

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

DANIEL H.

V.

WEST WARWICK SCHOOL COMMITTEE

INTERIM ORDER

This matter concerns a Section 504 complaint that seeks a change in Daniel H.'s classroom assignment and the implementation of supports, accommodations and staff training related to Daniel's academic and behavioral needs.¹

Daniel is a 10-year-old fifth-grade student with several serious physical and psychological disabilities, including Asperger's syndrome. He has a Section 504 plan. Daniel's mother, in her letter of appeal, states that "I have requested and been denied IEP's year after year for him. The 504 [plan] does not, nor has ever, met his needs." (emphasis in original). [Petitioner's Exhibit 1].

The evidence shows a complete breakdown in the relationship between the family and the school district. The parties are unable to communicate effectively. As a result, Daniel's needs are not being addressed, and inappropriate teaching and behavioral strategies have been used. A state of mutual frustration and mistrust exists, to the point where Daniel's mother has removed him from school. Daniel currently receives tutoring at home.

¹ The Commissioner of Education designated the undersigned hearing officer to hear and decide this matter. Hearings were held on January 15 and 27, 2003.

Following the filing of this appeal, the parties were able to agree on several diagnostic and remedial measures for Daniel. The parties continue to disagree on other issues, most notably Daniel's educational placement. Emphasizing the importance of continuity and the challenges of transition for Daniel, his mother wants him to remain at his current school but be assigned to a different fifth-grade classroom. The school district believes that the family-school relationship at Daniel's current school is irretrievably broken, and that Daniel's only chance to succeed this year is with a "fresh start" at a different elementary school.

The following passage from a June 2001 psychological evaluation accurately describes Daniel:

Daniel is an exceptionally gifted student with strengths in verbal reasoning and memory. He has significant difficulty with attention and concentration, and with impulsivity. He shows evidence of right brain dysfunction that suggests a nonverbal learning disability that impacts ability to pick out pertinent material in visual areas, to integrate complex visual material, to hold two things in mind at once and operate on them, to organize, plan, perform and sustain schoolwork as well as others of his age, and his skills are severely discrepant from those of others at his ability level. In addition, as part of this he shows a specific disability in written expression in the ability to generate ideas, write them down, sustain effort and organize around a plan or theme. [Petitioner's Exhibit 3].

With regard to Daniel's written-language ability, the evaluation reported that

It took Daniel an immense amount of time and much coaxing to have him write anything at all. If the standards are followed strictly, by the end of 15 minutes, Daniel had written only the title of the story . . . Even with much coaxing, structuring about what to write, allowing him to sound out his ideas aloud at first, he wrote only three sentences in 25 minutes. . . Daniel would appear to have a written language disability for independent written expression, especially when compared to his verbal potential. [Ibid.].

In the spring of 2001, Daniel was referred for a psychological evaluation because of his longstanding social and behavioral problems. The April 2001 evaluation states that

Specifically, Daniel demonstrates a qualitative impairment in social relatedness as evidenced by immature social skills,

restricted understanding of others' experiences, and under-developed peer relationships appropriate to this developmental level. He has a limited interest in, and demonstrates difficulty understanding social communication. Daniel also demonstrates unusual and restricted interests and activities as evidenced by his preoccupying interest in reading, his particular interest in reading manuals and his preference for mechanical things. He exhibits rigid adherence to his routines, and demonstrates significant resistance to changes. Daniel also exhibits other non-diagnostic characteristics that are often associated with Asperger's Disorders including highly developed verbal skills, attentional and organizational problems, sensory sensitivities and integration problems, motor clumsiness (particularly handwriting) and impulsivity, and chronic anxiety. [Petitioner's Exhibit 4].

Daniel's current 504 plan contains only two provisions related to written language: "Provide instruction in the writing process," and "Provide Daniel with a portable spelling aid." [Joint Exhibit 2]. As for his behavioral difficulties, the 504 plan states "Consider alternatives to recess detention as a disciplinary measure, or if recess detention is employed do so on a day when he has physical education or adaptive physical education or provide an alternative outlet (i.e. running errands)." [Ibid.]. Furthermore, with the exception of an adaptive physical education evaluation that was conducted last year, Daniel's evaluations date back to the first half of 2001. We note that the April 2001 psychological evaluation contained a recommendation that the district "may benefit from consultation with a specialist in the area of Autism Spectrum Disorders. The development of a tailored behavior program for Daniel may be instrumental in increasing his organizational skills and cooperation, and reducing disruptive behaviors." [Petitioner's Exhibit 4]. Twenty months later, the parties have agreed to enlist an autism expert to observe Daniel and make recommendations relative to his educational needs.

The 2002-03 school year is an important one for Daniel. It is his last year of elementary school before moving to the middle school. The move to middle school can be trying for any student. For Daniel, the challenges presented by this transition are monumental. A successful transition will require extensive preparation this year.

With the breakdown in the family-school relationship and the removal of Daniel from school, Daniel's situation has become critical. Given Daniel's impairments and needs, we do not believe that moving him to another school for the last four months of his elementary education will help with the challenges he is facing. On the other hand, given the current state of the parties' relationship and the inadequacy of Daniel's 504 plan, we consider it equally unwise at this time to return Daniel to the school he was attending.

We support the involvement of an autism expert at this time. However, we regret the delay that has occurred and the ensuing consequences, particularly with regard to Daniel's writing and behavioral difficulties. The resulting frustration of the parties is evident. The effect on Daniel is unknown and needs to be assessed. Given the overall circumstances, we think a back-to-basics approach is necessary.

Accordingly, we order the school district to conduct a full evaluation of Daniel's needs and a review of his records to determine whether he requires special education and related services under the Individuals with Disabilities Education Act. We further find that the circumstances warrant the appointment of a special visitor to oversee the processing of the special-education referral and to serve as an intermediary between the parties. The special visitor shall specifically address the areas for which accommodations and supports are being sought in this matter. We hereby appoint Dr. Thomas DiPaola or his designee as special visitor.

Pending the special-education evaluation, Daniel shall receive educational services at home. The special visitor shall ensure that appropriate services are provided.

We enter this order on an interim basis under R.I.G.L. 16-39-3.2. We retain jurisdiction of this case for the purpose of receiving reports from the special visitor.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date: February 27, 2003