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STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1616

In the Matter of the Appeal by Woodson Institute for Excellence Charter School.

Filed June 18, 2018
Affirmed
Randall, Judge*

Minnesota Department of Education
File No. OAH 5-1300-33879

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Considered and decided by Larkin, Presiding Judge; Bjorkman, Judge; and Randall, Judge.

U N P U B L I S H E D   O P I N I O N

RANDALL, Judge

Relator charter school petitioned for certiorari review of respondent Minnesota Department of Education's decision denying federal and state special-education-aid reimbursement. We affirm.

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* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

FACTS

Relator Woodson Institute for Excellence Charter School (WISE) operated a charter school for the 2014-15 school year, but ceased operations in August 2015, after the Minnesota Department of Education (the MDE) determined that WISE was not in compliance with federal and state requirements related to fiscal accountability. After the school's closure, the MDE conducted an expenditure review to ensure that relator complied with federal and state requirements regarding the use of special-education funds.

The MDE issued a Final Report in December 2015, determining that WISE failed to maintain and provide supporting documentation for six employees who were compensated, in part or in full, with federal or state special-education funds. As a result, the MDE reduced federal and state special-education aid to WISE by $290,551.15. WISE appealed the December 2015 Final Report to the MDE's Audit Appeal Committee, seeking review of the aid reductions for salaries paid to the six school employees. WISE submitted additional materials for consideration, including an affidavit from relator's executive director and employee records.

In August 2017, the MDE issued an Initial Determination decision, partially granting WISE's appeal with respect to three employees. The MDE determined that the additional documentation adequately demonstrated that the three employees provided special-education services to students, and awarded WISE an additional $123,614.84. However, the MDE denied the appeal as to the remaining three employees, determining that WISE failed to properly document expenditures related to them. WISE requested reconsideration of the August 2017 decision and submitted additional materials. The MDE issued a final determination in November 2017, upholding the August 2017 decision. This certiorari appeal follows.

D E C I S I O N

I.

Appellant argues that the MDE's decision is invalid because it constitutes an unpromulgated rule. An agency's authority to adopt administrative rules is governed by the Minnesota Administrative Procedures Act (MAPA), Minn. Stat. §§ 14.001-.69 (2016). A rule is an agency's "statement of general applicability and future effect, including amendments, suspensions, and repeals of rules, adopted to implement or make specific the law enforced or administered by that agency or to govern its organization." *Minn. Transitions Charter Sch. v. Comm'r of Minn. Dep't of Educ.*, 844 N.W.2d 223, 233 (Minn. App. 2014) (quoting Minn. Stat. § 14.02, subd. 4). Agency rules "must be adopted in accordance with specific notice and comment procedures established by statute." *White Bear Lake Care Ctr., Inc. v. Minn. Dep't of Pub. Welfare*, 319 N.W.2d 7, 9 (Minn. 1982). We will declare an agency's rule invalid if it was adopted without compliance with statutory rulemaking procedures. *Id.*

WISE argues that the MDE failed to comply with statutory rulemaking procedures because the State of Minnesota has not adopted specific rules regarding the type of documentation required to support reimbursement of special-education funding. WISE notes that the MDE provides "guidance" to school districts regarding what kind of documentation should be submitted during an audit. WISE argues that this "guidance" constitutes a "rule" under Minn. Stat. § 14.02, subd. 4, and is therefore invalid because it has not been properly adopted. During WISE's audit, the MDE requested documentation related to personnel, transportation, equipment, and procurement expenditures.

The MDE has a statutory duty to perform an audit. *See* Minn. Stat. § 127A.41, subd. 3 (2016). This section provides that the MDE "shall establish procedures for conducting and shall conduct audits of district records and files for the purpose of verifying . . . aid entitlements." *Id*. Additionally, a school district must keep its records open to inspection in the event the commissioner performs an audit. *Id*., subd. 5 ("The accounts and records of any district must be open to inspection by the state auditor, or the commissioner for the purpose of audits conducted under this section."). A charter school, such as WISE, is defined as a public school within Minnesota's public-education system. Minn. Stat. § 124E.03, subd. 1 (2016).

An agency must promulgate both legislative rules and interpretive rules. *Minn. Transitions Charter Sch.*, 844 N.W.2d at 233. Legislative rules are those "promulgated pursuant to delegated powers to make substantive law," while interpretive rules are those that "make specific the law enforced or administered by the agency." *Id*. (quotations omitted). An unpromulgated interpretive rule is nevertheless valid "if the agency's interpretation of a [statute] corresponds with its plain meaning, or if the [statute] is ambiguous and the agency interpretation is a longstanding one." *Id*. (quotations omitted).

The MDE's request for documentation from WISE constitutes an interpretive rule as it "make[s] specific" the law enforced or administered by the agency—namely, the MDE's authorization to perform an audit and to review the "accounts and records" of the school during the audit. Minn. Stat. § 127A.41, subds. 3, 5; *Minn. Transitions Charter*

Sch., 844 N.W.2d at 233. The MDE's request for documentation corresponds to the plain meaning of the statute and is valid under the exception for plain-meaning interpretations. *See Minn. Transitions Charter Sch.*, 844 N.W.2d at 233-34. We conclude the MDE's decision is valid. It was not a chapter 14 violation or an unpromulgated legislative rule.[1]

II.

Agency decisions "enjoy a presumption of correctness," and our review of a certiorari appeal from an agency decision is narrow. *Indep. Sch. Dist. No. 281 v. Minn. Dep't of Educ.*, 743 N.W.2d 315, 321 (Minn. App. 2008) (quotation omitted). We review the merits of a controversy to consider whether the agency's decision "was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it." *Anderson v. Comm'r of Health*, 811 N.W.2d 162, 165 (Minn. App. 2012) (quotation omitted), *review denied* (Minn. Apr. 17, 2012). We defer to the agency's decision as long as it is reasonable and supported by substantial evidence and we will not replace the agency's findings with our own. *In re Rocheleau*, 686 N.W.2d 882, 891 (Minn. App. 2004), *review denied* (Minn. Dec. 22, 2004). Legal issues are reviewed de novo. *Cable Commc'ns Bd. v. Nor-West Cable Commc'ns P'ship*, 356 N.W.2d 658, 668-69 (Minn. 1984). The party challenging the agency's decision bears the burden of proof. *In*

[1] Following commencement of this action, the Minnesota legislature amended Minn. Stat. § 127A.41, related to the distribution of school aid and appropriation, and clarified that "[audit] [p]rocedures adopted under this subdivision are not subject to chapter 14, including section 14.386, and may differ from the procedures under section 127A.42 [permitting MDE to withhold funds in other circumstances]." Minn. Stat. § 127A.41, subd. 3 (Supp. 2017).

re Reichmann Land & Cattle, LLP, 847 N.W.2d 42, 46 (Minn. App. 2014), *aff'd*, 867 N.W.2d 502 (Minn. 2015).

WISE has not satisfied that burden here. WISE argues that the MDE's decision was arbitrary, capricious, and not grounded in substantial evidence in the record. Substantial evidence is "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; and (5) evidence considered in its entirety." *AAA Striping Serv. Co. v. Minn. Dep't of Transp.*, 681 N.W.2d 706, 718 (Minn. App. 2004) (quotation omitted). A decision is arbitrary or capricious if the agency

> (a) relied on factors the legislature never intended it to consider, (b) entirely failed to consider an important aspect of the problem, (c) offered an explanation for the decision that runs counter to the evidence, or (d) rendered a decision so implausible that it could not be ascribed to a difference in view or the result of agency expertise.

Watab Twp. Citizen All. v. Benton Cty. Bd. of Comm'rs, 728 N.W.2d 82, 89 (Minn. App. 2007), *review denied* (Minn. May 15, 2007).

Here, upon completion of a financial audit, the MDE determined that the charter school received special-education funds in excess of the amount owed and denied WISE's request for reimbursement of those expenses in a December 2015 decision. WISE appealed the decision and provided additional information on six employees. The MDE granted WISE's appeal as to three of its employees, determining that the new documentation adequately demonstrated that each of these three employees provided special-education services to students during the school year. However, the MDE denied the appeal as to the remaining three individuals because it felt the documentation did not justify additional reimbursement. On reconsideration, the MDE reviewed additional materials and again determined that the school failed to properly document its expenses.

Substantial evidence in the record supports the MDE's decision. For employee C.J., WISE submitted a certification signed in October 2017, over two years after the school closed and three years after some of the pay periods at issue. The MDE reasoned that the timing was inconsistent with federal law and basic fiscal accountability standards and raised integrity concerns. The final determination also denied the appeal regarding employee M.D., stating that the certification for this employee contained a generic statement that M.D. spent 100% of her time as a "special education teacher or other service provider," but did not adequately describe her employment duties and activities. The MDE concluded that the appeal was "inadequate to support time spent on special-education activities." The MDE noted that the certification was created "over two years after the applicable employment period," and that there was no documentation submitted providing adequate support for the expense. Lastly, the MDE denied the appeal for employee C.B., determining that her employee certification contained only a generic statement that she worked 100% of her time "as a special education teacher or other service provider," but failed to describe the special-education activities in which she allegedly engaged. The MDE determined that WISE failed to provide adequate documentation in support of its reimbursement request for these three employees.

We find the agency's decision to deny WISE's reimbursement request was supported by substantial evidence with respect to each of the three employees. WISE, as the party seeking relief, bears the burden of establishing that the MDE's findings are not supported by the evidence in the record. *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 825 (Minn. 1977). WISE did not meet that burden.

WISE has not satisfied its burden of demonstrating that the MDE's decision was arbitrary or capricious in that it relied on factors the legislature never intended the agency to consider, ignored an important aspect of the problem, explained its decision in a way that ran counter to the evidence, or rendered an implausible decision. *Watab Twp. Citizen All.*, 728 N.W.2d at 89. WISE has not identified evidence suggesting that the MDE's decision "represent[ed] the agency's will and not its judgment." *In re Review of 2005 Annual Automatic Adjustment of Charges*, 768 N.W.2d 112, 118 (Minn. 2009) (explaining that an agency's decision is arbitrary or capricious if agency exercises its will, rather than reasoned judgment).

Affirmed.