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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1720**

Richard S. Heller
obo N. H., minor,
Relator,

vs.

Minnesota Department of Education,
Respondent.

**Filed May 25, 2010
Affirmed
Klaphake, Judge**

Minnesota Department of Education
File No. 09-050C

Richard S. Heller, St. Paul, Minnesota (pro se relator)

Lori Swanson, Attorney General, Martha J. Casserly, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Hudson, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

In this certiorari appeal from a special education complaint decision by respondent Minnesota Department of Education (MDE), relator Richard S. Heller challenges the department's determination that his son received a free and appropriate public education,

specifically that his son has been properly evaluated by the Anoka Hennepin School District (the district), in compliance with 34 C.F.R. § 300.304(b).

Because our review of the record leads us to conclude that there is substantial evidence supporting the decision and that the department engaged in reasoned decision-making, we affirm.

D E C I S I O N

We review an agency's quasi-judicial actions to determine if a petitioner's substantial rights have been prejudiced because of administrative findings, inferences, conclusions, or decisions that are, among other things, unsupported by substantial evidence, affected by an error of law, or arbitrary or capricious. Minn. Stat. § 14.69 (2008). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Fine v. Bernstein*, 726 N.W.2d 137, 142 (Minn. App. 2007), *review denied* (Minn. Apr. 17, 2007). A decision is arbitrary and capricious if there is no rational connection between the facts found and the decision made. *Id.* This court will affirm an agency decision, even though it may have reached a different conclusion, if the agency engages in reasoned decision-making. *Indep. Sch. Dist. No. 192 v. Dep't of Educ.*, 742 N.W.2d 713, 719 (Minn. App. 2007), *review denied* (Minn. Mar. 18, 2008). We will defer to an agency's decision in its area of expertise. *Id.*

Special education services are provided pursuant to federal law. *See* 20 U.S.C. §§ 1400-1450 (2009); 34 C.F.R. §§ 300-818 (2010). MDE is the "state education agency," (SEA) as defined in 20 U.S.C. 1401(32) and 34 C.F.R. § 300.41, responsible for supervision of public schools in the state of Minnesota. By federal law, each state must

make available a free appropriate public education (FAPE) to all children residing in the state, including children with disabilities. 34 C.F.R. § 300.101. Each SEA must provide a procedure for handling complaints about the denial of FAPE. 34 C.F.R. §§ 300.151-153. The SEA, in this case MDE, must investigate the complaint, conducting an on-site visit if necessary, give the complainant time to submit additional information, review all information, and issue a written decision. *Id.* The complaint may only allege violations occurring within one year of the date of the complaint. 34 C.F.R. § 300.153(c).

Relator presented two issues to MDE. First, he alleged that the district used improper evaluation methods to assess his son's progress under his Individualized Education Plan (IEP).¹ Second, relator contends that the district used improper evaluation methods for transition planning.²

Minn. R. 3525.2710 (2009) sets forth the standards for evaluations and reevaluations when writing an IEP. A district must use a variety of evaluation tools, not relying on any single procedure, and must use technically sound assessment tools to evaluate a child. *Id.*, subp. 3. There are a number of other considerations as well: tests must be culturally appropriate, standardized tests must be administered by trained

¹ When a child qualifies for special education services, the public school district in which the child lives must develop an IEP that analyzes the child's current status and sets measurable annual goals. 34 C.F.R. § 300.320. The IEP is developed with the help of the IEP team, which includes the parents, the regular education teacher, the special education teacher, and others. 34 C.F.R. § 300.321. The IEP is reviewed at least annually to determine if the goals are being met and if the plan needs revision. 34 C.F.R. § 33.324(b).

² A public school district must provide transition services to a child who is 14 years old or in high school and receiving special education services under an IEP; transition services are planning for postsecondary life. Minn. R. 3525.2900 (2009).

personnel, tests must cover all areas of suspected disability, and tests must provide relevant information. *Id.*, subp. 3(C). But the rules do not mandate any particular test or evaluation procedure.

Relator argues that the district failed to consider an outside evaluation that he obtained for his son through the Courage Center and failed to use a transitions planning test that he preferred to the evaluation model used by the district. MDE found that the district “conducted a thorough evaluation that included well-documented and pedagogically sound evaluation instruments . . . including extensive independent educational evaluations at the [d]istrict’s expense.” MDE also found that the transitions model used by the district incorporated all five areas to be considered under the rules.

The record supports MDE’s determination that the district made a thorough evaluation using appropriate tools. MDE noted that (1) the child was evaluated twice by the district and three times by outside professionals; (2) the district took nine steps in performing the evaluation, including administering several approved assessment protocols and making observations in the school setting; (3) the district used the Qualitative Reading Inventory (QRI) to establish reading benchmarks; and (4) the district used the Ten Sigma Inventory test to evaluate and guide transition planning, as well as an outside evaluation by the Courage Center. MDE also found that the district had provided reasons for choosing certain evaluation methods.

Although parental input is a necessary part of the IEP process, a parent’s preference does not control the IEP process. *See, e.g., Slama v. Indep. Sch. Dist. No. 2580*, 259 F.Supp.2d 880, 885-86 (D. Minn. 2003) (concluding that parental preference

does not usurp role of district in determining appropriate special education services). Relator may have offered alternative evaluation methods that have equal validity but the district is not required to adopt those standards so long as it uses appropriate evaluation methods. MDE's determination that the district used appropriate evaluation tools for developing both the child's IEP and transition plan is supported by substantial evidence and is not arbitrary or capricious. We therefore affirm MDE's determination that the child is receiving a free and appropriate public education.

Affirmed.