STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0250

Re: Special Education Complaint 22-027C
on behalf of V.S., L.S., and G.S.
from Waconia ISD 0110-01.

Filed October 10, 2022
Reversed
Gaïtas, Judge

Minnesota Department of Education
File No. 22-027C

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Considered and decided by Worke, Presiding Judge; Segal, Chief Judge; and Gaïtas, Judge.

SYLLABUS

A school district that offers a student with a disability special-educational services in conformity with the student's existing individualized education program (IEP) does not violate Minnesota Statutes section 125A.08(b)(1) (2020), which requires a school district to ensure that "all students with disabilities are provided the special instruction and services which are appropriate to their needs," or the corresponding federal regulation, 34 Code of Federal Regulations section 300.17(d) (2021), which requires such educational services to

be "provided in conformity with an [IEP]," when the student does not receive the services made available due to a parent's rejection of the services and refusal to cooperate with the school district.

OPINION

GAÏTAS, Judge

In this case, we must decide whether respondent Minnesota Department of Education (MDE) improperly issued a corrective-action order requiring relator Independent School District No. 110, Waconia Public Schools (the district) to provide compensatory services to three students with disabilities whose parent[1] rejected special-educational services that the district made available to the students in conformity with their existing IEPs and refused to cooperate with the district in developing new IEPs. MDE found no wrongdoing on the district's part. But MDE nonetheless concluded that the district violated state and federal law, warranting corrective action, because it failed to ensure that the students were provided with educational services that the students' parent refused to accept.

The district argues that MDE incorrectly interpretated Minnesota Statutes section 125A.08(b)(1)—which requires a school district to ensure that "all students with disabilities are provided the special instruction and services which are appropriate to their needs"—and the corresponding federal regulation. According to the district, MDE

[1] The students, who are siblings, have two parents. But only one parent, N.S., filed and pursued the complaint that is the subject of this appeal.

erroneously construed the statutory term "students . . . are provided" to mean "students . . . have received." And the district argues that it cannot ensure that students receive educational services that a parent refuses. But MDE asks us to defer to its interpretation of what it means to "provide" special education and related services under state and federal law. It contends that the district's good faith and parent's lack of cooperation does not change the fact that the students did not receive the instruction and services they needed, which necessitates corrective action.

We agree with the district that MDE's decision and corrective-action order rest on an incorrect interpretation of section 125A.08(b)(1) and the corresponding federal regulation. Because the students' parent refused to allow the students to receive appropriate special-educational services that were offered and made available by the school district, MDE erred in concluding that the district failed to provide such services. We therefore reverse MDE's decision and corrective-action order.

FACTS

Respondent-parent has three young students with disabilities—V.S., L.S., and G.S.—who were enrolled in schools in the district and eligible for special education and related services.[2] In September 2021, parent filed a complaint against the district with MDE. Parent alleged that, for the preceding calendar year, the district had failed to provide

[2] V.S. was eligible for special education and related services under the disability categories of "other health disabilities" and "speech/language impaired." L.S. was eligible for these services under the disability categories of "developmental delay" and "speech/language impaired." G.S. was eligible for services under the disability category of "developmental delay."

the students with special education and related services and had failed to consider parent's concerns for enhancing the students' education. After an investigation, MDE issued a decision on parent's complaint. Although MDE determined that the district had made special education and related services available to the students during the 2020-21 school year and had considered parent's concerns for enhancing the students' education, it concluded that the district violated federal and state law "when it failed to provide the students with special education and related services" during part of the 2021-22 school year.

MDE's decision acknowledged the district's extensive efforts to develop new IEPs for the students and to provide the students with special education and related services during the first half of the 2021-22 school year. It also recognized that parent refused to cooperate with the district and rejected all of the educational services that the district offered. But the decision stated that "merely making services available" was not enough. Instead, according to MDE, services must be "provided," and that did not occur because the students did not "receive" the services. Based on this decision, MDE ordered corrective action, requiring the district to meet with parent to "determine an appropriate amount of compensatory services to compensate the students for the lost educational opportunity," which could include reimbursing parent to obtain private services.

The district filed a certiorari appeal from MDE's decision. On appeal, the district asks us to reverse MDE's corrective-action order, arguing that MDE erred in concluding that the district failed to provide the students with special education and related services. Alternatively, the district argues that MDE erred in considering the issues in parent's

complaint because these issues were also the subject of a separate due-process proceeding that the district had initiated and were not properly before MDE.

Background[3]

The events in this case occurred against the backdrop of the COVID-19 pandemic, which widely disrupted education beginning in March 2020. Emerg. Exec. Order No. 20-02, *Authorizing and Directing the Commissioner of Education to Temporarily Close Schools to Plan for a Safe Educational Environment* (Mar. 15, 2020) (directing schools to close to students and for school and district staff to engage in a ten-day planning period); Emerg. Exec. Order No. 20-19, *Authorizing and Directing the Commissioner of Education to Implement a Distance Learning Period and Continue to Provide a Safe Learning Environment for Minnesota's Students* (Mar. 25, 2020) (directing the Minnesota Commissioner of Education to implement a month-long distance learning period); Emerg. Exec. Order No. 20-41, *Authorizing and Directing the Commissioner of Education to Extend the Distance Learning Period and Continue to Provide a Safe Learning Environment for Minnesota's Students* (Apr. 24, 2020) (extending the distance learning period until the end of the 2019-20 school year); Emerg. Exec. Order No. 20-82, *Authorizing and Directing the Commissioner of Education to Require School Districts and Charter Schools to Provide a Safe and Effective Learning Environment for Minnesota's Students during the 2020-21 School Year* (July 30, 2020) (establishing parameters for

[3] Our summary of the underlying facts is based on information that MDE obtained during its complaint investigation and the factual findings included in MDE's decision. The parties do not dispute the material facts.

school districts and charter schools to safely implement in-person, hybrid, and distance-learning models in the 2020-21 school year). Here, the relevant time periods are the 2020-21 and 2021-22 school years. The district began the 2020-21 school year with in-person instruction but switched to distance learning for all students on December 1, 2020, due to the pandemic. On January 19, 2021, the district returned to in-person instruction for the remainder of the 2020-21 school year. The district continued in-person instruction during the 2021-22 school year.

Federal and state law require school districts to have in effect an IEP for each child with a disability at the beginning of every school year. 34 C.F.R. § 300.320(a)(2)(i) (2021); Minn. Stat. § 125A.08(a) (2020). During the 2020-21 school year, the district, the students' parents, and other IEP team members created or modified separate IEPs for V.S., L.S., and G.S. The last agreed-upon IEPs for the students were dated December 10, 2020 for V.S.; May 5, 2021 for L.S.; and May 12, 2021 for G.S.

The IEPs specifically addressed the COVID-19 pandemic. Each student's IEP provided that if the general student population returned to in-person instruction, the student would also return to in-person education.

Planning for the 2021-22 School Year

In August 2021, the district decided that face coverings would not be mandated for students or staff at any district schools during the 2021-22 school year. Given this policy, parent was concerned about the students' health, noting that at least one student was

immunocompromised.[4] On August 11, 2021, district administrators met with parent to discuss her concerns.

Following the meeting, parent sent an email on August 20, 2021, to various district administrators stating that she did not "consider [her] kids district . . . students anymore." On August 27, parent notified the district in another email that she was withdrawing the students from the district "with no plans to return."

The District's Attempts to Prepare 2021-22 IEPs

The 2021-22 school year began on August 30. Parent again communicated to district staff on September 1 that the students would not be coming back to the district, but also admitted that she had no plan for the students to receive educational services elsewhere. Because the district was required to provide services while the students were homeschooled or until they were enrolled in another district, district staff invited parent to a meeting. District staff hoped to develop new IEPs at the meeting, which was scheduled for September 16.

During that meeting, district staff acknowledged that COVID-19 was a concern for parent and discussed different "service model options," requesting parent's input. One option was to bring the students to school in an environment where anyone who interacted with them would be masked. Another option was for the students to receive homebound

[4] Parent had heightened concern for her children's safety because one of her five children passed away in 2015 from a cause unrelated to COVID-19.

services.[5] Parent immediately rejected the in-person model. When district staff asked parent for input on possible homebound services, parent stated that it was not her job to create a homebound education plan.

The district then offered two proposals for homebound education. It proposed sending teachers to the students' home for in-person, at-home instruction. Alternatively, it offered to facilitate remote learning via video technology. Parent refused any plan that would allow a teacher to enter the home because she disagreed with the district's COVID-19 contact-tracing policies. And parent stated that if district staff "actually [knew]" her children, they would know that remote learning would not work. Parent told district staff that the district needed to find a safe place for the students to receive services. The district advised parent that it would come up with a plan and get back to her.

A few hours after the September 16 meeting, parent emailed district staff, stating that she did "not agree to anything proposed." Parent demanded that the district provide homebound or homeschooling programs.

In another email, dated September 18, parent asked the district to provide services at school through a "pod situation" with the following features:

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[5] Homebound services provide educational instruction for students medically confined to their home for any illness or condition—including COVID-19—as documented by a medical authority. Minn. Dep't. of Educ., *2020-21 Planning Guidance for Minnesota Public Schools* 59 (2021), https://education.mn.gov/mdeprod/groups/communications/documents/basic/bwrl/mdmy/~edisp/mde032934.pdf [https://perma.cc/3TYB-JYGB]. Homebound services require one-hour of instruction per day provided directly by an appropriately licensed teacher, either by the teacher going to the student's home or via online instruction. *Id.*

- A masked room, teacher and anyone who enters that room. Also, those teachers have limited exposure to the entire school population.
- A private bathroom (for staff in classroom, kids in classroom but not for entire school)

. . . .

- Someone to wipe down the lunch table or art table before use
- Lockers or personal items kept in classroom

Several days later, parent again emailed the district requesting "a pod situation," along with contact tracing.

On September 24, the district emailed parent proposed IEPs for each student. The proposed IEPs incorporated the "pod situation" requested by parent:

> Due to the COVID-19 pandemic, [the students] will be served in a home-based setting to limit [their] exposure to the virus. This is a restrictive setting being proposed due to [V.S. and G.S.'s health concerns].
>
> The location [the students] come[] to will be cleaned prior to [their] arrival including a bathroom. These spaces will be closed during the time [the students are] receiving services so others cannot enter the spaces. Staff working with [the students] will wear a mask. [The students] will have no access to peers in [their] general education classes while receiving services.
>
> . . . .
>
> The location for home-based services is a room at the district office and a bathroom across the hallway. The outside door is close to this location to avoid walking through a school building.

Between September 29 and October 8, the district also offered to provide general and special-educational services at the district office with the specified safety measures until the parties could agree on an IEP. Parent declined this offer.

On September 27, 2021, parent filed her complaint with MDE. Following parent's complaint, the district continued its efforts to prepare IEPs for the students. Parent rejected the district's efforts to have conciliation conferences[6] on September 29. When parent asked the district to mail the students' school materials to their home, the district did so and continued to mail these materials for months. On October 8, parent returned the district's proposed IEPs. Rather than signing them, parent wrote "our family fears our children's safety" on each form.

On October 12, the district suggested that parent and district staff participate in facilitated team meetings[7] for the students. The following day, parent agreed to meet with the district, attaching a letter from the students' pediatrician to her email. The pediatrician recommended distance learning, believing it was not "in the interest of [the students'] health or safety to attend school in person if there was no enforced mask mandate." Several days later, the district received an updated letter from the pediatrician, which included additional information about the students' health.

Shortly thereafter, on October 20, the district proposed IEP team meetings facilitated by MDE to discuss the information provided in the doctor's letter. But parent would not agree to a meeting date and time, asking to postpone the meeting until late November or early December. The district, concerned with the students' inability to access

[6] A conciliation conference is a means of resolving a special-education dispute provided for by statute. *See* Minn. Stat. § 125A.091, subd. 7 (2020).

[7] "A facilitated team meeting is an IEP . . . team meeting led by an impartial state-provided facilitator to promote effective communication and assist a team in developing an [IEP]." Minn. Stat. § 125A.091, subd. 11 (2020).

education, scheduled a conciliation conference for November 2, 2021. At this meeting, which parent attended virtually, parent stated that she would only accept online or other at-home education and rejected any proposal to use a district location.

On November 9, 2021, the district proposed new IEPs for the students. These included additional safety measures, including requiring that only masked and vaccinated staff interact with the students at the district location. Parent, through an attorney, rejected the amended proposed IEPs.

The Separate Due-Process Matter

After parent rejected the amended proposed IEPs in November 2021, the district requested an impartial due-process hearing before an administrative law judge (ALJ). Parent also requested a due-process hearing, and the ALJ consolidated the two matters. The proceedings before the ALJ were separate and distinct from parent's complaint to MDE, which resulted in MDE's decision that is the subject of this appeal.[8] In the due process matter, the ALJ considered whether the least-restrictive environment for the students was the segregated classroom that the district proposed in the November IEPs, which parent rejected.[9] The district ultimately prevailed in the due-process matter. In a

[8] There are two procedures available for resolving disputes concerning special education and related services: (1) an impartial due-process hearing and (2) an administrative complaint procedure, where the complainant files a complaint with MDE. *Indep. Sch. Dist. No. 281 v. Minn. Dep't of Educ.*, 743 N.W.2d 315, 322 (Minn. App. 2008). At issue in this appeal is MDE's decision and corrective-action order issued in response to parent's administrative complaint.

[9] The ALJ also determined that the district's most recent evaluation of G.S. was appropriate.

decision issued on February 4, 2022, the ALJ concluded that the district "has proved that the [least-restrictive environment] for all three students is the educational placement it proposed in November 2021."

MDE's Investigation and Complaint Decision

Parent's complaint sought corrective action against the district on two grounds, alleging first, that the district had failed to provide the students with special education and related services during the past calendar year and, second, that the district had refused to consider her input for enhancing the students' education and other needs. After receiving parent's complaint, MDE conducted an independent investigation, reviewing parent's information, the district's response to the complaint and supporting information, discussions with parent and district staff, and other relevant information. The investigation was limited to allegations that occurred on or after September 27, 2020, one year before MDE received parent's complaint.

Based on its investigation, MDE issued a complaint decision on December 29, 2021. The decision contained detailed factual findings and concluded:

- The district did not violate federal or state law in its provision of services to the students during the 2020-21 school year.
- The district considered parent's concerns for enhancing the students' education and other needs.
- "The district acknowledged that during the 2021-22 school year, it did not provide the students with special education and related services in conformity with [V.S.'s] December 2020 IEP, [L.S.'s] April 2021 IEP, and [G.S.'s] May 2021 IEP, in violation of 34 C.F.R. § 300.17 and Minn. Stat. § 125A.08."

As a corrective action, MDE required the district to "invite [parent] to a meeting and determine an appropriate amount of compensatory services to compensate the students

for the lost educational opportunity from the beginning of the 2021-22 school year to the date of this complaint."[10] Compensatory services could "take the form of reimbursement to [parent] to obtain private services." If the district and parent could not agree on an appropriate amount of compensatory services, a corrective-action specialist for MDE would make a final determination. The corrective-action order required the district to provide all compensatory services within one year.

ISSUE

Did MDE err in concluding that the district violated state and federal law when the district offered and made available special-educational services in conformity with the students' existing IEPs that the students did not receive due to their parent's rejection of the services and refusal to cooperate with the district?

ANALYSIS

The district challenges MDE's decision and corrective-action order on two grounds. First, the district argues that MDE erred in determining that the district violated state and federal law by not providing the students with special education and related services for part of the 2021-22 school year. Second, the district contends that MDE was barred from addressing the issues raised in parent's complaint because these issues were also pending

[10] MDE's complaint decision inconsistently identifies the time period during which the students did not receive educational services. In a section entitled "Decision," it identifies the relevant time period as "between the start of the 2021-22 school year and the date of this complaint." (Parent's complaint was dated September 27, 2021.) But in the section entitled "Corrective Action," the decision refers to services that the students did not receive for "the first half of the 2021-22 school year." In their briefs to this court, both MDE and the district seem to agree that the relevant period was the entire first half of the 2021-22 school year.

resolution in a separate due-process proceeding. Because our analysis of the district's first argument is dispositive, we do not reach the second argument.

The district's arguments require us to review the decision of an administrative agency. Our standard of review in such a case is narrow. An administrative agency's decision enjoys a presumption of correctness; the appellate court defers to the agency's expertise and special knowledge in its field. *In re Annandale NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 513 (Minn. 2007) (*Annandale*). "If an agency engages in reasoned decision-making, this court will affirm, even though it may have reached a conclusion different from the agency's." *Indep. Sch. Dist. No. 192 v. Minn. Dep't of Educ.*, 742 N.W.2d 713, 719 (Minn. App. 2007), *rev. denied* (Minn. Mar. 18, 2008). When an agency issues a quasi-judicial decision after reviewing evidence, making factual findings, and reaching a conclusion based on the application of a prescribed standard, the reviewing court considers whether substantial evidence supports the agency's decision. *Id.* We evaluate the evidence that the agency relied upon, "in view of the entire record as submitted." *Id.* (quoting *Cable Commc'ns Bd. v. Nor-West Cable Commc'ns P'Ship*, 356 N.W.2d 658, 668 (Minn. 1984)). "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), *rev. denied* (Minn. Apr. 17, 2007). The appellate court reviews questions of law de novo, however. *In re Restorff*, 932 N.W.2d 12, 18 (Minn. 2019). We will only reverse the decision of an administrative agency if it "reflects an error of law, the determinations are arbitrary and capricious, or the findings are unsupported by the evidence." *Special Sch. Dist. No. 1 v. E.N.*, 620 N.W.2d 65, 68 (Minn. App. 2000).

The district first challenges MDE's determination that the district violated Minnesota Statutes section 125A.08(b) (2020) by failing to ensure that the students were provided the special instruction and services that were appropriate to their needs for part of the 2021-22 school year. According to the district, this determination is based on an error of law, is not supported by substantial evidence, and is arbitrary and capricious.

We determine, as explained below, that MDE's decision and corrective-action order are based on an error of law. MDE's decision failed to apply the plain language of section 125A.08(b) and the corresponding federal regulation by interpreting the obligation to "provide" special-educational services to require that a student actually receive those services. Because MDE's factual findings cannot otherwise support the decision to order corrective action, we reverse.

A. Federal and State Special-Education Law

To guide our analysis, we initially provide some background on special-education law. Federal law sets the minimum requirements for education of students with disabilities. *Special Sch. Dist. No. 1, Minneapolis Pub. Schs. v. R.M.M.*, 861 F.3d 769, 773 (8th Cir. 2017). The federal Individuals with Disabilities Education Act (IDEA) "ensure[s] that all children with disabilities have available to them a free appropriate public education 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). Federal law defines a "[f]ree appropriate public education or FAPE" as

> 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 Education 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 (2021); *see also* 20 U.S.C § 1401(9) (2018).

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. 20 U.S.C. § 1414(d)(1)(A)(i) (2018). An IEP is created by an IEP team, which includes the student's parents, the student's teachers, and a representative of the local educational agency. 20 U.S.C. § 1414(d)(1)(B) (2018). When developing an IEP, the team must consider: "(i) The strengths of the child; (ii) The concerns of the parents for enhancing the education of their child; (iii) The results of the initial or most recent evaluation of the child; and (iv) The academic, developmental, and functional needs of the child." 34 C.F.R. § 300.324(a) (2021).

States may impose greater requirements for special education than federal law. *R.M.M.*, 861 F.3d at 773. Minnesota's special-education requirements largely mirror the federal requirements. *See id.* (noting similarities between federal and Minnesota statutes governing special-education law). Minnesota Statutes section 125A.08(b)(1) requires that every school district ensure that "all students with disabilities are provided the special instruction and services which are appropriate to their needs." Under this section, "[t]he

student's needs and the special education instruction and services to be provided must be agreed upon through the development of an [IEP]." Another statute defines "special instruction and services" using language that is almost identical to the federal definition of a FAPE. *See* Minn. Stat. § 125A.03(a) (2020) (defining "special instruction and services" as a FAPE and requiring that educational services be provided at public expense, meet state and federal standards, include preschool through secondary school education, and conform with an IEP as defined by federal law). But Minnesota law is more expansive than federal law in that it affords private-school students, and not just public-school students, a right to a FAPE. *R.M.M.*, 861 F.3d at 773-75.

Under federal law, when a state educational agency finds that a school district has "fail[ed] to provide appropriate services," the agency must address "corrective action appropriate to address the needs of the child." 34 C.F.R. § 300.151(b)(1) (2021). Corrective action may include compensatory services or monetary reimbursement. *Id.* The agency must also address "[a]ppropriate future provision of services for all children with disabilities." 34 C.F.R. § 300.151(b)(2) (2021).

B. MDE's Interpretation of Applicable Special-Education Laws

MDE found that the district "acknowledged that during the 2021-22 school year, it did not provide the students with special education and related services in conformity with the [students'] IEPs" adopted in December 2020, April 2021, and May 2021. And based on this finding, MDE concluded that "[t]he district violated 34 C.F.R. § 300.17 and Minn. Stat. § 125A.08 when it failed to provide the students with special education and related

services in conformity with their IEPs between the start of the 2021-22 school year and the date of this complaint."

The district points out that it never acknowledged that "it did not provide the students with special education and related services." Rather, as MDE's decision states just paragraphs earlier, the district reported that, "the students have not *received* special education services this school year because as noted in the complaint response . . . the [parents] refused to send their children to in-person school and then refused to send the students to a district facility where services could be provided with safety protocols in place." (Emphasis added.) The district also observes that MDE's decision interprets the word "provide," as used in section 125A.08(b)(1) and the federal law defining a FAPE, to mean "receive." According to the district, this interpretation contravenes the plain meaning of the law, is inconsistent with IDEA and our state statutory scheme for special education, fails to follow existing caselaw, and overlooks the reciprocal obligation of families to operate within the statutory framework.

But MDE maintains that for a district to provide a student with educational services, the student must receive the services. Because section 125A.08(b)(1) and federal law require the district to provide special-educational services and the students did not receive those services, MDE contends that the district must remedy the students' resulting educational deficiencies.

To address these arguments, we must interpret the term "are provided" as used in section 125A.08(b)(1) and the federal laws defining a FAPE. Before doing so, we identify the rules we apply in construing statutes and regulations.

C. Interpreting Statutes and Regulations

In this case we are required to interpret both a state statute and a federal regulation. The interpretation of a state statute presents questions of law, which an appellate court reviews de novo. *J.D. Donovan, Inc. v. Minn. Dep't of Transp.*, 878 N.W.2d 1, 4 (Minn. 2016). We are "not bound by [a state] agency's interpretation of a statute." *Indep. Sch. Dist. No. 709 v. Bonney*, 705 N.W.2d 209, 214 (Minn. App. 2005). But an appellate court affords some deference to an agency's interpretation "where the statutory language is technical in nature, and the agency's interpretation is longstanding." *E.N.*, 620 N.W.2d at 68.

"When interpreting a statute, [appellate courts] must look first to the plain language of the statute." *Jackson v. Mortg. Elec. Registration Sys., Inc*., 770 N.W.2d 487, 496 (Minn. 2009). "When a statute's language is plain, the sole function of the courts is to enforce the statute according to its terms." *Engfer v. Gen. Dynamics Advanced Info. Sys., Inc.*, 869 N.W.2d 295, 300 (Minn. 2015). In other words, if a statute is unambiguous, the appellate court applies its plain meaning. *In re Rate Appeal of Benedictine Health Ctr.*, 728 N.W.2d 497, 503 (Minn. 2007). If a statute or rule is ambiguous, however, the appellate court may accord deference to the reasonable interpretation by an agency charged with administering it. *Annandale*, 731 N.W.2d at 514. "A statute is ambiguous if it is susceptible to more than one reasonable interpretation." *Walgreens Specialty Pharmacy, LLC v. Comm'r of Revenue*, 916 N.W.2d 529, 533 (Minn. 2018) (quotation omitted).

In considering a state agency's interpretation of a federal regulation, the reviewing court first determines whether the regulation is effectively the state agency's "own regulation." *Annandale*, 731 N.W.2d at 512-13. When a state agency is legally required to enforce and administer a federal regulation, the regulation is effectively the agency's own regulation. *Id.* at 513. Review of an agency's own regulation is de novo. *Id.* at 516. The reviewing court does not defer to an agency's interpretation of its own regulation when the language is "clear and capable of understanding." *Id.* But the reviewing court defers to an agency's interpretation when the language is ambiguous and susceptible to different reasonable interpretations. *Id.*

D. MDE's interpretation of the term "are provided" to mean "are received" is both contrary to the plain meaning of this term and unreasonable.

We conclude that the term "are provided," as used in section 125A.08(b)(1) and the corresponding federal regulation defining a FAPE, is unambiguous. The common understanding of this term is clear. And MDE's alternative interpretation is not reasonable.

We first consider our state statute, section 125A.08(b)(1), which requires a district to ensure that "all students with disabilities are provided the special instruction and services which are appropriate to their needs." The specific statutory language at issue is the term "are provided." This is not technical language and MDE does not allege that it has a longstanding interpretation of the term. Thus, we examine the plain meaning of this term without affording deference to MDE's interpretation. *See E.N.*, 620 N.W.2d at 68.

In interpreting a statute, we must construe words "according to their common and approved usage." Minn. Stat. § 645.08(1) (2020). Because the state legislature did not define the term "are provided," we may look to dictionary definitions to determine its common meaning. *In re NorthMet Project Permit to Mine Application*, 959 N.W.2d 731, 757 (Minn. 2021). One dictionary defines "provide" as: "[t]o make available (something needed or desired)," "[t]o supply something needed or desired," and "[t]o make ready ahead of time; prepare." *The American Heritage Dictionary of the English Language* 1418 (5th ed. 2018)). Another dictionary defines "provide" as: "to supply or make available (something wanted or needed)" and "to make preparation to meet a need." *Merriam-Webster's Collegiate Dictionary* 1001 (11th ed. 2014).

Consistent with these definitions, we conclude that a district's obligation to ensure that students "are provided" with special-educational services, as set forth by section 125A.08(b)(1), requires a district to ensure that these services are offered or made available to eligible students. MDE's interpretation of the term "are provided" to mean "are received" is not the common and approved meaning of the term.

Moreover, MDE does not advance a reasonable alternative interpretation of the term "are provided." MDE's alternative interpretation—that "are provided" means "are received"—is unreasonable for three reasons.

First, MDE's proposed interpretation is inconsistent with the statutory standard for awarding compensatory services in impartial due-process proceedings—the alternative avenue of relief to the administrative complaint proceeding at issue here. In an impartial due-process proceeding, an ALJ can only require a "district to provide compensatory

educational services to the child if the [ALJ] finds that the district has not *offered* or *made available* to the child a [FAPE] in the least restrictive environment and the child suffered a loss of educational benefit." Minn. Stat. § 125A.091, subd. 21 (2020) (emphasis added). It would be unreasonable to have two different standards under Minnesota law for deciding whether a district failed to ensure that a student with a disability was provided with special-educational services—one for impartial due-process proceedings and one for administrative complaints.

Second, as the district contends, MDE's interpretation is unreasonable because it fails to recognize that parents have a "reciprocal obligation" to operate within the procedural framework of IDEA. *Cordrey v. Euckert*, 917 F.2d 1460, 1466 (6th Cir. 1990) ("We emphasize today that the parents likewise are obligated to operate within [The Education For All Handicapped Children] Act's [IDEA's predecessor] procedural framework."); *CJN v. Minneapolis Pub. Schs.*, 323 F.3d 630, 639-40 (8th Cir. 2003) (determining that school district did not deny student a FAPE when it did not implement a specific program proposed by student's IEP team because parent rejected proposed programs and ultimately removed student from the school); *Albright v. Mountain Home Sch. Dist.*, 926 F.3d 942, 950 (8th Cir. 2019) (concluding that student was not denied a FAPE when parent refused to attend an IEP meeting due to "a profoundly toxic lack of trust" between parent and school district); *L.J. ex rel. N.N.J. v. Sch. Bd. of Broward Cnty.*, 927 F.3d 1203, 1217-19 (11th Cir. 2019) (rejecting argument that school district failed to implement an IEP due to student's extensive absences that were not school district's fault, and where school district "offered a wide range of supports in an effort to address the

problem"); *Jonathan G. v. Caddo Par. Sch. Bd.*, 875 F. Supp. 352, 365 (W.D. La. 1994) (concluding that student was not denied a FAPE when parents resisted all of school district's efforts to change student's school and did not cooperate with the school administrators to provide student with educational services).

Third, interpreting section 125A.08(b)(1) to require that a district not only offer or make available special-educational services, but also ensure that those services are received—even when refused—would result in liability and corrective action for school districts based on circumstances completely beyond their control. "The imposition of strict liability without guidance from the Legislature is generally disfavored." *Popovich v. Allina Health Sys.*, 946 N.W.2d 885, 901 (Minn. 2020).

MDE argues that the decision of the United States Court of Appeals for the Eighth Circuit in *R.M.M.*, 861 F.3d at 776-77, supports its alternative interpretation of the term "are provided" in section 125A.08(b)(1). We disagree.

In *R.M.M.*, the Eighth Circuit held that, under Minnesota law, a school district must "provide" private-school students with a FAPE, meaning that the district must do more than "make available" a FAPE within a public-school setting. 861 F.3d at 771. MDE focuses on the court's statement that the obligation to "provide" special-educational services requires more than simply making these services available. But considered in its proper context, the court's pronouncement has no bearing on the statutory-interpretation question presented here. At the outset of the proceedings in *R.M.M.*, an ALJ determined that the student's individual service plan (equivalent to an IEP for private-school students) did not provide the student with a FAPE because it was not reasonably calculated to meet

her unique needs. *R.M.M. v. Minneapolis Pub. Schs.*, No. 15-CV-1627, 2016 WL 475171, at *2 (D. Minn. Feb. 8, 2016), *aff'd sub nom. Special Sch. Dist. No. 1, Minneapolis Pub. Schs. v. R.M.M.*, 861 F.3d 769 (8th Cir. 2017). Challenging this decision in the federal district court, the school district argued that a private-school student had no individual right to a FAPE. *Id.* The federal district court rejected this argument. *Id.* at *9. On appeal, the Eighth Circuit affirmed, concluding that private-school students with disabilities are entitled to special instruction and services under Minnesota law. *R.M.M.*, 861 F.3d at 776. It was within this context that the court discussed a school district's obligation to affirmatively "provide" special-educational services to private-school students, rather than to simply make them available in a public school. *Id.* Because the Eighth Circuit's differentiation between "provide" and "make available" did not concern a situation where a school district offered or made available educational services that were not received due to a parent's conduct, it does not support MDE's argument that "are provided" means "are received."

We conclude that MDE's interpretation of section 125A.08(b)(1) as requiring a school district to ensure that students "receive" special-educational services finds no support in the plain language of the statute and is unreasonable. Thus, we reject that interpretation in favor of the plain language of the statute: "are provided" means offered or made available. Given that plain meaning, when a school district offers or makes available special-educational services in conformity with a student's existing IEP, but those services are not received due to a parent's rejection of the services and refusal to cooperate

with the school district in developing a new IEP, the school district does not violate section 125A.08(b)(1). MDE erred in determining otherwise.

We also conclude that MDE erroneously interpretated 34 Code of Federal Regulations section 300.17. That federal regulation defines a FAPE as requiring educational services that "[a]re provided in conformity with an [IEP]." 34 C.F.R. § 300.17(d). Because MDE is charged with enforcing the regulation, we review it as though it is MDE's own regulation. *Annandale*, 731 N.W.2d at 512-13. As we have already determined, the term "are provided" is clear and capable of understanding. *Id.* at 513. We are not persuaded that it means anything other than what it is commonly understood to mean. Thus, MDE erred in concluding that a district violates section 300.17 when a student does not receive a FAPE due to a parent's rejection of appropriate services that were offered or made available to the student and failure to cooperate in developing a new IEP.

E. MDE's Decision Must Be Reversed.

We further conclude that there is no basis to remand to MDE to apply the correct legal interpretation because the record contains substantial evidence that the district "provided" special education and related services as required by law.

MDE's factual findings clearly show that the district offered and made available special education and related services for the first half of the 2021-22 school year in conformity with the students' existing IEPs, which stated that the students would receive educational services via in-person learning. Those findings also show that parent rejected all of the offered educational services and refused to cooperate in developing new IEPs.

Parent's decision to deny the students services is not evidence that the district did not provide them. Thus, applying the correct legal interpretation, substantial evidence in the record shows that the district ensured that the students were provided special-educational services as required by law and the district provided special-educational services in conformity with the students' IEPs. We therefore reverse MDE's decision and corrective-action order.

DECISION

MDE erred in concluding that the district violated state and federal law by not providing the students with special education and related services in conformity with the students' IEPs. Because the district offered and made available special education and related services, and the students did not receive those services due to parent's failure to cooperate, the district did not violate Minnesota Statutes section 125A.08(b)(1) or 34 Code of Federal Regulations section 300.17. We therefore reverse MDE's decision and corrective-action order.

Reversed.