STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1442

Special Education Complaint 23-157C on behalf
of A. M. A. from Rochester 0535-01.

Filed July 1, 2024
Affirmed
Bjorkman, Judge

Independent School District No. 535
File No. 23-157C

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Considered and decided by Bjorkman, Presiding Judge; Smith, Tracy M., Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

This appeal challenges the decision of respondent Minnesota Department of Education (the department) regarding a special-education complaint filed by respondent M.A.H. (the parent) on behalf of his teenaged child, A.M.A. (the student). Relator Independent School District No. 533 (the district) argues that the department erred by determining that the district (1) violated the requirement to have an individualized

education program (IEP) in effect for the student at the beginning of the school year, and (2) failed to provide the student a free and appropriate public education (FAPE). By notice of related appeal, the parent challenges the department's determination that the district's initial evaluation of the student's educational needs complied with federal evaluation procedures. We affirm.

FACTS

The student moved with his family from Pennsylvania to Rochester, Minnesota during the summer of 2022. About a week before the September 7 beginning of the school year, the student's family applied to enroll him with the district. They informed the district that the student's native language is Somali but he speaks some English, and they provided his most recent Pennsylvania IEP and educational-need reevaluation, both dated September 2021.

The Pennsylvania documents indicate that the student has received special-education services since 2015; falls within the primary disability category of autism, with secondary categories of intellectual disability and speech or language impairment; and requires specialized instruction with "significant modifications to the curriculum." The student's 105-page IEP provided him with: his own personal care assistant (PCA) for 6.5 hours per day; a speech-generating device; a behavior plan requiring use of specific restraint techniques to regulate aggressive behavior; and a schedule in which he spent most of his day in a special-education environment and some of it with general-education peers.

On September 8, the parent met with the district to discuss the student's placement. The district suggested, based on the Pennsylvania IEP, that the student be placed in a

separate special-education school. Because the student's family declined that option, the district placed the student in a self-contained special-education program at a district high school so he could continue to have some interaction with general-education peers. Regarding special-education services, the district told the family that it could not provide a one-to-one PCA; the family expressed concern that this omission would lead to behavioral problems but acquiesced in sending the student to school. The student began attending school on September 28.

After a relatively quiet first month, the student began exhibiting behavioral problems and served several full- or partial-day out-of-school suspensions in late October and early November. On November 4, the parent requested an IEP team meeting to address the student's behavior and suspensions. The district held a meeting on November 15 but did not treat it as an official IEP team meeting because the student had not yet been evaluated and deemed eligible for special education and related services in Minnesota.

Meanwhile, on November 8, the district provided written notice to the parent proposing an initial evaluation of the student. The proposal noted that the student is a "Multilingual Learner" and outlined a plan for the areas of evaluation, the assessments to be performed or materials to be reviewed, and the staff to act as evaluators. The parent consented to the initial evaluation on November 9.

During November, the student's behavioral problems continued, and he had several additional out-of-school suspensions. And in December, the student's behaviors escalated to the point that he exhibited physical aggression toward staff almost daily. Staff began using physical holds with the student, commonly a team-controlled hold in which multiple

staff restrained the student and lowered him to the floor, facing the ground. Staff generally completed a "Restrictive Procedures Form" documenting the number and duration of holds they used in a given day and informed the family about them.

Also in December, the district convened a "Behavior and Mental Health" team to address the student's behavior. The team recommended using simple verbal responses to the student's behavior. And the district limited the student's educational environment to a separate room where rotating teams of three staff sat with and directed the student at a high-sided study carrel. The student stopped attending lunch with his general-education peers on December 8.

The district completed its initial evaluation of the student's educational needs on December 13. In connection with the evaluation, the district conducted a file and records review; administered numerous assessments, including a functional behavioral assessment based on input from family and teachers; and conducted two observations of the student. In its report, the district notes that it was unable to complete five planned assessments because of the student's behavior, but obtained partial results for some of them, relied on information from the family, or completed an alternative assessment. At the end of the report, the district concludes that the student is eligible for special education and related services in the categories of autism spectrum disorder (ASD) and speech or language impairment.[1]

[1] The report notes that the student's Pennsylvania IEP placed him in the intellectual-disability category, stating that the district sought to assess him in that category but was unable to get a valid score. Instead, the district determined that the student "will receive services under ASD."

On December 16, the district held an IEP team meeting with the student's family, his teachers (except his art teacher, whom the parent agreed to excuse), and district staff to review the evaluation report, determine eligibility for special-education services, and develop a Minnesota IEP. They also planned to discuss the use of restrictive behavioral-response procedures, the topic of a prior meeting that was canceled because of inclement weather. Due to time constraints, the IEP team was only able to review the evaluation report and determine that the student is a child with a disability under the categories of ASD and speech or language impairment; they agreed to set another meeting to develop an IEP and discuss the use of restrictive procedures.

The meeting took place on January 4. Before the meeting, the district sent a draft proposed IEP to the family. The draft IEP proposed to serve the student in a separate special-education school in order to address his aggressive behavior. No general-education teacher attended the meeting because the district was proposing a placement where the student would not be participating in general education, and the student's speech/language pathologist had to leave early. The family expressed concern about the suggested annual goals, requested additions to the proposed services, and objected to the proposed placement at the special-education school. The principal of the special-education school described the school's programming, including its use of seclusion to regulate students' behavior. The team also discussed the use of physical holds, which was incorporated into the student's Pennsylvania IEP but not in the draft Minnesota IEP because of the proposed placement at a school that relies instead on seclusion.

On January 6, the district emailed a prior written notice[2] to the parent, attaching a revised proposed IEP (proposed IEP) and a proposed behavior intervention plan (proposed BIP). The proposed IEP sought to address at least some of the family's concerns but continued calling for the student's placement at the special-education school. Neither the proposed IEP nor the proposed BIP addressed the use of restrictive procedures, either physical holds or seclusion.

Meanwhile, district staff continued to use physical holds with the student on a regular basis, sometimes failing to thoroughly document the incidents and timely report them to the parent. On January 9, staff documented physical holds that day but only partially completed a restrictive-procedures form (as it had on December 14). Staff provided the form to the family the following day, along with forms for physical holds that took place on January 4 and 5, which was the first time the family learned of those holds.

On January 12, the parent met with district staff (not a full IEP team meeting) and expressed concern that the initial evaluation was insufficient, resulting in an inappropriate educational placement in the proposed IEP. The following day, the parent toured the special-education school. The district told the parent that he must consent to the proposed IEP or the student would be treated as a general-education student. The student did not attend school after January 13.

[2] Both federal and state law require school districts to provide written notice to parents of proposed changes regarding a student's disability identification, evaluation, educational placement, and other aspects of the student's educational needs and services. 20 U.S.C. § 1415(b)(3), (c)(1) (2018); 34 C.F.R. § 300.503(a) (2022); Minn. Stat. § 125A.091, subd. 3a (2022).

On January 16, the parent responded in writing to the district's January 6 prior written notice, reiterating objections to the proposed IEP and BIP ("lack of behavior goals, incomplete BIP, and placement at [the] separate special-education school") and requesting a meeting with the IEP team. The parent explained that, because staff told him that the district would stop providing services unless he agreed to the proposed IEP as written, he would not send the student to school unless and until advised otherwise or an agreement was reached. That same day, the parent reiterated concerns about the district's initial evaluation and requested an independent educational evaluation (IEE).

The district provided two separate responses. As to an IEP, it responded that "due to [the] refusal to consent to the initial provision of special education and related services," it would no longer provide "comparable services" to the student based on the Pennsylvania IEP, would not implement the proposed IEP, and would immediately begin treating the student "as a student who is not disabled and who is not suspected of having a disability." As to an IEE, the district again pointed to the parent's refusal to accept the proposed IEP, stating that the family could not seek a publicly funded IEE unless they did so.

In February, the parent wrote to the district again to "set the record straight" that he does not "categorically refuse to consent to the provision of special education and related services," and his objections to the IEP should not preclude an IEE or "absolve" the district of providing services to the student.

At the end of the school year, the parent filed a complaint with the department alleging numerous violations of special-education law. The department investigated, provided the parent and the district an opportunity to submit information and written

arguments, and issued a decision. The department determined that the district's initial evaluation was sufficiently comprehensive. But it determined that the district violated 34 C.F.R. § 300.323(a) (2022) when it failed to develop and have an IEP in place at the beginning of the school year; violated 34 C.F.R. § 300.101 (2022) and Minn. Stat. § 125A.03 (2022) when it failed to provide the student a FAPE; and violated various procedural requirements. The department ordered the district to take the following corrective action: (1) undertake tasks necessary to develop an IEP for the upcoming school year, (2) provide compensatory services commensurate with that IEP, and (3) coordinate with the department to provide training on special-education due-process requirements to district special-education staff and administration.

The district filed this certiorari appeal, and the parent filed a notice of related appeal.

DECISION

On certiorari review of the department's quasi-judicial decision, we presume the department's decision is correct and defer to the department's "expertise and special knowledge in its field." *Special Educ. Complaint 22-027C ex rel. V.S.*, 981 N.W.2d 201, 210 (Minn. App. 2022). We will reverse that decision if it "reflects an error of law, the determinations are arbitrary and capricious, or the findings are unsupported by the evidence." *Id.* at 210-11 (quotation omitted).

This appeal concerns special-education law, including: the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1482 (2018); federal regulations implementing the IDEA; and Minnesota statutes governing special education, Minn. Stat.

§§ 125A.01-.81 (2022).[3] The IDEA seeks to ensure that "all children with disabilities have available to them a [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). The tool for providing services under the IDEA is an IEP—a written statement prepared for each child with a disability that includes academic and functional performance goals, as well as the services and accommodations to be provided to the child. 20 U.S.C. § 1414(d)(1)(A)(i). An IEP is created by an IEP team, which includes the child's parents, the child's teachers, and a representative of the local educational agency—the school district. 20 U.S.C. § 1414(d)(1)(B).

The IDEA also seeks to protect the rights of parents of children with disabilities. 20 U.S.C. § 1400(d)(1)(B). To that end, the IDEA requires numerous procedural safeguards, including that the school district must provide prior written notice with certain information whenever it proposes to initiate or change, or refuses to initiate or change, the child's disability identification, evaluation, or educational placement, or the provision of a FAPE. 20 U.S.C. § 1415(b)(3), (c)(1); 34 C.F.R. § 300.503(a). Minnesota law additionally requires the school district to inform the parent about what will happen and what options they have if they object to a proposal. Minn. Stat. § 125A.091, subd. 3a.

[3] Minnesota's special-education laws "largely mirror the federal requirements." *V.S.*, 981 N.W.2d at 211.

I. The district violated 34 C.F.R. § 300.323(a) by not having an IEP in place for the student at the beginning of the school year.

The regulation at issue provides: "At the beginning of each school year, each [school district] must have in effect, for each child with a disability within its jurisdiction, an IEP . . . ." 34 C.F.R. § 300.323(a). It implements a provision of the IDEA with nearly identical language. *See* 20 U.S.C. § 1414(d)(2)(A); *accord* Minn. Stat. § 125A.08(a).

The district argues that the department erred by determining that it violated the regulation by not having an IEP in place for the student at the beginning of the 2022-23 school year. The district does not dispute the pertinent fact—that it did not have a Minnesota IEP in place at that time. But it argues that the department erred by determining that it violated the regulation because (1) the regulation does not apply to late-summer transfers from out of state, and applying it in such cases yields an absurd result; (2) the regulation applies only to children with a disability and the student was not considered a child with a disability in Minnesota at the beginning of the school year; and (3) the department arbitrarily and capriciously changed its interpretation of the regulation.[4] We address each argument in turn.

Late-Summer Transfer

The district asserts that 34 C.F.R. § 300.323(a) does not "directly address" the circumstances here—transfer from another state and enrollment shortly before the school

[4] The district also argues that the "stay-put" rule in 20 U.S.C. § 1415(j), which preserves a child's school placement while an IDEA action is pending, does not apply to require the district to implement the Pennsylvania IEP. We need not consider this argument because the department did not rely on the "stay-put" rule in determining that the district violated 34 C.F.R. § 300.323(a).

year begins. It maintains that 34 C.F.R. § 300.323(f) (2022) is "the only [law] that references interstate transfers," and that it followed the process outlined in that regulation by providing services "comparable" to those included in the student's Pennsylvania IEP.

This argument requires us to interpret 34 C.F.R. § 300.323(a). Interpretation of a regulation (like a statute) presents a question of law, which we review de novo. *V.S.*, 981 N.W.2d at 213. In doing so, we look first to the plain language of the regulation and, if that language is unambiguous, apply it as written. *Indep. Sch. Dist. No. 12 v. Minn. Dep't of Educ.*, 788 N.W.2d 907, 912 (Minn. 2010). We will not "disregard the regulation's plain meaning to pursue its spirit." *Id.*

The district simply asserts that 34 C.F.R. § 300.323(a) does not apply here but does not engage with the language of the regulation. That language could not be more clear—"At the beginning of each school year," the district "must" have an IEP in effect for "each child with a disability" within the district. 34 C.F.R. § 300.323(a). There is no exception for children who move to the district shortly before the beginning of the school year. In fact, the language does not even require that the child be enrolled; the IEP requirement applies simply based on the child being "within [the district's] jurisdiction." *Id.*

The district asserts that the regulation cannot mean what it says for *all* children, because it would be absurd to require it to implement an IEP for a new student with a disability who enrolls mere days before the school year begins. But courts will "displace" a law's plain language on the ground of absurdity only if the plain language would "utterly depart" from the law's purpose. *Rodriguez v. State Farm Mut. Auto. Ins. Co.*, 931 N.W.2d 632, 639 (Minn. 2019) (quotation omitted). Mere "anomalous results" are insufficient.

State v. Overweg, 922 N.W.2d 179, 185 (Minn. 2019) (quotation omitted). That the plain language of 34 C.F.R. § 300.323(a) gives rise to practical difficulties in some cases does not justify ignoring what the regulation says.

Moreover, even if practical considerations cast doubt on the regulation's meaning, other factors confirm that it applies here. First, the U.S. Department of Education has expressly declined to modify the regulation to address the challenge of late-summer transfers. Indeed, it explained that because the IDEA "is clear that at the beginning of each school year, each [school district] must have an IEP in effect for each child with a disability in [its] jurisdiction," school districts "need to have a means for determining whether children who move into the State during the summer are children with disabilities and for ensuring that an IEP is in effect at the beginning of the school year." 71 Fed. Reg. 46540, 46682 (Aug. 14, 2006).

Second, imposing the burden on school districts to provide for even those children with disabilities who enroll right before the beginning of the school year is consistent with provisions in state and federal law requiring school districts to locate and identify children with disabilities. 20 U.S.C. § 1412(a)(3)(A); Minn. R. 3525.0750 (2021) (requiring school districts to "develop systems designed to identify pupils with disabilities," even those who are "not attending any school"). These provisions impose a burden that is similar and complementary to the burden to have an IEP for all children with disabilities at the beginning of the school year.

Finally, reading 34 C.F.R. § 300.323(a) as applying to all children with disabilities who move to Minnesota during the summer is consistent with the language of the

regulation the district claims is controlling and that it followed—34 C.F.R. § 300.323(f). That regulation states that, when a child with a disability has an IEP in one state and transfers to another state "within the same school year," the school district in the new state must provide "services comparable to those described in the child's IEP" until it conducts its own evaluation. 34 C.F.R. § 300.323(f). By its plain terms, the regulation applies only when the child transfers during the school year. As such, subparts (a) and (f) of 34 C.F.R. § 300.323 (2022) establish a binary in which the former applies to all summer transfers and the latter applies to all school-year transfers.

In sum, both the plain language of 34 C.F.R. § 300.323(a) and numerous external factors indicate that the regulation requires school districts to have an IEP at the beginning of the school year for all children with disabilities who enroll during the summer, even those who transfer from another state and enroll late in the summer.

Disability Determination

The district next argues that 34 C.F.R. § 300.323(a) does not apply because the student was not considered a child with a disability in Minnesota at the beginning of the school year. This argument is unavailing for several reasons. First, the district did not make this argument to the department. Rather, its sole response to the claim that it violated 34 C.F.R. § 300.323(a) was that it followed 34 C.F.R. § 300.323(f) and provided "comparable" services—an argument premised on *accepting* that the student was considered a child with a disability. Appellate courts generally do not consider issues raised for the first time on appeal, including in certiorari appeals. *See In re NorthMet*

Project Permit to Mine Application, 959 N.W.2d 731, 755 (Minn. 2021); *In re A.D.*, 883 N.W.2d 251, 261 (Minn. 2016).

Second, even if we address the argument on the merits, it fails. The district is correct that, under the plain language of the regulation, it applies only to a "child with a disability." 34 C.F.R. § 300.323(a). It also is correct that, in this context, the phrase "child with a disability" means specifically a child "evaluated . . . as having" one or more disabilities and, "by reason thereof, needs special education and related services." 34 C.F.R. § 300.8(a)(1) (2022). But nothing in that definition indicates that a child evaluated as having a disability and in need of services in one state should not be considered a child with a disability in another state, particularly where, as here, the disability designation is long-standing and in a category recognized in Minnesota law. *See* Minn. Stat. § 125A.02, subd. 1 (including "speech or language impairment" and "autism spectrum disorder" among list of disabilities qualifying a child as a "child with a disability"). In fact, as discussed above, if a child transfers during the school year, a school district must accept the disability designation and provide special-education services "comparable" to those provided in the other state until it conducts its own evaluation. *See* 34 C.F.R. § 300.323(f).

Finally, the record confirms that the district consistently treated the student as a child with a disability. It postponed his school start to address placement and special-education services with the family, identified him in its records as a child with disabilities who needs special-education services, and it provided him special-education services from his first day of attendance.

Inconsistent Interpretation

The district also contends that the department acted arbitrarily and capriciously by interpreting 34 C.F.R. § 300.323(a) to require an IEP here when it reached the opposite conclusion "under virtually identical facts" in 2022. Arbitrary or capricious decision-making may be grounds for reversing an administrative decision, *V.S.*, 981 N.W.2d at 210-11, and such problematic decision-making may be demonstrated by unexplained deviation from prior decisions, *Anoka County v. L. Enf't Lab. Servs., Inc.*, 3 N.W.3d 586, 592 (Minn. 2024). But we disagree that the department's 2022 decision involved "identical facts."

In that case, a child moved to Minnesota over the summer with an out-of-state IEP and enrolled with the local school district in mid-August. The school district provided prior written notice before the beginning of the school year indicating its rejection of the out-of-state IEP and proposing to provide specified "comparable" services under an interim IEP until it completed its own initial evaluation of the child. The child's parent believed that the school district should simply implement the out-of-state IEP and did not initially consent to an evaluation of the child. The school district also provided prior written notice when it declined the parent's request for a change to the interim IEP and continued to negotiate a plan to evaluate the child. The parent later complained that the school district violated 34 C.F.R. § 300.323(a) by not having a Minnesota IEP in place for the child at the beginning of the school year. The department disagreed, explaining that the school district's actions—providing prior written notice declining to accept the prior IEP and proposing to provide specified special-education and related services until it completed its own initial evaluation—were "consistent with" 34 C.F.R. § 300.323(a).

Here, there was no such substantial compliance. At the beginning of the school year, the district did not provide the parent a prior written notice detailing the services it proposed to provide the student or explaining why it would not provide some services outlined in the Pennsylvania IEP, such as a one-on-one PCA. It did not provide a concrete proposal for an interim IEP or even a written commitment to provide "comparable" services, and it did not seek the parent's written consent to the provision of services. Nor did it ask to conduct its own evaluation of the student until two months into the school year. On this record, the department's determination that the district violated 34 C.F.R. § 300.323(a) is not an arbitrary or capricious deviation from its earlier decision.

II. The district failed to provide the student a FAPE as required by 34 C.F.R. § 300.101 and Minn. Stat. § 125A.03(a).

A FAPE "must be available" to all children with disabilities. 34 C.F.R. § 300.101(a). Both the IDEA and its implementing regulations define a FAPE as "special education and related services" that (1) are provided "at public expense, under public supervision and direction, and without charge"; (2) meet state educational standards; (3) include "appropriate" preschool, elementary school, or secondary school education in the state; and (4) are provided "in conformity with" the required IEP. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17 (2022). Minnesota law also requires a FAPE and provides a functionally identical definition. Minn. Stat. § 125A.03(a).

The department found numerous violations of special-education law that impacted the student's ability to receive a FAPE. It reiterated that (1) the district did not have an IEP in place at the beginning of the school year and recited a "cascade of subsequent

procedural violations," including (2) failure to hold IEP team meetings with appropriate attendance on at least two occasions, in violation of 34 C.F.R. § 300.321 (2022); (3) a pattern of failing to provide prior written notice to allow the parent to "meaningfully participate" in the student's educational planning, in violation of 34 C.F.R. § 300.503 (2022) and Minn. Stat. § 125A.091; (4) "excessive" use of physical holds and repeated failures to comply with the restrictive-procedures documentation and notice requirements of Minn. Stat. § 125A.0942; (5) more than ten disciplinary removals resulting in a change in the student's placement without a meeting to determine whether the student's conduct was a "manifestation of [his] disability," in violation of 34 C.F.R. § 300.530 (2022); (6) failure to make reasonable efforts to obtain the parent's consent to the provision of special-education services, in violation of 34 C.F.R. § 300.300(b) (2022); (7) improper response to the parent's request for an IEE, in violation of 34 C.F.R. § 300.502 (2022); and (8) provision of no general-education or special-education services after January 13, 2023.

In challenging the department's determination that it failed to provide the student a FAPE, the district argues that (1) it cannot be responsible for a denial of FAPE because the parent refused to consent to services, and (2) the procedural violations that the department found did not substantively impact the student's or the parent's rights.[5] Neither argument persuades us to reverse.

[5] The district also argues that the department's FAPE analysis is flawed because it treated the Pennsylvania IEP as mandatory. But the department's determination that the district denied the student a FAPE was expressly premised on the specific deficiencies enumerated above, not deviation from the Pennsylvania IEP. And aside from disputing the IEP requirement, the district does not challenge the department's findings as to any of those deficiencies.

Refusal to Consent to Services

The district asserts that the department's FAPE-denial decision is flawed because it failed to consider the parent's "refusal to consent to any services." It contends the parent "rejected a FAPE by not consenting to [its] January 2023 proposed IEP," which excused it from providing a FAPE under this court's decision in *V.S.*

The district is correct that providing a FAPE to a child with a disability is a cooperative effort between the child's parents and the school district. *See V.S.*, 981 N.W.2d at 214 (stating that "parents have a reciprocal obligation to operate within the procedural framework of IDEA" (quotation omitted)). A school district responsible for "making a [FAPE] available" to a child with a disability must "seek to obtain informed consent," meaning agreement "in writing," from the child's parent "before providing special education and related services." 20 U.S.C. § 1414(a)(1)(D)(i)(II); 34 C.F.R. § 300.9(b) (2022). And it must make "reasonable efforts" to obtain parental consent. 34 C.F.R. § 300.300(b)(2). Additionally, Minnesota requires that a school district inform the parent of a child with a disability that if they "object to a proposal or refusal" from the school district, they may request a "conciliation conference" or another dispute-resolution procedure, or identify the specific focus of the objection and request a meeting with "appropriate members of the [IEP] team." Minn. Stat. § 125A.091, subd. 3a(2).

If the parent "refuses to consent to services," a school district "shall not provide special education and related services to the child." 20 U.S.C. § 1414(a)(1)(D)(ii)(II); *see Fitzgerald v. Camdenton R-III Sch. Dist.*, 439 F.3d 773, 775 (8th Cir. 2006) (stating that this refusal provision "allows parents to decline services and waive all benefits under the

IDEA"). Accordingly, the school district is not "considered to be in violation of the requirement to make FAPE available" if the parent "refuses to . . . consent." 34 C.F.R. § 300.300(b)(3)(ii); *see also V.S.*, 981 N.W.2d at 215-16 (holding that a school district does not fail to provide FAPE to a child with a disability when the child's parent "reject[s]" services offered under the child's existing IEP and "refus[es] to cooperate" in identifying appropriate services).

It is undisputed that the parent never provided written consent to services and did not consent to the proposed IEP. But neither the IDEA nor the record supports a determination that the parent *refused* to consent to services and thereby waived the student's right to a FAPE.

The plain language of the IDEA and its implementing regulations require more than the absence of a parent's consent to services. Rather, a school district must "seek" a parent's consent through "reasonable efforts." 20 U.S.C. § 1414(a)(1)(D)(i)(II); 34 C.F.R. § 300.300(b)(2). This process ends only when a parent "refuses to . . . consent." 20 U.S.C. § 1414(a)(1)(D)(ii)(II); 34 C.F.R § 300.300(b)(3)(ii). To refuse is to "indicate unwillingness." *The American Heritage Dictionary of the English Language* 1478 (5th ed. 2011). Refusal is, itself, an act of rejection; it is a "no," rather than a "not yet" or silence. And interpreting the IDEA as requiring something more than nonacceptance is also consistent with the significant consequence—waiver of the child's right to a FAPE.

Applying the distinction between lack of consent and refusal to give consent makes particular sense on this record. Although the district did not seek the parent's initial consent to services at the beginning of the school year, the parent impliedly consented to them from

September 2022 until January 2023 by sending the student to school. The parent promptly consented when the district asked to evaluate the student in November 2022. After the district proposed an initial and then a revised IEP, the parent sought to discuss it and expressly stated that he was not refusing to give consent. He stopped sending the student to school only after the district said it would stop providing special-education services unless he agreed to the proposed IEP, and he did not withdraw the student's enrollment.[6] In short, the process of reaching agreement as to the provision of services may not have been as smooth as the parent or the district would have preferred, but it was not a process that the parent cut off by refusing to consent.

Impact of Procedural Violations

The district also faults the department for failing to "tie" the various procedural violations it found "to any specific harm" to the student or the parent. Procedural violations warrant relief only if they impaired the student's right to a FAPE. *See T.R. v. Sch. Dist. of Philadelphia*, 4 F.4th 179, 184 (3d Cir. 2021) (stating that "the IDEA provides relief only for the denial of a FAPE, not for the denial of a procedural right"). But "the procedures are there for a reason, and their focus provides insight into what it means, for purposes of the FAPE definition, to meet the unique needs of a child with a disability." *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 402 (2017) (quotations

[6] These actions are markedly different from those of the parent in *V.S.*, on which the district relies. There, the school district offered services to three children based on their existing Minnesota IEPs. The children's parent actively and repeatedly rejected those services, withdrew the children from school, and refused the school district's repeated efforts to develop new IEPs. 981 N.W.2d at 207-09.

omitted). Procedural "inadequacies" constitute failure to provide a FAPE only if they (1) "[i]mpeded the child's right to a FAPE," (2) "[s]ignificantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child," or (3) "[c]aused a deprivation of educational benefit." 34 C.F.R. § 300.513(a)(2) (2022).

Contrary to the district's argument, the department applied precisely this standard, finding that the district's procedural violations caused all three of the above-enumerated harms. And while it did not detail the specific harm flowing from each of the eight types of violations the district committed, the department explained that the student was able to access only "some academics . . . in between frequent physical holds and hours of escalated, aggressive behavior," did not make progress on the annual goals listed in the Pennsylvania IEP, and received no education from the district at all after January 13, 2023. The district offers little to counter this, apart from arguing that it was relieved of any obligation to conduct a manifestation meeting or respond to the parent's request for an IEE in light of the parent's refusal to consent to services. Because that premise is flawed, as discussed above, the argument fails. And the record amply confirms that the procedural violations were recurring and cumulative, effectively preventing the parent from actively participating in the decision-making process. Moreover, the district's argument disregards the fact that the procedural violations occurred on top of the district's initial failure to have an IEP in place for the student at the beginning of the school year. In short, we are satisfied that the department considered and made well-supported findings as to the detrimental

impact of the district's procedural violations, justifying the determination that the district denied the student a FAPE.

III. The district's initial evaluation of the student complied with 34 C.F.R. § 300.304 (2022).

A school district "must conduct a full and individual initial evaluation . . . before the initial provision of special education and related services to a child with a disability." 34 C.F.R. § 300.301(a) (2022). The evaluation must be designed to determine (1) if the child is a "child with a disability," and (2) the child's educational needs. *Id.* (c)(2) (2022). And it must comply with various procedural requirements. 34 C.F.R. § 300.304(c). In relevant part, the school district must ensure that the child is assessed in all areas of suspected disability and that the assessments are otherwise comprehensive and comply with additional procedural safeguards, including accommodations for the child's language and particular impairments. *Id.*

The parent contends the department erred by concluding that the district's initial evaluation sufficiently complied with 34 C.F.R. § 300.304(c) because (1) the district did not assess the student in all areas of suspected disability, (2) the evaluation was compromised because the student was "struggling behaviorally," (3) the district failed to conduct the evaluation in the student's native language, and (4) the functional behavioral assessment (FBA) was deficient in assessing the student's behavior and identifying appropriate interventions. We are not persuaded that any of these arguments warrant reversal.

With respect to the contention that the evaluation did not assess all areas of suspected disability, the parent focuses specifically on the absence of a mental-health assessment. But the record shows that the parent helped prepare and agreed to the evaluation plan, which did not include a mental-health or psychiatric assessment. And it reveals that the family consistently refuted the only indication of a mental-health concern—a possible schizophrenia diagnosis noted in the student's Pennsylvania records—and declined the district access to the student's medical records.

The record likewise defeats the parent's argument that the student's behavior compromised the evaluation. While the student's frequent and prolonged bouts of aggressive behavior posed a challenge to administering some of the language and intelligence assessments, the record supports the department's determination that the evaluation was nonetheless sufficiently comprehensive. When the student's behavior prevented the district from administering or completing an assessment, the district gleaned what it could from partial results and used alternative assessment tools and information obtained from family and teachers. Significantly, the assessments affected by the student's behavior comprise only a fraction of the information collected during the month-long evaluation process, which included numerous other assessments, historical and current records, observation of the student, and information from family and teachers.

The parent's assignment of error with respect to the language used for the assessments is similarly unavailing. The district was required to administer assessments "in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically,

developmentally, and functionally, unless it is clearly not feasible to so provide or administer." 34 C.F.R. § 300.304(c)(1)(ii). It was also required to administer assessments "so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level." *Id.* (c)(3). The record reflects that the district recognized that the student's native language is Somali but that he is a "Multilingual Learner" who "also speaks English" and has known language deficits. To address all of these circumstances, the district made multiple attempts to use a Somali interpreter for vocabulary assessments, although those attempts fell short because of inclement weather. And the district supplemented English communication with the student by drawing upon observation, family and staff input, and nonverbal communication with the student.

Finally, the parent does not identify how any of the claimed shortfalls with the FBA violate the requirements of 34 C.F.R. § 300.304(c). Nor does he persuade us that the FBA is inconsistent with Minnesota law. Minnesota's special-education rules define an FBA as "a process for gathering information to maximize the efficiency of behavioral supports" that draws upon various sources to describe "problem behaviors" and the circumstances that lead to the behaviors, as well as possible functions of those behaviors and "possible positive alternative behaviors." Minn. R. 3525.0210, subp. 22 (2021). The parent expresses concern that the FBA "focus[ed] on the [student's] problem behaviors," but that is the very purpose of an FBA. And the record confirms that the district drew upon a variety of sources, including obtaining and considering significant input from the student's family, to try to understand and address those behaviors, with specific reference to the

behaviors' antecedents, functions, and alternatives. Further, the district not only identified positive alternative behaviors in the FBA but also proposed a BIP that addressed ways to support the student in moving toward those positive behaviors. The parent may disagree with the district's findings or approach, but he has not demonstrated that the FBA failed to comport with Minn. R. 3525.0210, subp. 22, or the procedural demands of 34 C.F.R. § 300.304(c).

In sum, we conclude that there is no basis to disturb the department's well-reasoned and supported decision. But we observe the unique challenges the circumstances of this case presented for all parties. We do not doubt that the district attempted to meet the student's special-education needs, even if it did not comply with the governing substantive and procedural requirements. And we do not question that the parent acted at all times to support and further the student's needs and interests. We are hopeful that, going forward, the student will receive a FAPE.

Affirmed.