STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1182

Complaint Decision File 24-170C on behalf of L.L.B. from Delano 0879-01.

Filed April 21, 2025
Reversed and remanded
Larson, Judge

Minnesota Department of Education
File No. 24-170C

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

NONPRECEDENTIAL OPINION

LARSON, Judge

Relator Delano Independent School District No. 879 (the district) challenges respondent Minnesota Department of Education's (MDE) decision that the district violated the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1482 (2018), in the manner that it handled the parents' (parents) request for a publicly funded independent educational evaluation (IEE) for their child (student). Because MDE made a decision contrary to its prior decision without any explanation, and failed to adequately

investigate parents' claims, we conclude MDE engaged in arbitrary decisionmaking. Accordingly, we reverse and remand.[1]

FACTS

Student is enrolled in Delano High School, a public high school in the district. The district performed an initial evaluation of the student in fall 2015 to determine if student had a disability entitling student to special-education services. The district determined that student met the criteria for qualifying conditions, and student was deemed a child with a disability in need of special-education and related services. Based upon this initial evaluation, the district created student's individualized education plan (IEP), and student began receiving special-education services. "An IEP is a written statement prepared for each student with a disability that includes academic and functional performance and goals, as well as the services and accommodations to be provided to the student." *Special Educ. Complaint 22-027C ex rel. V.S.*, 981 N.W.2d 201, 211 (Minn. App. 2022).

The district reevaluated student triennially and determined student had a continuing need for special-education services. The reevaluation the district performed in January 2022 highlighted new areas of concern. The January 2022 reevaluation included

[1] We are simultaneously releasing a related opinion which addresses a different question. *See* A24-1167. In A24-1167, the school district, after agreeing to an IEE at public expense, included a condition in its criteria that was not the same as the criteria for the initial evaluation. We therefore affirmed MDE's decision that the school district violated 34 C.F.R. § 300.502(e) (2024). In this case, we examine MDE's decision that the school district violated federal law when it proposed a reevaluation in response to parents' IEE request and conclude that MDE's decision was arbitrary.

a functional behavioral assessment (FBA)[2] that concluded student had improved on some problem behaviors, but other behaviors continued to impact student's learning.

In February 2022, the district sent a notice to parents, proposing to implement a new IEP to address the concerns highlighted in the January 2022 reevaluation. Parents affirmatively consented to the district implementing the new IEP. Student's IEP was thereafter reviewed in January 2023 and amended again. Parents affirmatively consented to the January 2023 amendments as well.

In May 2023, the district amended the IEP again, this time in response to student's behavioral struggles, which "differ[ed] from what [the district had] seen in the past." Parents were deemed to have consented to the district implementing the IEP when they did not object in writing within 14 days. As part of these amendments, student's IEP team[3] agreed to complete another FBA in fall 2023. Parents consented to the FBA, which identified several target behaviors. Accordingly, the district amended student's IEP to include an updated "positive behavior plan" derived from the results of the 2023 FBA. Parents consented to those amendments.

In January 2024, student's IEP team met for an annual meeting, where "[p]arents reported that [the] term ha[d] gone significantly better" but "[t]here were still concerns."

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[2] An FBA is "a process for gathering information to maximize the efficiency of behavioral supports." Minn. R. 3525.0210, subp. 22 (2023). It "includes a description of problem behaviors and the identification of events, times, and situations that predict the occurrence and nonoccurrence of the behavior." *Id.*

[3] An "IEP team" is the group of individuals who prepare a student's IEP, which includes teachers, school representatives, and the student's parents or guardians. *See* 20 U.S.C. § 1414(d)(1)(B).

The district proposed continuing the IEP because, despite student's progress, student still "demonstrate[d] a need for special education and related services." Several days after the annual meeting, student intentionally broke a sink in the school bathroom. In response to this incident, the district placed student on in-school suspension and implemented a no-trespass order against student, restricting student from being on school property except during regular school hours and to attend certain extracurricular activities.

On February 15, 2024, the district received an email from parents stating that they were "formally disagreeing with the latest IEP evaluation" and requesting that the district "provide an [IEE] that will be paid for by the [d]istrict for [student]." An IEE is "an evaluation conducted by a qualified examiner who is not employed by the" district. 34 C.F.R. § 300.502(a)(3)(i) (2024). The district responded on February 21, 2024, and denied parents' IEE request, reasoning that it had the right to reevaluate student before parents were entitled to an IEE because the prior reevaluation was over two years old.

The district contacted parents again on February 23, 2024, to discuss scheduling a reevaluation planning meeting for student. Parents declined to schedule the meeting. Parents sent correspondence to the district on March 1, 2024, again requesting an IEE and stating that parents did not consent to the proposed reevaluation. Parents also indicated that they expressly disagreed with the January 2022 reevaluation and that this disagreement stemmed from their "discover[y] [of] serious inadequacies in the [d]istrict's last evaluation of [student]."

On March 5, 2024, the district sent correspondence to parents to supplement its earlier response to the IEE request. In that correspondence, the district indicated its belief

that parents were barred from challenging the January 2022 reevaluation under the IDEA's two-year statute of limitations. The district then admitted that the January 2022 reevaluation was "no longer a current or accurate representation of [student] or [student's] educational needs." The district again requested that parents consent to a reevaluation. Parents responded the same day that they intended to file an administrative complaint with MDE.

The district replied on March 7, 2024, reiterating its request for parents to consent to a reevaluation and offering to conduct the reevaluation "in an expedited manner." On March 11, 2024, parents responded that because the district refused to publicly fund an IEE, parents would privately obtain an IEE and seek an order for repayment from MDE.

On March 18, 2024, parents filed an administrative complaint with MDE, alleging the district violated their right to a publicly funded IEE because it imposed improper limitations and engaged in unnecessary delay. The next day, after an IEP team meeting, the district sent parents a "[n]otice for [r]eevaluation," formally proposing the district reevaluate student. Parents objected to the proposed reevaluation on March 20, 2024.

On April 4, 2024, the district filed and served a due-process complaint requesting a hearing before the Minnesota Office of Administrative Hearings. MDE put parents' administrative complaint on hold until the due-process complaint was resolved. However, the district withdrew its due-process complaint shortly thereafter. The district then submitted a response to the administrative complaint. Parents submitted a reply to the district's response. In their reply, parents clarified that they sought an IEE as to student's current condition: "[Parents] *do not* seek 'an IEE to determine whether [the] district's

evaluation was appropriate at the time it was completed.'. . . [Parents] seek an IEE to determine [student's] disabilities and needs because the [d]istrict's last evaluation missed the boat."

As part of its investigation, MDE had a phone conversation with the district's special-education director on March 19, 2024. The call notes from that conversation provide: "Just got complaint info. IEP mtg this afternoon. Parents are coming in person. Working to preserve relationship so that [student] can get [a free appropriate public education]. Multiple team mtgs on accoms/mods for extracurriculars. District may request a hearing." Emails between MDE, the district, and parents reflect an exchange of relevant documents. The record does not contain any other communications between MDE, the district, and parents.

On May 29, 2024, MDE issued a decision in favor of parents. In reaching its decision, MDE interpreted 34 C.F.R. § 300.502(b)(2) (2024) to allow only two options for school districts when responding to a parent's request for a publicly funded IEE: (1) "[f]ile a due process complaint to request a hearing to show that its evaluation is appropriate"; or (2) "[e]nsure that an [IEE] is provided at public expense." Accordingly, MDE concluded that the district violated federal law when it proposed a reevaluation in response to parents' IEE request, rather than taking one of the two prescribed options. MDE ordered the district to either file a due-process complaint or pay for the IEE. The district opted to pay for the IEE, but informed parents that it would seek reimbursement if successful on appeal.

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

DECISION

The district raises a number of challenges to MDE's decision. As relevant here,[4] the district asserts that MDE engaged in arbitrary decisionmaking because it: (1) departed from its prior decisions without an adequate explanation and (2) conducted an inadequate investigation into parents' claims. We begin by addressing the law governing this appeal and then address the district's arguments.

A.

We begin with a description of the laws governing this dispute. First, we discuss the IDEA provisions relevant to this case. Second, we address how special-education disputes are resolved in Minnesota.

1. The IDEA

Under the IDEA, Congress set minimum requirements for the education of public-school students with disabilities. *V.S.*, 981 N.W.2d at 211. "States may impose greater requirements for special education than federal law." *Id.* But "Minnesota's special-education requirements largely mirror the federal requirements." *Id.*

The IDEA "ensure[s] that all children with disabilities have available to them a free appropriate public education [or ("FAPE")] that emphasizes special education and related

[4] Because we agree with the district that MDE acted arbitrarily, we do not reach the broader legal challenges in this appeal. *See In re Denial of Contested Case Hearing Requests*, 993 N.W.2d 627, 660 (Minn. 2023) (declining to reach substantive issues and remanding to Minnesota Pollution Control Agency after concluding agency engaged in arbitrary and capricious decisionmaking).

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). A FAPE means

> special education and related services that—
>
> (a) Are provided at public expense, under public supervision and direction, and without charge;
>
> (b) Meet the standards of the [state educational agency], including the requirements of this part;
>
> (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
>
> (d) Are provided in conformity with an [IEP] that meets the requirements of [34 C.F.R.] §§ 300.320 through 300.324.

34 C.F.R. § 300.17 (2024).

IEPs are "the centerpiece of the [IDEA]'s education delivery system" for children with disabilities. *Honig v. Doe*, 484 U.S. 305, 311 (1988). As explained above, "[a]n IEP is a written statement prepared for each student with a disability that includes academic and functional performance and goals, as well as the services and accommodations to be provided to the student." *V.S.*, 981 N.W.2d at 211. School districts create IEPs using IEP teams that include teachers, school representatives, and the student's parents or guardians. *See* 20 U.S.C. § 1414(d)(1)(B).

IEPs are largely based on the results of statutorily required evaluations. *See, e.g.*, *id.* § 1414(b)(2)(A)(ii), (c)(1)-(2), (d)(3)(A), (d)(4)(A). "[A]n evaluation [is] a comprehensive assessment of the child that follows the mandatory procedures outlined in . . . the IDEA, including assessing the child in *all* areas of their disability." *D.S. by M.S. v.*

Trumbull Bd. of Educ., 975 F.3d 152, 163 (2d Cir. 2020).[5] As part of an evaluation, the school district must "review existing evaluation data," including "evaluations and information provided by the [student's] parents," the student's classroom-based assessments, and teacher observations. 20 U.S.C. § 1414(c)(1)(A).

Students with suspected disabilities first receive a "full and individual initial evaluation" to determine whether they are entitled to special-education and related services. *Id.* § 1414(a)(1)(A). This evaluation involves the school district determining "whether a child is a child with a disability" and "the educational needs of such child." *Id.* § 1414(a)(1)(C)(i). To do so, the school district must "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent." 34 C.F.R. § 300.304(b)(1) (2024); *see also* Minn. R. 3525.2710, subp. 3(B)(1) (2023) (substantially similar). And school districts must comply with numerous procedural requirements when employing these assessment tools and strategies. *See* 34 C.F.R. § 300.304(c) (2024); Minn. R. 3525.2710, subp. 3(C) (2023).

Following the initial evaluation, the student receives triennial reevaluations by the school district, unless (1) it is determined that an earlier reevaluation is necessary or (2) the

[5] Although we are bound only by U.S. Supreme Court and Minnesota Supreme Court decisions interpreting the IDEA, other federal court decisions provide persuasive authority when interpreting a federal statute. *See Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 20 (Minn. App. 2003) (recognizing that we are "bound by decision[s] of the Minnesota Supreme Court and the United States Supreme Court," but not "by any other federal courts' opinion[s]" though such opinions "are persuasive and should be afforded due deference").

school district and parents agree that the triennial reevaluation is unnecessary. *See* 34 C.F.R. § 300.303(a), (b)(2) (2024). Some circumstances where an earlier reevaluation is necessary include if the school district "determines that the educational or related services needs . . . of the child warrant a reevaluation" or a reevaluation is requested by the student's parent or teacher. *Id.* § 300.303(a).

For school-district performed evaluations and reevaluations under the IDEA, certain procedural safeguards are in place for parents given a school district's "natural advantage" in both "information and expertise." *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 60 (2005). These safeguards "attempt[] to level the playing field between" the parent and school district. *D.S.*, 975 F.3d at 158.

One procedural safeguard is that a parent may request an IEE at public expense. 34 C.F.R. § 300.502(b)(1) (2024). As explained above, an IEE is an evaluation performed "by a qualified examiner who is not employed by the" school district. *Id.* § 300.502(a)(3)(i). The right to request an IEE at public expense[6] triggers "if the parent disagrees with an evaluation" or reevaluation the school district performed. *Id.* § 300.502(b)(1); *see also G.J. ex rel. G.J. v. Muscogee Cnty. Sch. Dist.*, 668 F.3d 1258, 1266 (11th Cir. 2012) ("The right to a publicly funded [IEE] does not obtain until there is a reevaluation with which the parents disagree."). "Informing a school that, subsequent to

[6] Parents always have a right to obtain an IEE at private expense. *See* 34 C.F.R. § 300.502(c), (e)(1) (2024). If parents obtain a privately funded IEE and share it with the school district, the results of that evaluation "[m]ust be considered by the [school district], if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child." *Id.* § 300.502(c)(1).

an evaluation [or reevaluation], a child's condition has changed is not the same thing as disagreeing with the evaluation." *N.D.S. by de Campos Salles v. Acad. for Sci. & Agric. Charter Sch.*, No. 18-CV-0711, 2018 WL 6201725, at *2 (D. Minn. Nov. 28, 2018).

If a parent "disagrees" with a prior evaluation or reevaluation and "requests an [IEE] at public expense," the IDEA's implementing regulations provide that the school district must either:

> (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or
>
> (ii) Ensure that an [IEE] is provided at public expense, unless the agency demonstrates in a hearing . . . that the evaluation obtained by the parent did not meet [the school district's] criteria.

34 C.F.R. § 300.502(b)(2). When making its decision, the school district may ask the parent why they disagree with the evaluation or reevaluation, but the school district "may not require the parent to provide an explanation" or "unreasonably delay" making its decision. *Id*. § 300.502(b)(4) (2024). No Minnesota state court has addressed whether a school district violates the IDEA and the attendant regulations if they do not employ one of the two options in 34 C.F.R. § 300.502(b)(2), no matter the circumstances that bring about the IEE request (including when a parent seeks an IEE due to changed circumstances). And federal authority is split on this question.[7]

[7] *Compare G.J.*, 668 F.3d at 1261, 1266 (concluding that parents were not entitled to IEE when parents refused to first consent to triennial reevaluation for which their child was due), *and N.D.S.*, 2018 WL 6201725, at *4 (concluding that parents were not entitled to an IEE on the basis that a prior reevaluation "was no longer accurate"), *and Derek B. ex rel. Lester B. v. Donegal Sch. Dist.*, Civ., No. 06-2402, 2007 WL 136670, at *14 (E.D. Pa. Jan. 12, 2007) (concluding that parents were not entitled to reimbursement from school district for a private IEE when purpose of private IEE was to compare student's current condition

2. Dispute Resolution

In Minnesota, there are two methods for resolving disputes over special-education laws: (1) file a due-process complaint under 20 U.S.C. § 1415(f) and Minn. Stat. § 125A.091, subd. 12 (2024), or (2) file an administrative complaint with the state educational agency, which, in Minnesota, is MDE.[8] *Indep. Sch. Dist. No. 281 v. Minn. Dep't of Educ.*, 743 N.W.2d 315, 322 (Minn. App. 2008). The due-process-complaint process results in a hearing in which the parties submit evidence before an impartial hearing officer who decides the case based upon the evidence presented at the hearing. *See* Minn. Stat. § 125A.091, subds. 16-18, 20 (2024). The hearing officer's decision can be appealed either to our court or the federal district court. *Id.*, subd. 24 (2024). In the administrative-complaint process, MDE investigates complaints that a school district is not providing required services to children with disabilities. *See* 34 C.F.R. §§ 300.151-.153 (2024).

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with his condition when last evaluation occurred two years prior), *with Evans v. Dist. No. 17 of Douglas Cnty., Neb.*, 841 F.2d 824, 830 (8th Cir. 1988) (concluding that parents were entitled to reimbursement for IEE after school district did not employ one of two options in 34 C.F.R. § 300.502(b)(2) in response to their IEE request), *and William S. Hart Union High Sch. Dist. v. Romero ex rel. G.G.*, No. CV-13-3382-MWF (PLAx), 2014 WL 12493766, at *7 (C.D. Cal. Apr. 9, 2014) (concluding that school district must employ one of two options in 34 C.F.R. § 300.502(b)(2) even though parents did not request IEE until 14 months after evaluation), *and MP by VC v. Parkland Sch. Dist.*, No. 5:20-CV-04447, 2021 WL 3771814, at *3, *5, *17 (E.D. Pa. Aug. 25, 2021) (concluding that school district must employ one of two options in 34 C.F.R. § 300.502(b)(2) even though parents did not request IEE until 11 months after evaluation).

[8] MDE "supervis[es] local school districts' compliance with federal and state special-education law," and has the "authority to remediate the denial of special-education services." *Indep. Sch. Dist. No. 192 v. Minn. Dep't of Educ.*, 742 N.W.2d 713, 723 (Minn. App. 2007) (*Farmington*), *rev. denied* (Minn. Mar. 18, 2008).

MDE's decision is reviewable by a petition for a writ of certiorari in our court. *See* Minn. Stat. § 480A.06, subd. 3 (2024).

While implicating the due-process-complaint process, this appeal arises from MDE's decision on parents' administrative complaint. When MDE receives an administrative complaint, within 60 days, it must: (1) determine whether an investigation is necessary, and if so, "[c]arry out an independent on-site investigation"; (2) give the parents an "opportunity to submit additional information"; (3) give the school district an "opportunity to respond to the complaint"; (4) "[r]eview all relevant information"; and (5) "[i]ssue a written decision . . . that addresses each allegation in the complaint." 34 C.F.R. § 300.152(a). If MDE determines a school district violated the IDEA, MDE must outline "corrective action" for the school district "appropriate to address the needs of the child." *Id.* § 300.151(b)(1).

With these provisions in mind, we turn to the district's arguments.

B.

The district argues MDE acted arbitrarily when it determined that the district violated 34 C.F.R. § 300.502(b)(2) when, in response to parents' IEE request, it failed to either file a due-process complaint or provide student with an IEE at public expense. Specifically, the district submits that MDE failed to conform to its prior decisions or conduct a thorough investigation into the situation before issuing its decision.

MDE issued a quasi-judicial decision not subject to the Minnesota Administrative Procedure Act, Minn. Stat. §§ 14.001-.69 (2024). *See Anderson v. Comm'r of Health*, 811 N.W.2d 162, 165 (Minn. App. 2012), *rev. denied* (Minn. Apr. 17, 2012). Accordingly, our

review is limited "to questions affecting . . . jurisdiction[,] . . . the regularity of [MDE's] proceedings, and, as to merits of the controversy, whether the order or determination . . . 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). An agency engages in arbitrary decisionmaking if it (1) "relied on factors which the legislature had not intended it to consider"; (2) "entirely failed to consider an important aspect of the problem"; (3) "offered an explanation for the decision that runs counter to the evidence"; or (4) made a decision that "is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Minn. Transitions Charter Sch. v. Comm'r of Minn. Dep't of Educ.*, 844 N.W.2d 223, 235 (Minn. App. 2014) (quoting *Trout Unlimited, Inc. v. Minn. Dep't of Agric.*, 528 N.W.2d 903, 907 (Minn. App. 1995), *rev. denied* (Minn. May 28, 2014)).

We begin with the district's argument that MDE engaged in arbitrary decisionmaking because it did not follow its prior decision and failed to explain the reason for its departure. It is well-established that an agency acts arbitrarily when it fails to "conform to its prior norms and decisions or, to the extent that it departs . . . set forth a reasoned analysis for the departure." *In re Rev. of 2005 Ann. Automatic Adjustment of Charges for All Elec. & Gas Utils.*, 768 N.W.2d 112, 120 (Minn. 2009) (*In re Adjustment*).

We agree with the district that, based upon the record, MDE did not follow its prior decision. In 2019, MDE released its order in *Complaint Decision 19-032C*. There, the parents filed an administrative complaint after the school district refused to pay for an IEE. The parents asserted that they "disagreed" with a two-year-old evaluation. The school

district responded that, because the evaluation was two years old, it would not provide an IEE at public expense, but would conduct an early reevaluation. The parents responded that they would consent to the reevaluation if certain conditions were met. But when the school district proposed a reevaluation plan, the parents did not consent. MDE determined the school district complied with 34 C.F.R. § 300.502(b)(2) even though the school district did not file a due-process complaint or provide a publicly funded IEE prior to reevaluation. MDE reasoned that the parents had waited for over two years since their child's last evaluation to request an IEE and "used this request as a bargaining tool when negotiating with the [school] [d]istrict." MDE relied on the *N.D.S.* decision to support its decision. Specifically, MDE quoted the following language from *N.D.S.*:

> Congress specifically contemplated that a disabled child's circumstances would change. It gave the parents of a disabled child the right to request a reevaluation, and it imposed an obligation on the school to perform that reevaluation. If the parents then disagree with the reevaluation, they can force the school to defend it or pay for an IEE—but not until the school first *conducts* a reevaluation.[9]

2018 WL 6201725, at *6 (citation omitted). Accordingly, MDE concluded that the school district was not in violation of the IDEA for refusing to pay for an IEE until the child was reevaluated. MDE noted that the parents could "revisit their request for an IEE" should they disagree with the reevaluation.

[9] The central legal issue in *N.D.S.* involved whether the parents' due-process complaint was barred by the IDEA's statute of limitations. 2018 WL 6201725, at *3-4. The federal district court ultimately remanded the case on that issue. *Id.* at *4. Accordingly, this language is dicta. *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.'").

This case has striking similarities to *Complaint Decision 19-032C*. Parents sought an IEE based on their disagreement with an over two-year-old reevaluation. The district concluded that parents did not have a disagreement with the prior reevaluation, but rather that circumstances had changed that warranted a new reevaluation. Parents refused to allow a reevaluation and, instead, filed an administrative complaint. Despite these similarities, MDE reached the opposite conclusion and decided the district violated 34 C.F.R. § 300.502(b)(2) because, in response to the IEE request, the district did not either file a due-process complaint or provide the publicly funded IEE. This is directly contrary to *Complaint Decision 19-032C* in which MDE specifically concluded that the school district had a third option where the parents waited for over two years to request an IEE: refuse to pay for the IEE on the basis that the parents must first consent to a reevaluation. We therefore conclude that MDE failed to follow its prior decision when it applied the IDEA to disallow a school district from proposing a new reevaluation when a parent seeks an IEE on an evaluation or reevaluation that is over two years old.

We also conclude that MDE did not adequately explain its reason for departing from its prior decision. *See In re Adjustment*, 768 N.W.2d at 120. To reach its decision, MDE noted the absence of "binding precedent" and that persuasive authority is contradictory regarding the options available to a school district when it receives this kind of IEE request. But MDE did not, then, explain why it was reaching the opposite legal conclusion that it reached in *Complaint Decision 19-032C*. In so doing, MDE "abandon[ed] its own precedent without reason or explanation." *In re Qwest's Performance Assur. Plan*, 783

N.W.2d 571, 578 (Minn. App. 2010) (quotation omitted). Under such circumstances, we conclude MDE acted arbitrarily when it decided the district violated the IDEA.[10]

The district also argues that MDE acted arbitrarily because it failed to investigate whether parents actually "disagreed" with the reevaluation. The district cites *Farmington* to support its argument. 742 N.W.2d at 720-22. There, we concluded that "[i]n complex cases," MDE's investigation must include interviews and "substantive inquiries" with both parties. *Id.* at 720-21. We noted that, although "credibility determinations play[ed] a significant role in sustaining the complainant's principal allegations," MDE only interviewed the parent and the parent's witnesses. *Id.* at 721. MDE did not interview relevant school-district staff or make any "substantive inquiries" with school-district staff. *Id.* at 720-21. We therefore concluded that MDE's failure to conduct a more balanced investigation resulted in an arbitrary decision. *Id.* at 722.

We agree with the district that this case presents a similar situation to *Farmington*. The record reflects that MDE's investigation included a review of the parties' written responses and exhibits, and one phone call with the district's special-education director.[11] But a parent must "disagree[]" with a prior evaluation or reevaluation before obtaining a

[10] MDE argues that these cases are not factually similar because the parents in *Complaint Decision 19-032C* used their consent to a reevaluation to bargain with the school district. But the relevant question is whether school districts have a third option when a parent requests an IEE even though only two options are listed in 34 C.F.R. § 300.502(b)(2). *Complaint Decision 19-032C* plainly provided that a school district had a third option when presented with an IEE request on a two-year-old evaluation.

[11] MDE's decision indicates that its investigation included discussions with parents and district staff. But it does not appear from the record that MDE interviewed parents as part of its investigation. The call log shows only one phone call with the district's special-education director.

publicly funded IEE. 34 C.F.R. § 300.502(b)(1); *see also G.J.*, 668 F.3d at 1266 ("The right to a publicly funded [IEE] does not obtain until there is a reevaluation with which the parents disagree."). And the fundamental dispute between parents and the district was whether parents "disagreed" with the prior reevaluation or if changed circumstances required a new reevaluation. Despite this factual dispute and the "significant role" that "credibility determinations" would play in resolving it, MDE did not have a single conversation with parents.[12] *See Farmington*, 742 N.W.2d at 721-22. And, because the district cannot require parents to provide an explanation, *see* 34 C.F.R. § 300.502(b)(4), it is significant that only an MDE investigator could develop the record to ascertain whether parents genuinely disagreed with the January 2022 reevaluation. *See* 34 C.F.R. § 300.502(b)(4) (stating that "the public agency may not require the parent to provide an explanation" for their disagreement with an evaluation). We therefore conclude that MDE's failure to conduct a more balanced investigation resulted in an arbitrary decision.[13]

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[12] MDE asserts that, because parents used the buzz word "disagree" in their written submissions, MDE did not need to engage in any further inquiry as to the nature of parents' disagreement. But when, as here, credibility is crucial to determining whether a statutory standard is met, MDE does not comply with the IDEA when it merely relies on one party's averments in written submissions. *See* 34 C.F.R. § 300.152(a); *Farmington*, 742 N.W.2d at 721-22.

[13] We further note that requiring this balanced investigation is consistent with MDE's prior practice. In *Complaint Decision 19-032C*, MDE determined that, consistent with the IDEA, the school district could refrain from providing an IEE until the parents consented to a reevaluation, reasoning that the parents waited over two years to request an IEE and used their consent to a reevaluation as a "bargaining tool." To make this finding, MDE conducted an on-site visit and interviewed the student's special-education case manager who provided MDE with information supporting MDE's "bargaining tool" finding. Here, no on-site visit occurred, and MDE only contacted the district's special-education director, who is not a member of student's IEP team. MDE did not contact any other district staff or parents.

For these reasons, we conclude MDE acted arbitrarily when it issued its decision that the district violated 34 C.F.R. § 300.502(b)(2) when it failed to either file a due-process complaint or provide a publicly funded IEE. Accordingly, we reverse MDE's decision and remand for further proceedings consistent with this opinion.

Reversed and remanded.