Westran, completed a Disciplinary Notice on Student for assaulting a student. (Tr. pg. 198-199; Ex. P-9).

40. Mr. Aulber, in investigating the September 17, 2007 incident, interviewed Student, the other student involved, a teacher, Cara Edmondson, and the school Counselor, Mrs. Jacques. (Tr. pg. 200-202; Ex. P-7, P-8).

41. Based on a thorough and fair investigation of the September 17, 2007 incident, Mr. Aulber concluded that Student had punched the other student in the face. As a result, Mr. Aulber suspended Student for three days. (Tr. pg. 202-203).

42. On September 24, 2007, a Bus Conduct Report was issued by Joe Welch, Transportation Director for Westran concerning Student's running in front of school busses as they were leaving campus. (Tr. pg. 157-160; Ex. P-15).

43. On September 24, 2007, Joe Welch boarded the bus Student had boarded and questioned Student regarding his unsafe conduct. In response to Mr. Welch's inquiry Student lost control and started using profanity. (Tr. pg. 160; Ex. P-15).

44. Joe Welch removed Student from the bus and instructed him to report to Carl Brown's office. (Tr. pg. 160).

45. Upon being advised to report to Mr. Brown's office Student lost control, began using profanity and screaming, "F—k you! I don't have to do a f—king thing you tell me to do! F—k you! Leave me the F—k alone! I hate you! F—k you!" (Tr. pg. 160-161; Ex. P-19).

46. In transit to Carl Brown's office Student's tantrum continued. Student was kicking and punching, and he continued to use profanity and expletives in front of younger students and staff. (Tr. pg. 161-162).

47. In Carl Brown's office, Mr. Brown advised Student that if he left the building he, Mr. Brown, would have to call the police. In response Student stated he didn't give an "f" anyway; he was going to juvie anyway. (Tr. pg. 162).

48. Mr. Brown requested Beth Andrews' assistance in attempting to help Student regain his self control. Student attempted to flee and Mrs. Andrews blocked his egress, whereupon Student threw Mrs. Andrews to one side, pulled her arm, threw his shoulder into her causing her to fall across Mr. Brown's desk, injuring her shoulder. (Tr. pg. 162-165; 241-242; Ex. P-14, 16, 17, 18, 19).

49. As a result of the incidents of September 24, 2007, Carl Brown issued a Disciplinary Report, Student was suspended from bus transportation, and the matter was referred to Westran's Special Education Department regarding the remainder of the school year. In addition, Mr. Brown referred the case to the Randolph County Juvenile Office. (Tr. pg. 170-171; Ex. P-13, 19).

50. An August 23, 2007 Behavior Plan for Student was strengthened by his IEP team after the September 24, 2007 incident. On September 26, 2007 the IEP team adopted a second plan providing *inter alia*: "any verbal (extreme profanity) aggression or physical aggression will result in immediate placement on homebound instruction and an IEP meeting will be scheduled to discuss appropriate placement beyond the homebound instruction." (Ex. P-24).

51. On October 3, 2007, Michael Aulber completed a Disciplinary Notice on Student for choking another student. (Tr. pg. 207; Ex. P-22).

52. Mr. Aulber investigated the October 3, 2007 incident by interviewing Jennifer Emerick, a teacher at the middle school, Student and the student that was allegedly choked. (Tr. pg. 208-210; Ex. P-21).

53. In addition to the report of Jennifer Emerick, Mr. Aulber personally observed that the alleged victim's neck had red marks and he was having trouble breathing. (Tr. pg. 209-210). Mr. Aulber also testified that the alleged victim told him that he had been bullied by Student in the school hallways for a couple of days. *Id.*

54. When Mr. Aulber asked Student for his side of the incident, Student admitted to Mr. Aulber that he did indeed choke the other student, but that he was "playing around." (Tr. pg. 210). He also expressed no remorse to Mr. Aulbur for this incident. (Tr. pg. 222).

55. As a result of the October 3, 2007 incident, and the operation of the behavior plan then in effect, Student's placement was changed to Home Bound, and his Individualized Education Plan ("IEP") team met on November 15, 2007 to consider and determine a different placement. (Tr. pg. 210-211; 242-246; Ex. P-24).

56. At the November 15, 2007 IEP meeting Student's IEP team, with the exception of his parents, determined that the appropriate placement for Student was at NCRMS in the Moberly School District (Tr. pg. 247; Ex. P-24).

57. Placement at NCRMS was deferred pending Student's functional behavior assessment and an on-site visit to NCRMS by Student's parents. (Tr. pg. 248-249; Ex. P-24).

58. Following Student's functional behavior assessment and his parents review of the NCRMS program, Student's IEP reconvened on January 7, 2008 to review the NCRMS program and revise the IEP. (Tr. pg. 249-250; Ex. P-26).

59. Debbie Young, Director of the NCRMS, attended the January 7, 2008 IEP meeting. (Tr. pg. 250-251; Ex. P-25)

60. On January 7, 2008, Student's IEP team, with the exception of his parents, determined that Student's home bound placement was too restrictive and did not allow for transition back to Westran Middle School. In addition, the IEP team determined that Student's needs would be most appropriately met at NCRMS, and changed Student's placement to NCRMS effective January 18, 2008. (Tr. pg 250-251; Ex. P-26).

61. The NCRMS is a specialized behavior management program for at-risk students in sixth through eight grades. The program is designed to change students' behavior in order for them to be successful in school. (Tr. pg. 108-109)

62. The NCRMS program provides a comprehensive behavior modification curriculum for at-risk students whose behavior impacts their education. The program teaches self-discipline and maintenance of proper conduct through a system of "calls," referrals, behavior "packets," self evaluation and categorized or grouped offenses. (Tr. pg. 110-115; 188-194; Ex. R-1).

63. The NCRMS program is available and accessible to regular education and special education students. (Tr. pg. 115; Ex. R-1).

64. Specialized instruction at NCRMS is typically delivered by regular education teachers under the supervision of a certified special education teacher. (Ex. R-1). However, Westran has made arrangements with NCRMS to furnish a certified special

education teacher to provide Student's special education instruction while at NCRMS. (Tr. pg. 106).

65. NCRMS can deliver all minutes of specialized academic instruction called for in Student's IEP without modifying or changing any goals or objectives. (Tr. pg. 136-137).

66. NCRMS programming does not implement BIPs contained in a student's IEP. This is because NCRMS programming is designed around proven operative conditioning techniques that facilitate behavior change. These techniques include, among others, set limits, consequences for inappropriate behavior, token economies, and reinforcement of positive choices. (Tr. pg. 117-118; Ex. R-1).

67. The behavior programming in place and utilized by NCRMS contains virtually all of the components contained in the BIP developed for Student by Dr. Lonnie Morrow, a behavior specialist, on April 7, 2008, and provides all of the substantive strategies and interventions contained in Dr. Morrow's April 7, 2008 BIP. (Tr. pg. 122-132; Ex. P-31).

68. Student's IEP team's decision to place him at NCRMS has not been implemented because on January 16, 2008, Parent filed a Due Process Hearing Request Notice with the DESE, initiating the "stay-put" provisions of § 1415(j) of the IDEA, thereby freezing Student's home bound placement. (Tr. pg. 253).

69. Student has continued to receive his special education in the home bound placement delivered at the Westran Middle School and/or public library since October 2007. He receives 5 hours of instruction per week and is expected to do homework. (Tr. pg. 210-211; 242-247; Ex. P-24).

70. Student's current placement does not provide any opportunity for Student to interact socially or academically with age appropriate peers in a school setting. As such, the current placement does not provide any real evidence that Student's behavior problems have been resolved, or that he can now control his aggression. (Tr. pg. 46-49; 57-58; 65-66; 188-194).

71. Wendy Kitchen has been a special education teacher at Westran for 4 years. Ms. Kitchen has provided the home bound instruction since October 2007 to the date of the hearing. She credibly testified Student would: sometimes get frustrated by bending the bill of his cap, scratch out on his paper really hard; put his head down crying. She further testified that he has used profanity on a number of occasions documented in her notes, mostly recently on April 28, 2008 when he said "I hate this f-----g school" in response to a request by Ms. Kitchen. Ms. Kitchen is assisted by a paraprofessional when teaching Student because she feels safer with someone present in view of his behavioral history. (Tr. pg. 85-87). Ms. Kitchen also testified that Parent attended the home bound instruction sessions for a couple of months at her request. During this period, Student was verbally aggressive to Parent such as telling her to shut up. (Tr. pg. 83).

72. Mr. Aulbur witnessed misconduct by Student as recently as March 2008 at the Missouri State High School Basketball tournament in Columbia. An usher at the University of Missouri basketball arena stopped Student, who was walking the wrong way when exiting the student section. In response to the usher's request to exit in a different direction, Student loudly replied that "this is f-----g bullshit." (Tr. pg. 213).

73. Ms. Andrews also witnessed inappropriate behavior by Student at the Missouri State High School Basketball tournament. She saw him throwing something at

another student, elbowing and slapping the student next to him, basically being disruptive. (Tr. pg. 257).

74. Ms. Andrews has had occasion to talk to Student since the incident on September 24, 2007 incident when he shoved her and caused injury to her shoulder. He has neither shown remorse nor offered an apology for this misconduct. (Tr. pg. 263).

75. Student's IEP was recently amended to provide for ESY services as follows: 10 hours of home bound instruction per week from June 2, 2008-June 20, 2008. (Ex P-31).

CONCLUSIONS OF LAW

76. Student is an individual with a disability within the purview of the IDEA. 20 U.S.C. § 1400 et sec. The IDEA insures that all children with disabilities receive a Free Appropriate Public Education ("FAPE") that includes special education and related services that are designed to meet their unique need, prepare them for further education, employment and independent living. *Board of Education of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 US 176, 203 (1982). In this matter, neither Student's eligibility under the IDEA nor his entitlement to a FAPE is in dispute.

77. The IDEA authorizes a local educational agency ("LEA") to request an expedited due process hearing when the LEA "believes that maintaining the current placement of a child is substantially likely to result in injury to the child or to others." In Missouri, the hearing authorized by Section 162.961, RSMo., and conducted in this cause on May 29, 2008, is intended to be the expedited hearing mandated by the § 1415(k)(1)(F)(3).

78. Under IDEA, the burden of proof falls on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U. S. 49 (2005).

79. Westran has met its burden of proof under 20 U.S.C. § 1415(k)(2) that the Student is substantially likely to injure himself or others. 34 C. F. R. Section 300.352(b). See also 20 U. S. C. Section 1415(k)(3).

80. Westran has also met its burden of proof under 20 U.S.C. § 1415(k)(2) that the beginning with the start of the 2008-2009 school year Student should be placed for up to forty-five (45) days at NCRMS as his interim alternative educational setting. NCRMS is clearly an appropriate placement for Student.

DECISION

In support of its position that Student's behavior presents a significant risk of danger to himself and/or others, Westran presented the testimony of Beth Andrews, Westran's Director of Special Services, Carl Brown, Principal of the Westran Middle School, Wendy Kitchen, Student's Special Education Teacher, Michael Aulbur, Administrator at Westran Middle School, and Carol Tipton, Deputy Juvenile Officer for the Randolph County Missouri Division of Family Services. In doing so, Westran provided credible, extensive, un rebutted, first-hand testimony of Student's aggressive, antisocial behavior both in the school and community setting. The behavior incidents reported by these witnesses, and reflected in school records introduced into evidence, prove unequivocally that since the time of his enrollment at Westran in October 2006, Student has been dangerous to, and presented a significant risk of injury to others, as well as himself. Student's antisocial behavior, including at least two (2) instances of

uncontrolled rage, has continued unabated despite Westran's repeated attempts to address them. *See Findings of Facts* above.

In this case the evidence demonstrates an escalating pattern of volatile, antisocial behavior substantially likely to cause injury to Student or others. This evidence is well beyond the traditional definition of preponderance of evidence, particularly given the evidence of repeated, unprovoked assaults on other students. The serious nature of Student's behavior, the number of incidents, the suddenness of Student's assaults, the isolative nature of, and the total lack of programming, strategies, and interventions, as well as, safety concerns of the teacher and implementer in the current homebound placement, all lead to the inescapable conclusion that leaving Student in the home bound setting will not address Student's problematic behavior and continue to pose a clear and present risk of injury to Student and others.

The only witness to testify for Student was the Parent who opposes the proposed placement at NCRMS. She disputed both the accuracy and veracity of the behavior incidents as reported by Westran. For example, she disputed that Student had stolen a wallet as documented by Westran: Student found a wallet in the music room; when asked by Mr. Brown if he had seen a billfold, he said no but changed his story after Mr. Brown referred to the item as a wallet but said he had planned to turn it into Mr. Brown at the end of the day. (Tr. pg.270). Parent believes that Student's difficulties in the school setting are caused by inappropriate behaviors of other students such as in 5th grade when another classmate may have twisted her son's arm causing Student to hit the classmate so he could get away. (Tr. pg. 269). Westran's report stated that Student had punched the classmate. While recognizing the very strong propensity for a parent to see his or her

child's side of the story, this Parent seemed to go to the extreme in not acknowledging serious misconduct by Student.

Credible testimony and reports from Westran staff concerning Student's behavior in his current placement, as well as in the community since October 2007 are persuasive and substantiate that, in those settings Student's problematic and anti-social behavior continues. Wendy Kitchen, Student's special education teacher testified that Student continues to use profanity in his current setting. Ms. Kitchen also testified that because of concern for personal safety no teacher, including herself will deliver Student's homebound instruction when alone with Student. Rather, two Westran staff members are required whenever Student receives his homebound instruction. Parent's contention that Student's behavior in the homebound setting, and at home is not problematic notwithstanding, reports of anti-social behavior during homebound instruction, and observed in public community settings, as recently as March 2008 are instructive because they demonstrate that Student's antisocial behavior has not been addressed in the homebound setting.

Having so found, the remaining issue is whether NCRMS is an appropriate IAES. Parent opposes placement at NCRMS because she believes NCRMS is too restrictive, and its programming discriminates against disabled children under IDEA. In determining the appropriateness of an IAES, it is essential that such a setting provide ongoing opportunities to evaluate Student, and address the causes of his problematic behaviors. Carol Tipton, the Randolph County Deputy Juvenile Officer is intimately familiar with NCRMS and its programming, having worked at NCRMS for five (5) years. In addition, Ms. Tipton testified that as a DJO, she has worked with and supervised

students who have been placed at NCRMS. Ms. Tipton testified that NCRMS is specifically designed to address problematic behaviors, such as those evidenced by Student. Carl Brown, Principal of Westran Elementary School is also familiar with NCRMS, having taught in the Moberly School District, and at NCRMS prior to his tenure at Westran. Mr. Brown also believes that NCRMS is an appropriate placement to address Student's behavior needs.

Debbie Young, Director of NCRMS, testified that NCRMS was created to address behavior problems for students such as Student. Indeed, Ms. Young testified that NCRMS has served both regular and special education students with behavior issues significantly more problematic than Student. Ms. Young believes that NCRMS is an appropriate setting for Student's forty-five day IAES placement.

NCRMS provides a structured educational environment in which Student's behavior will be monitored, assessed and modified over the course of the forty-five day placement. It is reasonable to conclude that through placement at NCRMS more appropriate interventions and strategies will be utilized for effectively addressing Student's behavior.

I am not persuaded by Parent's argument that homebound remains an appropriate placement for Student. To begin with, Student receives only five (5) hours per week of instruction. This cannot be considered equivalent to a school setting. The homebound placement provides no opportunity to interact with other students socially or academically. Moreover, the homebound placement does not provide any opportunity to assess or evaluate, let alone address, Student's behavioral issues. The homebound

placement is not an appropriate placement for purposes of providing Student with a full academic program while at the same time, addressing his significant behavior difficulties.

Parent also argues that because NCRMS's program calls for special education instruction to be delivered by regular education teachers under the supervision of a special education teacher it violates the IDEA and, is therefore inappropriate. I need not address this point because Westran has arranged for Student to receive his specialized instruction from a Westran a special education teacher on site at NCRMS.

Next, Parent argues that because NCRMS's programming requires that a behavior improvement plan (BIP) that is part of a student's IEP will not be implemented, but replaced by the NCRMS protocol, placement at NCRMS cannot be appropriate. To begin with Student's IEP team, albeit with Parent dissenting, determined that NCRMS is an appropriate placement for Student. Perhaps more importantly, Debbie Young effectively compared and cross referenced NCRMS's programming with the BIP in Student's current IEP. In doing so, it became clear that there is little substantive difference between NCRMS's behavior programming and Student's current BIP. NCRMS's behavior programming is appropriate for Student.

While not binding in Missouri, a very recent Massachusetts State Education Agency decision is strikingly similar to this case. In *Braintree Public Schools v. Student* 108 LRP 16708 (MA SAE Mar. 6, 2008), the school district requested an expedited due process hearing seeking an order placing a student in an IAES. In *Braintree*, as here, the student had assaulted other students and staff and used obscene language. As here, the student was removed from the school environment and placed in a more restrictive setting due to concerns that the student would continue to injure other students. As here,

in the more restrictive setting the student did not exhibit as many aggressive behaviors because he was more isolated and did not have access to other students. In *Braintree* as here, the school district had proposed an IAES placement specifically designed to address the student's aggressive, antisocial behavior. And, in *Braintree* the student's parent voiced the same, if not identical, objections to the school district's proposed IAES placement as Parent has here. Finally, based on facts very similar to those in evidence in this case and for similar reasons, the hearing officer in *Braintree* found the student to be substantially likely to injure himself and others, and ordered the student placed in the IAES proposed by the school district. *Id.* See also *Clinton County R-III School District v. C. J. K.*, 896 F. Supp. 948 (W. D. MO. 1995) (The Court denied injunctive relief to a school district trying to change a stay put placement but was not able to demonstrate some appreciable danger of serious personal injury: student's history of misconduct consisted of empty threats confined to the school setting. *Id.* at 951. Here we have Student's long history of actual violence to himself, other children and adults in school and in the community.

For the forgoing reasons, I find that continuing Student in his homebound placement does nothing to address Student's behavior problem, is too restrictive, and is substantially likely to result in injury to himself or others. As such, Student should be placed in an appropriate IAES for not more than forty-five (45) school days.

ORDER

For the reasons set forth above the Hearing Officer issues the following Order:

1. Student is ordered placed in an appropriate interim alternative education setting for a period of forty-five (45) school days;

2. The IAES shall be Student's stay put placement pursuant to 20 U.S.C. § 1415(k)(4)(A);

3. The North Central Regional Middle School is the appropriate placement for Student during this IAES;

4. Parent is ordered to fully and completely cooperate in this process. Within five (5) business days of this Order, Parent will authorize Student's enrollment and admission to the North Central Regional Middle School in the Moberly School District.

APPEAL PROCEDURE

Please take notice that these Findings of Fact, Conclusions of Law, Decision and Order constitute the final decision of the Department of Elementary & Secondary Education in this matter. A party the right to request review of this decision pursuant to the Missouri Administrative Procedures Act, Sections 536.010 et seq., RSMO. A party also has the right to challenge this decision by filing a petition in a state or federal court of competent jurisdiction within forty-five (45) days after the receipt of this final decision. The right to appeal is described in detail in the IDEA in 20 U.S.C. Section 1415 (i) and in the Regulations to the IDEA in 34 C.F.R. Sections 300.512.

SO ORDERED this 9th day of June, 2008.

Pamela S. Wright, Hearing Officer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served via electronic and first class mail, postage prepaid, this 9th day of June 2008; upon:

Lisa Sutherland
Attorney for Parents
Missouri Protection & Advocacy Services
3100 Main, Suite 207
Kansas City, MO 64111
314-785-1707 (fax)
lisa.sutherland@mo-pa.org

Ernest G. Trakas, #33813
Attorney for Westran R-I School District
34 N. Meramec Avenue, Suite 600
St. Louis, Missouri 63105
314.880.3600
314-880-3601 (fax)
etrakas@tuethkeeney.com

Margaret Strecker
Special Education Legal Services
Department of Elementary & Secondary Education
PO Box 480
Jefferson City, MO 65102-0480

Pamela S. Wright