

**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 November 3, 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 at the North Central Regional Middle School (“NCRMS”) in the Moberly School District pursuant to a previous Decision and Order issued on June 9, 2008. At all times relevant to this expedited due process proceeding, the Student has lived with his Parents who reside within the boundaries of the Westran R-1 School District (“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:

Beth Andrews	Director of Special Services
Diane Gammon	Special Education teacher

7. 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. 72-73).

8. Carol Tipton is employed by Randolph County Juvenile Office as a Deputy Juvenile Officer and has formal and informal case management responsibilities. (Tr. pg. 61). Student came under the authority of the Randolph County Juvenile Office as a result of the referral process two to three years ago. (Tr. pg 61).

### **Procedural Background**

9. Westran filed the instant expedited due process hearing complaint with the Department of Elementary and Secondary Education (“DESE”) on October 14, 2008 seeking an order extending Student’s Interim Alternate Education Setting (“IAES”) placement at NCRMS for an additional forty-five school days. (Tr. pg. 8-15). DESE notified the Hearing Officer on October 15, 2008, that she had been selected to serve as the Hearing Officer for this expedited due process complaint.

10. The hearing in this matter was held on November 3, 2008 in the Launer Conference Room at Columbia College in Columbia, Missouri. Both parties appeared and were represented by counsel.

11. During the hearing, the following exhibits were identified and admitted as evidence in this proceeding: Petitioner’s Exhibits P1-P5 and P7-P11 and Respondent’s Exhibit R1-R10 and R12-R14. (Tr. pgs. 117-117; 149-149)

### **Time Line Information**

12. Westran filed an expedited due process hearing complaint with DESE on October 14, 2008. The deadline for holding the hearing was 20 school days after the filing date. The hearing was held on November 3, 2008 which satisfied the deadline.

13. 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 November 13, 2008, which meets this time line.

### **Issues**

14. The following issue was presented to the Hearing Officer: whether the Student continues to present a substantial likelihood to injure himself and/or others if returned to his previous placement of Homebound Instruction. (Tr. pg. 11-15)

### **Background Facts**

15. Student is a 13 year-old student who, prior to being ordered placed at NCRMS for a 45 day Interim Alternate Educational Setting (“IAES”) was enrolled as a special education student in Westran. (Tr. pg. 10).

16. On June 9, 2008, following a previous expedited due process hearing, Student was determined to present a substantial likelihood to injure himself or others, and his educational placement was changed from Homebound Instruction to a 45 day IAES at NCRMS, pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. §1415(k) (“IDEA”). See *Westran R-I School District*, (SEA Mo, 2008) available at: [http://dese.mo.gov/divspeced/Complaint\\_System/documents/DP0708\\_27\\_Westran\\_R-I.pdf](http://dese.mo.gov/divspeced/Complaint_System/documents/DP0708_27_Westran_R-I.pdf). (Student’s medical history, educational history and lengthy behavioral problems giving rise to the holding in the above case will not be restated here.)

17. Student’s 45 day IAES began on August 26, 2008. (Tr. pg. 75)

18. On October 14, 2008, Westran requested a second expedited due process hearing seeking an extension of the IAES for another 45 school days. Student’s initial IAES was scheduled to expire on October 26, 2008. Westran requested the second expedited hearing because the District believes that, if returned to his prior placement at the expiration of the IAES, Student continues to present a significant likelihood to injure

himself or others. *Pet. 's Second Request for Expedited Hearing* at ¶ 8; 34 C.F.R. § 300.532(b)(3).

19. During his IAES at NCRMS Student received six (6) separate disciplinary referrals for inappropriate language, and aggressive, threatening and/or destructive behavior, including assault. The referrals were the following conduct:

08/26/08: Inappropriate Language – Student argued with his special education teacher for over thirty minutes, finally stating “I can’t take this f—king sh-t.”

08/27/08: Assault – Student slapped another student. Student admitted doing so, stating “It’s my fault, I started it.”

09/05/08: Inappropriate Language – Student became upset in the classroom, throwing a chair and kicking a desk. Upon leaving the classroom Student stated “I hate this f—king school, f—k school. Westran is making up this crap is why I am here.”

09/09/08: Disruptive Conduct – Student pulled chair out from under another student causing the student to fall to the floor

09/10/08: Threat – Student stated “I’m gonna burn this school down.”

09/22/08: Destruction of Property – Student destroyed glass portion of school building door.

(Tr. pg. 75-78; Ex P-1)

20. On September 22, 2008, Debbie Young observed Student twisting his shirt into a noose and placing the noose around his neck and tightening it. Ms. Young approached Student in an attempt to prevent him from hurting himself. Ms. Young and Gregory Carroll removed Student from the classroom. While attempting to do so, Student lost control and grabbed a computer table, a railing and a door jam. Ms. Young and Mr. Carroll had to restrain Student. (Tr. pg. 63, 79-80; Ex. P-1; P-4; P-5).

21. On September 22, 2008, after Student was removed from the classroom, he told Debbie Young that he enjoyed hurting himself, other people and animals. He advised Ms. Young that he had access to a 20 gauge shotgun, a 30-06 and .22 caliber rifles. He told Ms. Young that hurting people and death was funny. He bragged about hurting a specific boy and about the blood coming out of his mouth and nose. He commented “I ain’t afraid of no one.” (Tr. pg. 81-82; Ex. P-5).

22. On September 22, 2008, after being removed from the classroom and regaining self control, Student requested that he be given his cellular telephone. When his request was refused Student lost control again and began using profanity and screaming, “Give me my f—king phone!” Student then ran at a door kicking the glass upper section of the door, destroying the glass completely. Student then beat his head against a metal railing and used his own fists to beat himself on the face. (Tr. pg. 66-67; 82-84; Ex. P-1; P-5).

23. Student first became involved with the Randolph County Juvenile Office 2-3 years ago. In the past he has been put on an informal supervision by the Deputy Juvenile Officer. (Tr. pg. 10, 62); *Westran R-1 School District, supra*.

24. Carol Tipton, Deputy Juvenile Officer with the Randolph County Juvenile Office (“RCJO”) testified that RCJO received a referral on Student for peace disturbance at NCRMS on September 22, 2008. DJO Tipton stated that Student had lost control, destroyed property at NCRMS and engaged in self injurious behavior. (Tr. pg. 61-66)

25. As a result of the September 22, 2008, referral to RCJO Student was handcuffed, taken into custody and incarcerated at Bruce Normile Juvenile Justice Center for three days. (Tr. pg. 64; 83-84; Ex. P-5, R-6, R-8, R-9).

26. Student is awaiting trial on a Petition filed in the Circuit Court of Randolph County, Missouri concerning his actions at NCRMS on September 22, 2008. Student is charged with Peace Disturbance, Property Damage, and Injurious Behavior to Self or Others. Trial was scheduled to begin on November 6, 2008. (Tr. pg. 65-67, 71; Ex. R-6).

27. Beth Andrews, Director of Special Services at Westran testified that on October 21 and 22, 2008, two Bus Conduct Reports were issued against Student for assaulting another student while on the school bus. (Tr. pgs. 110-114; Ex. P-8, P-9)

28. Beth Andrews also testified that as a result of Student's assault of another student on October 21 and 22, 2008, Mike Aulbur, Middle School Principal, sent a formal referral to the RCJO on October 23, 2008. (Tr. pg. 115-116; Ex. P-10)

29. On October 23, 2008, RCJO received Westran's referral concerning Student's assault of another student while being transported to and from NCRMS. (Tr. pg. 69-70; 112-115; Ex. P-8, P-9, P-10)

30. Despite his continued behavior Student did make progress, both academically and behaviorally at NCRMS. Diane Gammon, the special education teacher assigned by Westran to provide special education instruction to Student at NCRMS, testified that during the time she has worked with Student (August-October 2008) he has improved academically and socially. (Tr. pg. 24, 31)

31. Diane Gammon testified that Student's reading skill and performance with the Marie Carbo program improved from 100-110 words-per-minute using 3<sup>rd</sup> grade level stories to as high as 210 words in two (2) minutes with 100% comprehension using 4<sup>th</sup> grade stories. (Tr. 25-40; Ex. P-2, P-3)

32. Diane Gammon testified, and documents support that on the Scholastic Reading Inventory, Student is reading at the 5<sup>th</sup> grade comprehension level. (Tr. pg. 45; Ex. P-11)

33. Ms. Gammon also testified that Student has nearly achieved total mastery of the “Earobics” program since beginning it. (Tr. pg. 41-42; Ex. P-11)

34. Student has also either made progress on, or met the goals contained in his individualized education plan (“IEP”). Diane Gammon testified that Student has mastered or met annual Goal No. 3, mastered all but the last portion of Goal No. 12, and is progressing on Goal No. 4. (Tr. pgs. 43-46; Ex. P-11)

35. Debbie Young testified that Student’s regular education teachers and para-professionals reported that Student has met Annual Goal Nos. 1 and 9, and is making progress on Annual Goal Nos. 2, 5, 6, 7, 8, 11, and 12. (Tr. pgs. 84-89; Ex. P-7, P-11)

36. Diane Gammon testified that Student is a good reader, is progressing very well, comprehends what he reads, and is currently reading at the 5<sup>th</sup> grade, seventh month level outside of the Marie Carbo program. (Tr. pg. 48)

37. Student has made genuine progress socially and behaviorally, despite the number and severity of incidents. Diane Gammon testified that Student’s behavior is now “very different” compared to when she first starting working with him. Student’s attitude is often positive, and he has demonstrated the ability to correct and comport his behavior after initially refusing to do so. Indeed, Student responded to a prompt from Ms. Gammon to change his initial rude and impolite demand made upon the school nurse for an aspirin to a proper, polite request. (Tr. pg. 29-31; Ex. P-2)

38. Debbie Young testified that Student received no office discipline referrals at NCRMS since September 22, 2008, well over a full month. (Tr. pg. 89)

### **CONCLUSIONS OF LAW**

39. 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 or his entitlement to a FAPE is in dispute.

40. 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.” §1415(k)(1)(F)(3).

41. IDEA regulations further authorizes a local educational agency (“LEA”) to repeat the expedited due process hearing process of §1415(k)(1)(F)(3) to extend a previously ordered IAES placement when the LEA “believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.” 34 C.F.R. §300.532(b)(3).

42. In Missouri, the hearing authorized by Section 162.961, RSMo., and conducted in this cause on November 3, 2008, is intended to be the expedited hearing mandated by the §1415(k)(1)(F)(3) and 34 C.F.R. §300.532(b)(3).

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

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

45. Westran has also met its burden of proof under 20 U.S.C. § 1415(k)(2) and 34 C.F.R. §300.352(b) that the forty-five (45) day interim alternative educational setting at NCRMS as the Student's placement should be extended for an additional forty-five (45) days.

### **DECISION**

In support of its position that Student's behavior continues to present a significant risk of danger to himself and/or others, Westran presented the testimony of Diane Gammon, special education teacher at Westran; Debbie Young, Director of the North Central Regional Middle School – NCRMS; Beth Andrews, Westran's Director of Special Services, 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 continued aggressive, antisocial behavior during his 45 day IAES at NCRMS. The behavior incidents reported by these witnesses, and reflected in school records introduced into evidence, prove without dispute that since the time of his enrollment at NCRMS in August, Student has continued to be dangerous, and continues to present a significant risk of injury to others, as well as himself. Student's antisocial behavior, including yet again instances of uncontrolled rage, continues despite NCRMS's attempts to address them. *See Findings of Facts* above.

While the Student has made significant progress in controlling his behavior during his initial 45 days at NCRMS, the evidence adduced at the November 3<sup>rd</sup> hearing demonstrates a continuing pattern of volatile, antisocial behavior that continues to present a substantial likelihood to cause injury to Student or others. As in the previous hearing, the evidence is well beyond the traditional definition of preponderance of evidence, particularly given the evidence of Student's self injurious behavior, troublesome claims of delight in injuring people and animals, and possession and use of firearms. The serious nature of Student's behavior, the number of incidents, the suddenness of Student's actions, as well as, his statements about injuring people and animals, all lead to the inescapable conclusion that returning Student to his previous placement of Homebound Instruction as urged by Parent will in not in any way address Student's behavior needs and will continue to pose a substantial risk of injury to Student and others.

The only witness to testify for Student was the Parent who continues to oppose the placement at NCRMS. Parent was more concerned with when the IAES ended and why she had not been contacted by Westran or NCRMS about the duration of the IAES and Student's curriculum and performance, than whether Student had made progress controlling his behavior. As in the previous hearing, this Parent continues to go to the extreme in not acknowledging the continuing misconduct by Student and his serious need for help in addressing his social/behavioral needs with appropriate programming, such as that offered at NCRMS. Indeed, Parent steadfastly refused to acknowledge or appreciate Student's progress on any front, going to the extreme of attempting to parse the difference between progress and praise. (Tr. pgs. 133-139)

Incredibly, Parent chose to have Student attend and sit through the entire hearing, despite the sensitive, personal nature of the testimony and evidence. Parent also confirmed that Student does indeed have unfettered access to, and routinely uses firearms. Most alarming, despite Student's history of antisocial behavior, incarceration, Randolph County Juvenile Authority supervision, and statements about injuring other people and animals, Parent neither expressed nor demonstrated the least bit of concern that Student has access to guns. (Tr. pgs. 146-148)

Parent demonstrated that she has no interest in Student succeeding at NCRMS. Indeed, it seems clear that Parent is more concerned with demonstrating where and how Westran and/or NCRMS have failed to serve Student, than in supporting their efforts to address her son's serious social/behavioral issues. Perhaps this is most evident in Parent's overt arrogance in refusing to comply with this Hearing Officer's June 9, 2008 Decision and Order, requiring her to enroll Student at NCRMS within five (5) days of that Order. Parent admitted that she did not enroll Student at NCRMS until August 22, 2008. (Tr. pgs. 134-135); see also *Westran R-1 Sch. Dist.*, supra. I find Parent's testimony not credible.

Credible testimony and reports from NCRMS's Director concerning Student's behavior in his current 45 day IAES placement are beyond persuasive and substantiate that while Student has indeed made strides in controlling his behavior, his problematic and anti-social behavior continues.

Having so found, it is clear that NCRMS continues to provide the specialized programming and structured educational environment in which there is every reason to believe that the modification of, and improvement in Student's behavior will continue

over the course of an additional forty-five (45) day placement. It is reasonable to conclude that extension of the IAES at NCRMS, and the appropriate interventions and strategies available there will continue to be utilized toward effectively addressing Student's serious social/behavioral needs.

For the forgoing reasons, I find that returning Student to his original placement at this time will compromise the progress made at NCRMS to date, do nothing to address Student's continuing abhorrent behaviors, and presents a substantial likelihood that Student will injure himself or others. Therefore, Student's IAES at NCRMS is extended for an additional forty-five (45) school days.

### **ORDER**

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

1. Student's placement in an interim alternative education setting is ordered extended for an additional period of forty-five (45) school days;
2. The continued 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 continues to be the appropriate placement for Student during the extension of the IAES;
4. Parent is ordered to fully and completely cooperate in this process. Parent is ordered to comply with all requests and take whatever actions requested by North Central Regional Middle School in assuring Student's continued uninterrupted attendance at NCRMS.

### **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 has 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 13<sup>th</sup> day of November 2008.

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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 13th day of November 2008; upon:

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