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Expedited Due Process Hearing Officer

KANSAS STATE DEPARTMENT OF EDUCATION
EXPEDITED DUE PROCESS HEARING

and [redacted] Special Education Cooperative Case no. 12EP [redacted]
[redacted] on behalf of [redacted], a minor child.

EXPEDITED DUE PROCESS DECISION

It is the finding of the Hearing Officer under K.S.A. 72-992a, that [redacted] should be placed in the appropriate interim alternative educational setting proposed by the [redacted] Special Education Cooperative; homebound placement with services, for 45 school days. This placement is necessary because leaving [redacted] in his current placement is substantially likely to result in injury to [redacted] or to others. This change in placement appears not to be disputed by either party.

In support of the above decision, the Hearing Officer finds as follows:

1. [redacted] (an [redacted] year old minor [redacted] child) "has been diagnosed with PTSD, Mood Disorder, ADHD, ODD, Generalized Anxiety Disorder, PDD and RAD by history with a history of abuse and neglect (according to Discharge Diagnosis/Aftercare Plan from Marillac)."

[redacted] Special Education Cooperative, USD # [redacted], (hereinafter referred to as Coop) Exhibit # 1, p. 244, Present Levels of Academic Achievement and Functional Performance. He is in the 2nd grade.

2. It appears from the Coop Ex. #1, page 219-220, that [redacted] was suspended for 10 days from the Connections program on April 19, 2012, for verbal outbursts, disrupting the class

and physically injuring himself and staff members. The Connections program is a self-contained classroom located at _____ Elementary School, designed to assist children who meet the criteria for emotionally disturbed. (testimony of _____, Building Principal, _____ Elementary School)

3. _____, who is the grandmother of _____ but who is sometimes referred to in the Coop exhibits as “mother”, did not attend a meeting that was scheduled for April 24, 2012, but did attend an IEP Team Meeting on April 25, 2012. The IEP team proposed moving _____ to homebound placement for 45 days until the IEP team could come up with another educational plan for _____. The Coop offered to begin the homebound services on April 26, 2012, but Ms. _____ requested the Coop wait until April 30, 2012, so that Ms. _____ could consult with the Disability Rights Center. (Coop Ex. #1, pages 219-220) Ms. _____ had issues with the proposed homebound placement.

4. On April 27, 2012, the Coop filed a Notice to Parents of Expedited Special Education Due Process Hearing. The notice was timely filed and appropriately sent to Ms. _____. On April 30, 2012, this hearing officer was appointed to hear the expedited due process hearing by Mark Ward, Special Education Services, Kansas State Department of Education.

5. The Coop filed a “Supplemental Statement in Support of Expedited Hearing” on May 3, 2012. _____ was not represented by counsel. Ms. _____ did obtain assistance through the Disability Rights Center (DRC) and on May 9, 2012, filed “Parent’s Response to the Notice of Expedited Due Process Complaint.” DRC did not represent _____ during the expedited due process hearing.

6. On May 9, 2012, at 10:58 p.m., Ms. [redacted] sent an e-mail stating that no hearing was necessary because [redacted] was happy and his behaviors at home had improved. (Coop Ex. #2, contained in Coop Ex. #1 at page 239). On May 10, 2012, at 11:29 p.m., Ms. [redacted] sent another e-mail (two pages) stating that she wanted a hearing unless [redacted] could play with the children before school and at recess. Ms. [redacted]'s e-mail contained various other allegations against the Coop. (Coop Ex. #3, contained in Coop Ex. #1 at pages 240-241)

7. The expedited due process hearing took place on May 16, 2012, at 10:00 a.m., at the [redacted] Education Center, 1700 W. 7th Avenue, [redacted], KS 66801, in Room 114. Dr. [redacted], Director of [redacted] Special Education Cooperative, and [redacted], Special Education District Coordinator for [redacted], appeared for [redacted] Special Education Cooperative. Ms. [redacted] did not appear. Ms. [redacted] did not answer her phone May 16, 2012, and did not contact any party prior to the hearing. The hearing proceeded without Ms. [redacted]. On May 16, 2012, by e-mail at 12:52, Ms. [redacted] again withdrew her objection to the homebound services. This e-mail has been marked and admitted as Coop Ex. #5.

8. In addition to [redacted]; [redacted] Building Principal at [redacted] Elementary; [redacted], school social worker for Connections at [redacted] Elementary; and [redacted] special education Connections teacher at [redacted] Elementary all testified. Coop Exhibit #1 (a large bound volume); Coop Exhibits 2 and 3 (e-mails from Ms. [redacted]) and Coop Exhibit #4 (not to scale drawing of the Connections classroom at [redacted] Elementary by Ms. [redacted]) were all admitted into evidence.

9. The Coop presented ample evidence that [redacted] was substantially likely to cause injury to self or others. Ms. [redacted] testified that [redacted] was large for his age, approximately 4'

tall and weighing approximately 130 pounds. frequently engages in self harming behavior, has injured staff and destroys classroom property. Ms. testified that the other Connections students are afraid of .

10. Ms. and Ms. both testified that 's behavior problems increased when his attendance at the Connections program was increased beginning in November, 2011. Both also testified that it appeared did not get enough sleep and he complained that his grandmother woke him up at night. Ms. does not appear to be supportive of the school staff.

11. No attempt is made in this decision to document 's talking back to staff, cursing, failing to do his school work, disregarding instructions, whining, complaining, being disrespectful or his failure to follow instructions. Such behaviors appear to be common for , along with the cursing. Ms. testified that was permitted to curse at staff because the cursing was one of the least damaging behaviors exhibits.

12. Ms. testified about the examples of self injury, property damage and injury to others by contained in Coop Ex. #1. The documentation for 's incidents was recorded on teacher logs or point sheets that track student's daily behaviors. Some examples are included in this decision, but these examples are in no way a complete recounting of 's behavior. All of the following are contained in Coop Ex. #1.

12. November 9, 2011, at p. 20-21: . kicks desk, states "this school tortures people", "I just want to go home – I'll just jump out window", hits forehead with fist, states "people treat me like I'm retarded".

13. November 16, 2011, at p. 29: : throws pencils, kicks desk repeatedly,

bangs fist on desk, states "I feel like a big loser" "I hate my life, I feel retarded, I never get anything I want", stabs desk with pencil.

15. November 18, 2011, at p. 32: [redacted] kicks desk and hits wall.

16. November 21, 2011, at p. 35: [redacted] pretends to cut wrists with plastic silverware, smashed food, throws papers.

17. November 28, 2011, at p. 38: [redacted] kicks desk and chair, says "I wish I had a life", hits head on desk and on books, kicks walls, says "If I don't get PE and Art my house will be on fire" "People knock me down in the streets".

18. November 30, 2011, at p. 42: [redacted] bangs head on desk, kicks desk.

19. December 7, 2011, at p. 53: [redacted] threatens staff with his grandmother, says "They are trying to strangle me." "My grandmother tells me to take care of it on my own." "I want to kill myself" "People hate me. The neighbors in the yellow house shoot me with a BB gun and make fun of me" "I hate myself and I hate my life", kicks desk, pushing desk around, tearing papers.

20. December 8, 2011, at p. 55: [redacted] slams milk carton, throws note book on floor, kicks desk.

21. December 13, 2011, at p. 60: [redacted] says "Oh, how I feel like killing myself. It doesn't matter".

22. December 15, 2011, at p. 62-63: [redacted] says "My life is already fucking bad enough" "I hate my life, it sucks" "When I try to go places people try to hurt me with metal baseball bats and chainsaws", kicks desk and wall, rams door, slams chair on ground.

23. December 20, 2011, at p. 69: [redacted] bounces chair around.

24. January 4, 2012, at p. 74: [redacted] throws markers, kicks desk.

25. January 6, 2012, at p. 78: _____ tears up stuff on desk, bangs on desk, kicks desk, says “I’m tired because grandma always has to wake me up at 3 o’clock in the morning”, kicks door, hits window, hits staff with shoe, bangs on desk.

26. January 11, 2012, at p. 85: _____ kicks desk, tears up work, says “I don’t care about anything no one cares about me”.

27. January 18, 2012, at p. 90: _____ hits self in head with book.

28. January 30, 2012, at p. 100: _____ says “I wish I would have stayed home so I could shove sticks down my throat and a pocket knife”, bangs head on wall, kicks desk, throws pencil, hits self in head with pencil box, spits at staff, rams door, hits window with shoe, throws lunch at door, kicks walls.

29. February 2, 2012, at p. 106: _____ says “I don’t have to listen to you because you are all stupid”, sleeps, wipes syrup on another student.

30. February 8, 2012, at p. 112: _____ sleeps, rolls on floor and tries to hurt himself, says “I can’t sleep like this” while twisting body into pretzel.

31. February 9, 2012, at p. 114: _____ says “I can’t control my tiredness” “I feel like fighting” “I wish I had a knife so I could cut off my head”, hits self in face, flops on floor, slams door, knocks book off desk.

32. February 13, 2012, at p. 118-119: _____ hits head on bottom of desk, throws book, crawls on floor says he can’t walk, says “I wish I could just tear my head off” “I’m trying to make my head crack”, makes forehead red by hitting it, says he can lay on top of desk “It doesn’t matter, I do dangerous stuff all the time”, spits at staff, bangs head against wall, kicks desk.

33. February 15, 2012, at p. 122: _____ scratches forehead and makes it bleed, picks at forehead and wipes blood on items in classroom, says “I feel like a whole bunch of people are

beating (me) with baseball bat. They are sticking baseball bats down my throat and beating my lungs”, makes fun of other students.

34. February 22, 2012, at p. 125: talks about hurting himself, tired.

35. February 27, 2012, at p. 130-131: says “I need help killing myself” “I hate these people”, punches staff in back and says “I can do it harder”, puts sock around neck, hits self in face with shoe, spits, shoves desk and chair, antagonizes peers, says “My head feels like people are stabbing it with forks”, refuses to eat, says “Pretty soon my brain is going to explode”, runs back and forth and hits walls hard with body, says about peers “Assholes, they want me dead – I’ll give them what they want”, throws trash can at staff.

36. February 29, 2012, at p. 135-136. spit in Ms. !’s face, spit on walls, kicks door, runs into door with shoulder, says “let me out fucking psycho” “Well if you aren’t going to let me out at least give me a knife or a piece of glass so I can stab it through my head”, says “I want to die”, hits head on wall, says “Everyone is careless, they want me dead. Everyone just says they are my friend but they want me dead” “I want to kill myself”.

37. March 6, 2012, at p. 140-146: says “I don’t have to listen to you” “It happens because people force me to be mad”, kicks staff, slaps head multiple times, slams and throws book, says “shut up you fucking asses”, punches right eye, squeezes right eye, says “I want to kill myself” “I want to get the biggest concussion ever so I can sleep forever”, beats head on wall over and over, says “I’ll punch you” to Ms. ;, hits Ms. , bites left wrist, cries, screams, says over and over “I need to go home”, kicks staff repeatedly.

38. March 7, 2012, at p. 147: falls off chair, kicks, bangs head against the wall, spits, bites left arm, bites wood on door, stomps on paper, scratches self, hits self, rams into door.

39. March 12, 2012, at p. 149-155: slams self into door, bangs his head on wall, says he didn't care if all of his classmates are afraid of him, bangs wall, sleeps, breaks crayons in half and throws them, kicks chair, says "I hate it here", destroys desk, says "I don't have to do anything you say – my grandma said I don't", hits self in head with binder and hits Ms. when she puts her hand on 's forehead to protect him, says "I don't have to follow the fucking rules – the rest of the idiots in here don't get bored like I do", says "Not having drawing time will end up in me choking everybody", closes door on self over and over, says "My grandma doesn't make me clean up; you shouldn't try to make me", says "you all hurt me, I'll hurt you all back worse".

40. March 14, 2012, at p. 156-160: bangs on desk, hits forehead with hand, throws play equipment at staff, says "I want to sleep", stands in middle of room with hands over ears and growls "Why don't you just shut up, you dumb ass", threw chair at Ms.

41. On March 14, 2012, an IEP team meeting was held, Coop Ex. #1, p. 161-162. Ms. attended the meeting. The team recommended that return to half days after spring break and agreed to do an updated Functional Behavior Assessment. The team agreed that Ms. would be contacted by staff if was put into seclusion.

42. March 15, 2012, at p. 163-167: knocks games off shelf, threw a game, bangs head on wall, appears to not be upset and appears to enjoy the extra attention he gets when he behaves badly, is picked up from school by relatives.

43. On March 26, 2012, the IEP team met again for a Change of Placement meeting. Ms. gives verbal permission for to attend Connections for ½ day. (Ex. #1, p. 170)

44. March 28, 2012, at p. 174: yells at another student, says "Why doesn't everyone shut the fuck up", refuses to be quiet, says "I might as well scratch my eyes out", talks

to grandma on phone, hits self, pounds on wall, . is picked up from school by relatives at 10:15 a.m.

45. March 29, 2012, at p. 179-181: kicks desk, frightens other students by screaming and growling, other students moved into hall because they are afraid of . , says “I’m tortured – it’s complicated to explain”, sleeps, hits self, growls and pounds on the wall, scratches forehead (after speaking with Ms. conversation at p. 182), is picked up at school by relatives at 10:15 a.m.

46. March 30, 2012, at p. 184: spits out food in lunchroom, growls and screams and throws chair, spits on floor, offered nap and says “My grandma said she would ground me if I did and then I couldn’t go to the lake”.

47. On April 3, 2012, another IEP team meeting was held. (Ex. #1, at p. 185-186) Ms. was told that the Connections program was for student with IEP for emotional disturbance and who were not successful in their home school. The goal of Connections is to return the student to the home school. Other options for were discussed and the IEP team agreed to meet again on April 11, 2012.

48. April 5, 2012, at p. 191-192: kicks wall, hits wall with fist, tries to hit wall with his head.

49. April 9, 2012, at p. 193-195: hits self in arm, sleeps, blocks time out door with his hands and rams door into staff, kicks staff, knocks down ceiling tiles, throws shoe at staff, sleeps again, throws chair, kicks staff in shin repeatedly and punched staff in jaw. Ms. received medical attention for the punch to her jaw. (Ex. #1, at p. 197-199).

50. On April 11, 2012, the IEP team held another meeting to review the functional behavior assessment and to write a behavior intervention plan. (Ex. #1, -. 202-204). Ms.

testified that does not like school and see no purpose to doing academic task. The function of his behavior is to divert attention from school work/tasks to his behavior. 's end goal is to go home. Ms. testified that at first, is loud and curses. then engages in physical outbursts such as kicking or throwing chairs and desks. Ms. testified that the other students fear and hide from him. Connections classroom is small, see Ex. #4.

51. April 12, 2012, at p. 205-206: says of other students "These people are more annoying than my sister – I hate people", hits forehead against top of his desk.

52. April 13, 2012, at p. 207: says "I wish I had a rock to bang my head, either that or a pistol to hit myself in the head", all other children were removed from the classroom, hits staff, kicks file cabinets.

53. April 16, 2012, at p. 209-213: . throw folder, pencil, hits staff in chest, hits head on table, staff tries to remove all items that can use to hurt himself (shoes, belt), hits head with fist, breaks ceiling tile, hits room window with ceiling tile, throws shoe, says "I broke it on purpose and I don't care – everyone makes me angry", hits door.

54. April 19, 2012, at p. 214-218: hits self in face, threw papers, wedged self in doorway, scratched, hits and tried to bite staff, screaming "You fucking bitches", says "I want to hurt people" "I will fucking kill you, you fucking bitch – let me out so I can do that", rams door with arm, spits Ms. received medical attention for biting and hitting her. (Ex. #1, p. 200). Ms. also received medical attention for hitting, scratching, pulling her hair and trying to bite her. Ms. has claw marks on arms and bruises on her face. (Ex. #1, p. 201) pictures of Ms. s injuries at p. 227, 229, 230, 235, 236, 237, 238.

55. On April 25, 2012, the IEP team held another meeting regarding [redacted]'s change of placement. The team recommended [redacted] return to the homebound setting again. Ms. [redacted] wanted [redacted] to have PE and Art in general education. The IEP team offered to start homebound services on April 27, 2012 but Ms. [redacted] preferred to wait for services to begin on April 30, 2012, so she could contact the Disability Rights Center.

56. Ms. [redacted], testified that [redacted] was not successful at Connections. [redacted] is violent and aggressive and refuses to complete academic work which [redacted] views as a non preferred task.

[redacted] has been in Connections for 3 years and needs more structure and support than the Connections program can provide. Ms. [redacted] testified that the homebound program in [redacted] County allowed [redacted] 4 days (at the elementary school after regular school hours) with assistance one on one with 1 paraprofessional and 1 special education teacher for 1 ½ hours a day. No other children are present.

57. Ms. [redacted] testified that in the 3 years [redacted] has been in Connections, he has not grown and the program was not successful. [redacted] has not been able to transition back to his home school. [redacted] lacks the self control necessary to be in a classroom with regular education peers.

58. Ms. [redacted] testified that she had taught Connections at [redacted] Elementary for 15 years. When [redacted] increased his hours at Connections in November, 2011, Ms. [redacted] testified that his behavior problems increased. Rewards did not work for [redacted] since [redacted] did not like the offered rewards. Other children in the class were afraid of [redacted] and often had to be removed from the classroom during his outbursts. As with the other professional educators, Ms. [redacted] testified that Connections was not the appropriate place for [redacted] at this time. [redacted] has attended Connections for 3 years and the program has not helped his behavior.

59. Ms. testified that Ms. did not support school staff and that needed structure and rewards and consequences without interference from Ms. . The homebound program works for , he performs work. If were to return to Connections, Ms. agreed that he was likely to cause injury to self or other students or to staff.

60. The uncontroverted testimony from the experts (Ms. , Ms. , Ms. , Ms.) is that is likely to cause injury to self or others if he is returned to the Connections program at Elementary. The uncontroverted facts in this case are that has already caused injury to self, others and property while at the Connections program. has been in the Connections program for 3 years and is no closer to returning to his home school than the day he started at Connections. Lack of support from Ms. makes it unlikely can be successful at this time.

/s/ Sue DeVoe
Sue DeVoe, #13314
Expedited Due Process Hearing Officer

Certificate of Service

Sue DeVoe states that on May 22, 2012, she served a copy of the above to the following in the manner indicated:

, lawyer for Special Education Cooperative,
Also by mail: McAnany, Van Cleave & Phillips, PA
10 E. Cambridge Circle Drive, Ste. 300
Kansas City, Kansas 66103

Also by mail:

With all of the exhibits

Mark Ward, via e-mail: mward@ksde.org

/s/ Sue DeVoe
Sue DeVoe, #13314
Expedited Due Process Hearing Officer