

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0229**

Complaint Decision File 24-043C on behalf of Students from Minnetonka ISD 0276-01.

**Filed November 4, 2024
Affirmed
Schmidt, Judge**

Minnesota Department of Education
File No. 24-043C

Laura Tubbs Booth, Adam J. Frudden, Ratwik, Roszak & Maloney, P.A., St. Paul, Minnesota (for relator Independent School District No. 276, Minnetonka Public Schools)

Keith Ellison, Attorney General, Martha J. Casserly, Assistant Attorney General, St. Paul, Minnesota (for respondent Minnesota Department of Education)

S.K., Excelsior, Minnesota (pro se respondent)

Considered and decided by Schmidt, Presiding Judge; Ross, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

In this certiorari appeal, relator Independent School District No. 276, Minnetonka Public Schools (the District) challenges a decision by respondent Minnesota Department of Education (the Department) that the District violated the Individuals with Disabilities Education Act. 20 U.S.C. § 1400 et seq (2018). The District argues (1) it did not violate the Individuals with Disabilities Education Act; (2) any violation was harmless and, therefore, the Department improperly imposed corrective action; and (3) the Department's investigation did not comply with federal regulations. We affirm.

FACTS

At the beginning of the 2022–23 school year, the District informed parents that October 13 would be an asynchronous instruction¹ e-learning day to facilitate parent-teacher conferences. Self-represented respondent S.K.’s (Mother) son (Student 1) attended a school in the District. Student 1 had an individualized education program (IEP) that required “specialized direct instruction” in several different subjects.

Mother emailed her son’s principal, his case manager, and his special education teachers to express concern about Student 1’s IEP direct services for the asynchronous e-learning day. Student 1’s IEP contained no mention of procedures for asynchronous e-learning days. After several emails between Mother and the District employees, the District held the asynchronous e-learning day as planned. On the e-learning day, Student 1 completed one assignment and informed his teacher he ran out of time to finish the second assignment. Student 1 completed the second assignment on his next in-person day of class.

Mother filed a complaint with the Department about the e-learning day on behalf of her son and 299 similarly situated students. Mother alleged the District “failed to deliver IEP direct service minutes to all 6th, 7th, and 8th” grade students in the district on the e-learning day. The District denied the allegations in Mother’s complaint, insisting it complied with all obligations to provide Student 1—and other similarly situated students—with a free appropriate public education and complied with Student 1’s IEP. As part of its investigation, the Department interviewed Mother and the District’s special education

¹ For “asynchronous instruction” e-learning, students work independently online without live instruction.

director. The Department also requested that the District provide a description of the asynchronous e-learning day, a timeline of events, “[a] list of all eligible students,” Student 1’s IEP, any other student’s IEPs that included an asynchronous instruction provision, a school calendar, and “[a]ny additional educational records reviewed when the District prepared its response to [the] complaint.”

The Department issued its decision, determining that the District violated the Individuals with Disabilities Education Act by not ensuring “the Students’ IEPs were developed, reviewed, and revised, as appropriate, to describe the special education and related services to be provided during planned asynchronous learning.” The Department noted that no additional asynchronous e-learning days should be added until the District ensures that each student with a disability is provided a free appropriate public education. The Department required the District to plan and implement a corrective action.

The District asked the Department to reconsider.² The Department issued a clarification letter, recommending that the District could satisfy the corrective action by allowing “the parents/guardians of eligible students the opportunity to discuss the impact of planned asynchronous online learning days of instruction on their student.” The Department suggested that the District could alert parents and guardians of this opportunity by adding a sentence in the announcement about any future asynchronous e-learning day that reminded parents and guardians about their right to meet with their child’s IEP team.

The District petitioned for writ of certiorari.

² Mother also asked the Department to reconsider, but no petition for writ of certiorari relating to that request is before us.

DECISION

When reviewing the Department’s quasi-judicial decision, we presume the decision is correct, deferring to its “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 only reverse the Department’s 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.

“Whether an administrative agency has acted within its statutory authority is a question of law that [appellate courts] review de novo.” *In re Application of Otter Tail Power Co.*, 942 N.W.2d 175, 179 (Minn. 2020) (quotation omitted). We will affirm an agency’s decision as long as it is supported by substantial evidence, which addresses “the reasonableness of what the agency did on the basis of the evidence before it.” *In re Expulsion of A.D.*, 883 N.W.2d 251, 259 (Minn. 2016) (quotation omitted).

I. The Department properly determined the District violated the Individuals with Disabilities Education Act.

The District argues that the Department’s decision is not supported by substantial evidence because the evidence only shows that the District complied with the Individuals with Disabilities Education Act. The District further asserts that the Department’s decision runs afoul of the plain language of the Act.

One of the main purposes of the Individuals with Disabilities Education Act is “to ensure that all children with disabilities have available to them a free appropriate public education [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) (2018). The Act established the IEP as a resource to accomplish that goal. *Id.* § 1414(d) (2018).

An IEP describes the programs and services that will be used to help an individual student reach measurable goals. *Id.* An IEP is “developed, reviewed, and revised in accordance with” the Individuals with Disabilities Education Act mandated standards. *Id.* § 1414(d)(1)(A)(i) (2018). The applicable IEP requirement in this appeal concerns “the projected date for the beginning of [special education and related services/modifications], and the anticipated frequency, location, and duration of those services and modifications[.]” *Id.* § 1414(d)(1)(A)(i)(VII) (2018); 34 C.F.R. § 300.320(a)(7) (2023). An IEP should be revised “as appropriate” to address a “child’s anticipated needs[.]” 20 U.S.C. § 1414(d)(4)(A)(ii)(IV) (2018); 34 C.F.R. § 300.324(b)(1)(ii)(D) (2023). A parent must receive written notice before the District proposes to change “the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.” 20 U.S.C. § 1415(b)(3) (2018).

Congress enacted these procedures to “guarantee parents and guardians a large measure of participation in the IEP process[.]” *K.E. ex rel. K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 804 (8th Cir. 2011) (quotation omitted). A district fails to provide a free appropriate public education if “procedural inadequacies . . . significantly impeded the parents’ opportunity to participate in the decisionmaking process regarding” their child’s education. 20 U.S.C. § 1415(f)(3)(E)(ii)(II) (2018). Minnesota also protects a “parent’s right to notice, participation, [and] due process” for their child’s educational progress. Minn. Stat. § 125A.091, subd. 28 (2022).

The District contends the Department's decision is not supported by substantial evidence because the parents and guardians received notice of the asynchronous e-learning day. The District correctly notes that parents and guardians were given notice that an asynchronous e-learning day would occur, but the Department's decision was based on the lack of notice to parents and guardians about how the asynchronous e-learning day might impact services provided under a child's IEP. The Department determined that the District violated the right of parents and guardians to notice and participation. We conclude that the Department's decision is supported by substantial evidence.

The Department's factual findings show that Mother, like other parents and guardians of children with IEPs, received notice of the asynchronous e-learning day. But the District's initial communication included no notice that Mother could schedule a meeting with her child's support team to discuss the impact of an asynchronous e-learning day on Student 1's IEP, which included direct services. Mother received notice about scheduling a meeting with the support team only *after* she affirmatively contacted the District to inquire about her child's IEP in relation to the asynchronous e-learning day. The District anticipated, planned, and executed the asynchronous e-learning day without informing the parents and guardians about their right to participate in an alteration to their child's IEP services. Such a notification would have initiated all the procedural safeguards embedded in the Individuals with Disabilities Education Act. *See* 20 U.S.C. § 1415 (2018). The Department's conclusion that the District unilaterally altered Student 1's IEP by not ensuring that the IEP was "developed, reviewed, and revised, as appropriate" is supported by substantial evidence.

The District also argues that the Department’s determination that a violation occurred is not supported by the plain language of the statute because the Department did not find any student was denied a free appropriate public education. But the Department did find violations of two federal regulations. The Department may impose a corrective action based on those violations, even when no student has been denied a free appropriate public education. *See Special Sch. Dist. No. 1 v. E.N.*, 620 N.W.2d 65, 71 (Minn. App. 2000). Moreover, the Department has the authority to issue a corrective action after finding that a unilateral policy that impacts the services of children with IEPs violates the Individuals with Disabilities Education Act. *See Indep. Sch. Dist. No. 281 v. Minn. Dep’t of Educ.*, 743 N.W.2d 315, 327 (Minn. App. 2008); 34 C.F.R. § 300.151(b)(1) (2023). The Department’s decision adheres to the statute, the regulations, and the caselaw.

II. The District’s actions were not harmless “technical” violations.

The District argues that the Department exceeded its authority by imposing corrective actions because the violations, if any, were harmless technical violations. “A district is not liable for harmless technical violations of federal or state laws, rules, or regulations governing special education if the school district can demonstrate that the violations did not harm a student’s educational progress or the parent’s right to notice, participation, or due process.” Minn. Stat. § 125A.091, subd. 28.

If the Department finds a denial of services, the Department must address: “(1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and (2) Appropriate future provision of services for all children with disabilities.” 34 C.F.R.

§ 300.151(b)(1), (2) (2023). The corrective action “must be calculated to remediate the services that the school district failed to provide.” *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).

Because we have concluded that the Department’s determination that the District violated the parents’ and guardians’ right to notification was supported by substantial evidence, we likewise conclude that the violation was not a harmless technical violation. Federal law requires written notice to parents and guardians of students with IEPs before the District “proposes to initiate or change . . . the identification, evaluation, or educational placement of the child[.]” 20 U.S.C. § 1415(b)(3)(A).

Had the District provided appropriate notice when first announcing the asynchronous e-learning day, the procedural safeguards would have been triggered, thereby protecting the rights of parents, guardians, and the District. *Id.* § 1415. A proper notice, for example, would have invoked the parents’ and guardians’ right to “participate in the education of their children at school and at home.” *Id.* § 1400(c)(5)(B) (2018).

The District also contends no corrective action was warranted because Student 1 did not regress. *See Glazier v. Indep. Sch. Dist. No. 876*, 558 N.W.2d 763, 768 (Minn. App. 1997) (concluding technical violation was harmless because student did not regress). Although the record does not show that Student 1 regressed, the student’s parents were not afforded the appropriate notice under federal law, which violated the parents’ right to participate in their child’s education. 20 U.S.C. § 1400 (2018). These were not “harmless technical violations” because the Department determined that the District’s actions harmed the parents’ right to notice and participation. *See Minn. Stat. § 125A.091*, subd. 28.

III. The Department conducted an appropriate investigation.

The District argues the Department's investigation was arbitrary and capricious because it failed to "[r]eview all relevant information and make an independent determination as to whether" the District violated a requirement of the Individuals with Disabilities Education Act. 34 C.F.R. § 300.152(a)(4) (2023). An agency's ruling is arbitrary and capricious if:

the agency (a) relied on factors not intended by the legislature; (b) entirely failed to consider an important aspect of the problem; (c) offered an explanation that runs counter to the evidence; or (d) the decision is so implausible that it could not be explained as a difference in view or the result of the agency's expertise.

Citizens Advocating Responsible Dev. v. Kandiyohi County Bd. of Comm'rs, 713 N.W.2d 817, 832 (Minn. 2006). But an agency's conclusions are not arbitrary and capricious so long as there is a "rational connection" between the facts found and the ruling. *In re Rev. of 2005 Ann. Automatic Adjustment of Charges for All Elec. & Gas Utils.*, 768 N.W.2d 112, 120 (Minn. 2009).

The Department's investigation included interviews of Student 1's Mother and the District's special-education director. The Department also requested that the District provide documentation, which included (among other things): a timeline of events, a list of eligible students, Student 1's IEP, a school calendar, and any students' IEPs that included an asynchronous instruction provision.

The District argues the Department "neither requested nor reviewed any educational records or individual communications regarding 299 of the 300 relevant Students." The

District also asserts that the Department did not conduct any interviews with District personnel who worked on IEPs or obtain any information about District personnel that worked with students or families before, during, or after the asynchronous e-learning day.

But the Department determined that the District's blanket policy for the asynchronous e-learning day violated the Individuals with Disabilities Education Act. The Department's factual findings established that the District failed to notify all parents and guardians of students with IEPs, which violated their right to notice and participation in their child's education. The Department's investigation reviewed the necessary information to conclude that the District's blanket policy decision violated the Individuals with Disabilities Education Act as to all students with IEPs.³ Thus, the Department's decision was not arbitrary and capricious.

Affirmed.

³ The District relies on *Independent School District No. 192 v. Minnesota Department of Education* as an instructive case of a “fundamentally flawed” investigation. 742 N.W.2d at 720. In *District No. 192*, the Department found an individual student was denied a free appropriate public education because of procedural and substantive issues with the student's IEP. *Id.* at 718. This court concluded that the decision was arbitrary and capricious because the investigation itself was fundamentally flawed. *Id.* at 720. In *District No. 192*, the Department failed to interview the student's special education teacher and other relevant school district personnel. *Id.* at 720-21. The lack of those interviews was especially important in that case because “key credibility determinations play[ed] a significant role in sustaining the complainant's principal allegations.” *Id.* at 721. This situation differs from *District No. 192* because there is no question of credibility here—as the facts are not disputed—and this case involves all students with IEPs in the District, not one student's specific IEP plan. *See id.* at 716-18.