STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1167

Complaint Decision File 24-162C on behalf of K.W.S. from Hermantown 0700-01.

Filed April 21, 2025
Affirmed
Cochran, Judge

Minnesota Department of Education
File No. 24-162C

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Considered and decided by Cochran, Presiding Judge; Slieter, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

This certiorari appeal involves respondent department's decision that relator school district violated the Individuals with Disabilities Education Act (the IDEA) and its implementing regulations. Under the IDEA, a parent may seek an independent educational evaluation (IEE) of their child at public expense following an initial evaluation by a school district if the parent disagrees with the school district's evaluation. 34 C.F.R. § 300.502(a)(1), (b)(1) (2024). If the school district agrees to pay for an IEE,

the IEE criteria must be the same as the criteria the school district uses when it initiates an evaluation of a student. *Id.* § 300.502(e)(1) (2024). In this appeal, relator school district challenges a decision by respondent department concluding that relator's IEE criteria violate the IDEA because relator's IEE criteria impose a requirement on publicly funded IEEs that differs from the criteria applied to school-district evaluations. We affirm.

FACTS

Relator Independent School District No. 700 (the district) is a public school district located in Hermantown. The district is subject to the requirements of the IDEA. Respondent Minnesota Department of Education (MDE) is responsible for ensuring that Minnesota Public School Districts comply with the IDEA. As part of its supervisory responsibility, MDE investigates complaints brought by parents alleging violations of the IDEA and its implementing regulations. This case arises from a complaint filed by respondent parent on behalf of their child, a student currently enrolled in the district. Before discussing the facts giving rise to the parent's complaint and MDE's decision, we provide an overview of the IDEA to frame our discussion.

Relevant Statutory Background

The IDEA requires states to provide a "free appropriate public education" to students with disabilities. *See* 20 U.S.C. § 1400(d) (2018); *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 390 (2017); *see also* 20 U.S.C. § 1412(a)(1)(A) (2018) ("A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21."). An appropriate education includes both instruction that is "specially designed" to "meet the

unique needs" of the student and sufficient supportive services to enable the student to benefit from that instruction. 20 U.S.C. § 1401 (9), (26), (29) (2018).

Under the IDEA, a school district must conduct a "full and individual initial evaluation" of a student, either on its own initiative or at the request of the parent, to determine whether a student is "a child with a disability" and to identify "the educational needs of such child." 20 U.S.C. § 1414(a)(1)(A)-(C)(i)(I)-(II) (2018); *see also* Minn. Stat. § 125A.08, subd. 1(b)(4) (2024). "[A]n evaluation [is] a comprehensive assessment of the child that follows the mandatory procedures outlined in . . . the IDEA." *D.S. by M.S. v. Trumbull Bd. of Educ.*, 975 F.3d 152, 163 (2d Cir. 2020). Once a student is determined to have a disability within the meaning of the IDEA, the IDEA requires preparation of an individualized education plan (IEP) for the student. The IEP is a written document with goals designed to ensure that the student receives special education and related services tailored to fit the student's educational needs. *See* 20 U.S.C. § 1414(d) (2018). The IEP is to be prepared cooperatively by parents and school staff. *Id.* § 1414(d)(1)(A)–(B). An IEP is reviewed annually and revised as appropriate to address the student's needs and progress. *Id.* § 1414(d)(4).

The school district must also conduct reevaluations "if [it] determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation," or "if the child's parents or teacher requests a reevaluation." *Id.* § 1414(a)(2)(A)(i)–(ii). In any event, a reevaluation must occur at least once every three years. *Id.* § 1414(a)(2)(B)(i)–(ii); *see also* Minn. R. 3525.2710, subp. 2. School districts must obtain the consent of a student's

parent or guardian before performing an initial evaluation or reevaluation. 20 U.S.C. § 1414(a)(1)(D)(i)(I); 34 C.F.R. § 300.300(a)(1)(i) (2024).

"[The IDEA] establishes various procedural safeguards that guarantee parents both an opportunity for meaningful input into all decisions affecting their child's education and the right to seek review of any decisions they think inappropriate." *Honig v. Doe*, 484 U.S. 305, 311-12 (1988) (citations omitted). As one such safeguard, the student's parent may request an IEE at public expense if the parent disagrees with an initial evaluation or a reevaluation by the school district. 34 C.F.R. § 300.502(a)(1), (b)(1) (2024); 20 U.S.C. § 1415(b)(1) (2018). If the parent disagrees with an evaluation or reevaluation and makes a request for a publicly funded IEE, the applicable federal regulation provides that the district must, without unnecessary delay, either—

> (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or
>
> (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

34 C.F.R. § 300.502(b)(2) (2024).[1]

If the school district agrees to provide an IEE at public expense, 34 C.F.R. § 300.502(e) (2024) (section 300.502(e)), sets forth what constitutes permissible criteria for a publicly funded IEE. Specifically, "The criteria under which the IEE is

[1] We are simultaneously releasing a related opinion where we acknowledge a split in federal authority regarding the application of this rule. *See* A24-1182. Nothing in this decision shall be construed as expressing an opinion on that split in federal authority.

obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation." *Id.* § 300.502(e)(1). The school district "may not impose" other conditions or timelines related to obtaining a publicly funded IEE. *Id.* § 300.502(e)(2). A parent is entitled to only one IEE at public expense following a school district evaluation or reevaluation with which the parent disagrees. *Id.* § 300.502(b)(5) (2024).

Facts and Procedural History Underlying the IEE Dispute

In November 2022, the district conducted an initial evaluation and determined that student qualifies under the IDEA as a "child with a disability" and therefore is eligible for special education and related services. The evaluation included a review of student's school records, a review of group achievement scores, teacher- and service-provider input, parent input, classroom observation, and curriculum-based measurements of learning progress. Following the evaluation, the district sent written notice to parent proposing to implement an initial IEP. Parent agreed to the initial provision of services, which were implemented in September 2023 when student began attending second grade. The district amended student's IEP in October 2023, with parent's consent.

In December 2023, the district held an annual IEP meeting with parent, the district's special-education director, and a district special-education coordinator to review student's needs. Following this meeting, the district requested permission from parent to complete additional assessments on student. It also provided parent with a copy of a proposed amended IEP, recommending an increase in student's daily special-education direct

services. Parent did not respond to the proposal, and the amended IEP went into effect 14 days later.

The next month, January 2024, parent contacted the district and inquired, "I am wondering if you had [student] scheduled for any testing yet? If so, I'd like to get a second opinion on his original testing he had done in [November 2022] prior to agreeing to move forward on anything else." The district indicated that it had not conducted any further testing because it did not have parent's consent. Parent subsequently sent an email to the district's special-education director asking, "I am allowed to request a second opinion on the testing done by [the district] at their expense, correct?" The special-education director responded, offering to "talk through any specific concerns" regarding the initial evaluation from November 2022. Parent replied, "I just need to have him evaluated by an outside source."

In February 2024, the district proposed to reevaluate student to determine his present educational needs given the amount of time that had passed since the initial evaluation. Parent retained an attorney, who sent a letter in response to the district's reevaluation proposal. Parent's attorney informed the district that parent did not consent to the proposed reevaluation and also reminded the district that parent had requested an IEE at district expense. The letter also indicated that parent disagreed with the district's current IEP.

The district responded with a letter stating: "The District grants the Parent's request for an IEE at public expense so long as it complies with the District's IEE criteria." The letter included a copy of those criteria. The criteria included: examiner qualifications; a geographic limitation, requiring the independent examiner to be located within 100 miles

of the school; a discussion of evaluation instruments; and a statement that the IEE could include classroom observations. The district's IEE criteria also included a requirement that "the IEE must focus on whether the [d]istrict evaluation with which the Parents disagree was appropriate at the time it was completed." Parent objected to this requirement regarding the "focus" of the IEE and asked the district to "remove this improper limitation." The district declined parent's request to remove this requirement from its IEE criteria.

Parent's Complaint and MDE Decision

After receiving the district's response, parent filed a complaint with MDE. Parent alleged that the requirement in the district's IEE criteria that the IEE "must focus on whether the district evaluation with which the Parent[] disagree[s] was appropriate at the time it was completed" is expressly contrary to the IDEA's implementing regulations. Parent also argued that the district violated parent's "right to an [IEE] at public expense" by imposing this condition. Parent urged MDE to

> order the District to correct its noncompliance by removing from its IEE Criteria a requirement that an IEE must be limited in scope to the student's disabilities and educational needs *as they existed in the past at the time of the disputed public evaluation*, and order the District to provide the IEE without such limitation.

(Emphasis in original.)

The district objected and stated that its IEE criteria were consistent with caselaw and the IDEA. It also proposed to reevaluate student, noting that the district had "not yet had an opportunity to evaluate [student's] current needs and levels of performance." Parent objected to a proposed reevaluation.

MDE issued a decision in May 2024, agreeing with parent that the challenged condition conflicted with the IDEA's implementing regulations. Specifically, MDE concluded that "[t]he [d]istrict violated 34 C.F.R. § 300.502(e)(1) and (2) when it imposed a condition related to obtaining an IEE at public expense that was not the same as the criteria used by the [d]istrict when it initiates an evaluation and that was not consistent with parents' right to an IEE." MDE ordered corrective action, requiring the district to remove the following sentence from its IEE criteria: "The IEE must focus on whether the District evaluation with which the Parents disagree was appropriate at the time it was completed."

The district petitioned for a writ of certiorari to review MDE's decision.

ANALYSIS

MDE plays a "unique role in supervising local school districts' compliance with federal and state special-education law" and has "broad oversight responsibility to ensure that local school districts provide free appropriate public educations to students with disabilities." *Indep. Sch. Dist. No. 192 v. Minn. Dep't of Educ.*, 742 N.W.2d 713, 723 (Minn. App. 2007), *rev. denied* (Minn. Mar. 18, 2008). As part of its duties, MDE investigates complaints filed by parents alleging that school districts are not complying with the IDEA or its implementing regulations. *See* 34 C.F.R. §§ 300.151-.153 (2024). If MDE determines that a district has violated the IDEA requirements, it must order the school district to remedy its denial of those services, including with "corrective action appropriate to address the needs of the child." *Id.*, § 300.151(b)(1).

Our review of MDE decisions is narrow. *Indep. Sch. Dist. No. 281 v. Minn. Dep't of Educ.*, 743 N.W.2d 315, 321 (Minn. App. 2008). Agency decisions enjoy a presumption

of correctness, and we defer to agencies' expertise and special knowledge. *Id.* MDE's decision in this case is a quasi-judicial decision that is not expressly subject to judicial review under the Minnesota Administrative Procedure Act, Minn. Stat. §§ 14.63-.69 (2024). Our review of the merits of such decisions is limited to whether the decision "was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it." *Dietz v. Dodge County*, 487 N.W.2d 237, 239 (Minn. 1992) (quotation omitted). On review, we consider whether substantial evidence supports the agency's decision. *Am. Fed'n of State, Cnty. & Mun. Emps., Council No. 14, St. Paul v. Cnty. of Ramsey*, 513 N.W.2d 257, 259 (Minn. App. 1994). "However, we review questions of law de novo." *Reetz v. City of St. Paul*, 956 N.W.2d 238, 247 (Minn. 2021).

The issue presented in this appeal is whether MDE erred as a matter of law when it concluded that the district violated section 300.502(e), by including a requirement in its IEE criteria that was not the same as the criteria used by the district when it initiates an evaluation. We conclude that MDE did not err.

Before turning to the merits of the legal issue before us, we again note the procedural posture of this matter. Parent demanded an IEE at public expense in January 2024 based on her disagreement with the district's evaluation of student. When the district proposed to reevaluate student, parent's attorney sent a letter to the district indicating that parent did

not consent to a reevaluation and wanted to proceed with an IEE. The district then granted parent's request for a publicly-funded IEE, subject to the district's IEE criteria.[2]

We now turn to the language of section 300.502(e) to determine whether MDE correctly concluded that the district's IEE criteria for a publicly funded IEE violate this federal regulation because the criteria include a requirement that the IEE "focus on whether the [d]istrict evaluation with which [p]arent disagree[s] was appropriate at the time it was completed." Section 300.502 is the IDEA implementing regulation that governs the criteria for publicly funded IEEs. It states:

> If an [IEE] is at public expense, *the criteria under which the evaluation is obtained*, including the location of the evaluation and the qualifications of the examiner, *must be the same as the criteria that the public agency uses when it initiates an evaluation*, to the extent those criteria are consistent with the parent's right to an [IEE].

34 C.F.R. § 300.502(e)(1) (emphasis added). In addition, the regulation specifically provides that a school district "may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense" other than those expressly described in paragraph (e)(1). 34 C.F.R. § 300.502(e)(2).

[2] In light of the district's decision to grant an IEE, the question of whether parent is entitled to a publicly funded IEE is not before us. We therefore do not address the district's arguments focused on whether parent has a right to an IEE, including its argument that parent did not have a genuine disagreement with the initial evaluation and that the district has not yet had an opportunity to reevaluate student because parent will not consent to a reevaluation. The district raises several statutory interpretation and public policy arguments in support of these arguments. Because the district granted parent's request for an IEE, however, these issues are not properly before this court, and we do not address them.

"[R]eview of an agency's interpretation of its own regulations is a question of law that courts review de novo." *In re Cities of Annandale & Maple Lake NPDES/SDS Permit Issuance for the Discharge of Treated Wastewater*, 731 N.W.2d 502, 513, 516 (Minn. 2007) (noting that federal regulations are treated as a state agency's own regulation "if the state agency is charged with the day-to-day responsibility for enforcing and administering [the] regulation"); *see also In re Reichmann Land & Cattle, LLP*, 867 N.W.2d 502, 506 (Minn. 2015) ("Review of a state agency's interpretation of a federal regulation that the agency is charged with enforcing and administering is a question of law that we review de novo." (quotations omitted)). This court gives considerable deference to an agency's interpretation of its own rules if the relevant language is unclear or ambiguous. *St. Otto's Home v. Minn. Dep't of Human Servs*., 437 N.W.2d 35, 40 (Minn. 1989). However, when a regulation is clear and unambiguous, we rely on the plain language and need not defer to the agency's interpretation. *In re Cities of Annandale & Maple Lake*, 731 N.W.2d at 516.

Here, the parties agree that the language of section 300.502(e), the controlling federal regulation, is unambiguous. We concur. The language plainly requires that the criteria for a publicly funded IEE "must be the same as the criteria that the [school district] uses when it initiates an evaluation" and the school district "may not impose" any additional conditions on a publicly funded IEE. 34 C.F.R. § 300.502(e). Accordingly, we turn to the question of whether the district's challenged IEE requirement violated section 300.502(e). To answer this question, we turn to the criteria used by the district when it

initiates an evaluation and consider whether the challenged requirement goes beyond the criteria that the district uses when it conducts an initial evaluation.

The district's Total Special Education System (TSES) sets forth its criteria for evaluating a student for learning disabilities. The district criteria "use a variety of evaluation tools and strategies to gather relevant functional and developmental information." The criteria include evaluations of "health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities." The TSES further requires a review of "existing evaluation data on the [student], including evaluations and information provided by the parents of the [student], current classroom-based assessments and observations," and observations from teachers and other service providers. In conducting student's initial evaluation, the district relied on a number of evaluation criteria, including: information gathered from student's health records, diagnostic assessment tools, input from his teachers, teacher and parent rating scales, a functional behavior assessment, and classroom evaluations. Student was evaluated by licensed professionals that included the school psychologist and special-education teachers.

When parent requested a publicly funded IEE because parent disagreed with the district evaluation, the district provided parent with its IEE criteria. The IEE criteria are included in an appendix to the district's TSES. Most of the district's IEE criteria are consistent with the TSES. In particular, both the TSES and the IEE criteria require a student to be evaluated by a qualified professional using relevant, current, and age-appropriate evaluation instruments and allow the evaluator to rely on classroom

observations. But one criterion included in the district's IEE criteria is not the same as the criteria used by the district when it initiates its own evaluations: the "IEE must focus on whether the District evaluation with which the Parent[] disagree[s] was appropriate at the time it was completed." The district does not include this requirement in its own criteria. Indeed, it would be logically impossible for the district to apply this challenged criterion to its own evaluation because the district cannot focus on whether an evaluation that it is just initiating "was appropriate at the time it is was completed." As such, the district cannot include this condition in its criteria for a publicly funded IEE. *See* 34 C.F.R. § 300.502(e).

Because the district's IEE criteria are not "the same as the criteria that the [district] uses when it initiates an evaluation" as required by section 300.502(e) and the district "may not impose" other conditions on a publicly funded IEE, we conclude the district's IEE criteria violate section 300.502(e). 34 C.F.R. § 300.502(e)(1)-(2). The district does not point us to any language in section 300.502(e) to support a contrary conclusion. We therefore agree with MDE's decision that "[t]he [d]istrict violated 34 C.F.R. § 300.502(e)(1) and (2) when it imposed a condition related to obtaining an IEE at public expense that was not the same as the criteria used by the [d]istrict when it initiates an evaluation and that was not consistent with parents' right to an IEE."

To persuade us otherwise, the district argues that inclusion of this condition in its IEE criteria is supported by a nonbinding federal decision, *N.D.S. by de Campos*

Salles v. Academy for Science and Agriculture Charter School, No. 18-CV-0711, 2018 WL 6201725, at *1 (D. Minn. Nov. 28, 2018).[3] We disagree.

In *N.D.S.*, the federal district court addressed a statute-of-limitations question under the IDEA—whether a parent's due-process complaint challenging the adequacy of a child's 2015 reevaluation was time-barred because it was filed more than two years after the reevaluation occurred. *Id.* at *3. Ultimately, the federal district court remanded the matter back to an independent hearing officer to consider whether the parent's claim was time-barred. *Id.* at *4. The federal district court noted in dicta[4] that if the independent hearing officer determined that the parent's challenge to the reevaluation was not time-barred, then the school district could either file a due-process complaint or provide an IEE at public expense. *Id.* at *5 (quotation omitted). The federal district court then stated, also in dicta, that the "hearing or IEE must focus on whether the . . . reevaluation was 'appropriate' at the time it was completed." *Id.* at *7.

The district relies on this dicta in *N.D.S.* to argue that the challenged language is properly included in its IEE criteria. The district's reliance on *N.D.S.*'s dicta is misguided for an important reason—the federal district court was not asked, as we are in this case, to interpret section 300.502(e). Because *N.D.S.* did not address the language of

[3] *See State ex rel. Hatch v. Emp's Ins. of Wausau*, 644 N.W.2d 820, 828 (Minn. App. 2002) (noting that the decisions of federal courts are not binding on Minnesota state courts), *rev. denied* (Minn. Aug. 6, 2002).

[4] Because the court's ruling on this matter was not necessary to the decision, we consider it dicta. *See State v. Rainer*, 103 N.W.2d 389, 396 (Minn. 1960) ("[A] ruling not necessary to the decision of a case can be regarded as only 'dictum.'").

section 300.502(e), *N.D.S.* is not helpful to resolving the relevant interpretation question. And, for the reasons discussed above, we conclude that the plain language of section 300.502(e) unambiguously precludes the district from including the requirement that "[t]he IEE must focus on whether the [d]istrict evaluation with which the [p]arent[] disagree[s] was appropriate at the time it was completed." *See* 34 C.F.R. § 300.502(e)(1)-(2).[5]

In sum, we conclude that the district violated the plain language of section 300.502(e) by including a condition in its IEE criteria that is not the same as the criteria that the district uses when it initiates an evaluation. Accordingly, MDE did not err by requiring the district to remove that condition from its IEE criteria.

Affirmed.

[5] The district noted at oral argument, and the record reflects, that it included the challenged condition in its IEE criteria in response to the *N.D.S.* decision. While the district may not include the challenged condition in its IEE criteria for a publicly funded IEE, nothing in this opinion precludes the district from otherwise informing parents of federal court decisions that the district believes are relevant to an IEE.