

Experts say ‘missteps’ were likely in how school addressed special needs of Richneck student

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When first grade teacher Abigail Zwerner was shot by her 6-year-old student in the middle of a lesson on Jan. 6, it left the Newport News community — and the nation — in shock.

In the wake of that shooting at Richneck Elementary, much has been said about the heightened student behavior problems Newport News schools have experienced in the past several years. Teachers and community members have lamented the lack of administrative support in dealing with and disciplining students for disruptive and dangerous behaviors.

But special education advocates across the state say it’s also important to note that the school division likely failed to provide the 6-year-old student the supports and services he needed up to that point.

An attorney for the child’s family said the boy has “an acute disability,” and that, as part of a specialized “care plan,” his parents had been attending school with him every day until the week of the shooting.

Special education is governed by a federal law called the Individuals with Disabilities Education Act, or IDEA. Under the act, students can be eligible for special education services if they fall in one of 13 categories. One is for students who have emotional disabilities, which can include behavior disorders.

Although it is unclear if the boy had a disability that qualified him for an individualized education plan, or IEP, many special education experts have called the accommodation of a parent in the classroom a “red flag.” They say it indicates significant behavior concerns that likely called for additional support.

Federal privacy laws prevent the school division from disclosing whether the student was evaluated or deemed eligible for special services, but special education advocates say the statement from the student’s family raises questions about what was being done to support him.

Cheryl Poe is the executive director of a Virginia Beach-based nonprofit called Advocating 4 Kids, which provides special education advocacy services to parents in Hampton Roads and across the country. She’s worked in the special education arena for more than 20 years.

Poe said school divisions are not only required to provide services to students who have special needs, but — through an IDEA clause referred to as Child Find — they also are required to identify and evaluate those children.

“Child Find means that a school district has a responsibility to seek out, locate, identify, evaluate and provide services to students who have disabilities or developmental delays,” she said.

She claims many school divisions in Virginia are not abiding by the Child Find mandate.

“A lot of times, school districts make it close to impossible for children to really get the services that they need,” she said.

Poe said the problem is rampant because the state is not providing the necessary oversight to ensure that school divisions are complying with IDEA.

“In my opinion, the Virginia Department of Education special education department has some responsibility in the failures that existed in Newport News with this child,” she said.

Poe said media reports and the family’s statement raise many questions: “Was he fully evaluated? Were they providing related services? ... Was he getting psychological counseling? Were the parents getting support? Was a social worker working with the family to help them figure out if they needed additional supports in the home?”

But even if all steps are appropriately followed, it can take months for a child to be evaluated, deemed eligible for special education services and placed on an IEP. In Newport News, the process of identifying students in need of special services begins with what the division calls the Student Success Team.

Erika Daniel, the supervisor of psychological services at Newport News, said if a parent or teacher believes a child needs additional support, they can request a meeting with the Student Success Team. During that meeting, the team determines a plan of interventions, based on the child’s needs.

Over the course of several weeks to months, the success of those interventions is monitored. At that point, if the team suspects a disability, it can make a referral to the special education department, which then has 65 business days to set an eligibility meeting, then a further 30 days to develop an IEP.

Daniel noted that for special education eligibility under the emotional disability category, students must exhibit characteristics of an emotional disability for about six months. Among the criteria to determine eligibility for this category are “an inability to build or maintain satisfactory interpersonal relationships with peers and teachers” and “inappropriate types of behavior or feelings under normal circumstances.”

But officials noted that at any point, a parent can revoke their consent and refuse services.

Vivian Vitullo, director of special education, said if a parent does not give consent for their child to be identified as a student with a disability, the school would follow the general education discipline criteria.

Experts noted that families and school officials sometimes do not agree on the best course of action for children. They acknowledge a possibility the child's parents may have refused certain services or supports in this case, but say that does not absolve the district from responsibility for the safety of other students.

"It's the school's ultimate duty to ensure that everybody in that school is protected," Poe said. "There is a clause that states if a child's behavior impedes the learning of himself and/or others, or his peers, then some supports and services need to be put in place."

Advocates say improper implementation of special education laws are a problem throughout Virginia. Some say they've experienced situations in which school divisions, strapped for resources, sometimes fail to provide proper support because they don't have the essential personnel.

Michele Gardner, a special education advocate with SDW Consulting in Norfolk, said she has sat in meetings where school officials acknowledge a child needs certain supports but later refuse to include them in an IEP because the school would then be obligated to provide them. Gardner said there is often resistance to place anything in an IEP that requires resources, be it a reading specialist, a one-to-one aide or alternative placement.

Gardner said this can place an undue burden on teachers, who are then required to work with students without the necessary support.

Melissa Waugh is an attorney based in Fairfax who exclusively practices special education law. She said the Newport News case raises questions about whether the school properly carried out its obligations. If the child had an IEP, he is entitled to a free and appropriate education, and the accommodation of having a parent in the classroom comes with a cost, she said.

"If the parent is having to come in and sit with the child throughout the day, then that's not free because I bet those parents have a job," Waugh said. "And time has a monetary value, whether or not they have a job."

Waugh also said if the child required a one-to-one aide, that should have been someone with appropriate behavioral training.

"If someone needs to be sitting there all day with a child, that individual should be hired, paid for and trained by the school district," she said. "It should not be the parents."

"When students are not properly identified, when they're not properly supported in our schools, then these are the kinds of horrific outcomes that we see. This one is particularly egregious, particularly horrific, but that doesn't mean that there isn't horrific outcomes happening throughout school districts of Virginia all the time."

Waugh said the failures of schools to "properly apply and comply with" special education and disability laws have led to bullying, injuries and suicides.

Kevin Sutherland, a professor of counseling and special education at Virginia Commonwealth University's School of Education, noted the circumstances of this case are "extremely rare."

“I think it’s really hard to extrapolate any kind of policy or practice recommendations from this particular case,” he said.

But he said there appears to have been many “missteps” along the way of getting the child the help and support he needed. Sutherland stressed that he only knows what has so far been reported in the media, including accounts of the student’s past aggressiveness and threats against teachers and peers.

“It definitely sounds like this student was exhibiting some challenging behaviors,” he said.

Sutherland spent several years as a special education teacher, working in residential and public settings with children who have intensive behavioral and learning needs. He said he had never heard of an accommodation that allowed or required a parent to be in the classroom with their child every day.

Vitullo said it is hard to speak about what “typical” accommodations look like in the special education world.

“Special education accommodations are individualized based on specific student needs,” she said. “We follow best practices. We look at the high-leverage practices to identify appropriate accommodations. ...Every accommodation that’s identified is unique to the individual student and their needs.”

But Sutherland said significant behavior challenges, such as those reportedly exhibited by the child, cannot be addressed simply by having a one-to-one adult in the classroom.

“This is a situation where it sounds like the needs of this particular student were so significant, that there probably were potentially some mental health concerns that needed to be addressed,” Sutherland said. He added that the child likely needed “wraparound” services, which extend beyond the classroom and can include things like counseling and other supports.

He said the whole situation is disheartening.

“I feel sad for the teacher, I feel sad for the child’s classmates that had to see this,” Sutherland said. “And we have to keep in mind, it’s a 6-year-old child. I feel sad for the child and the family, and I hope that something positive comes out of this situation that can help teachers and kids and families in the future to avoid another incident like this.”

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