STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1213

In the Matter of J. H.,
Respondent,

vs.

Northfield Public School District #0659-01,
Relator.

Filed May 5, 2009
Affirmed
Larkin, Judge

Minnesota Department of Education
OAH Docket No. 58-1300-19641-9

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Considered and decided by Stauber, Presiding Judge; Minge, Judge; and Larkin, Judge.

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

LARKIN, Judge

Relator challenges an administrative-law judge's decision that one parent's written refusal to consent to an initial evaluation to determine a child's eligibility for special-education services prevents the school district from proceeding with the evaluation, notwithstanding the other parent's consent to the evaluation. Because federal law defers to individual states on matters of parental consent, and because the administrative-law judge's decision is consistent with applicable state law, we affirm.

D E C I S I O N

This is a certiorari appeal from a decision by an administrative-law judge (ALJ) concerning a school district's authority to proceed with an initial evaluation to determine a child's eligibility for special-education services under the Individuals with Disabilities Education Act (IDEA) when the child's parent has provided written refusal to consent[1] to the evaluation. 20 U.S.C. §§ 1400 to 1482 (2006) (IDEA); *see also* Minn. Stat. §§ 125A.001 to .80 (2006) (Minnesota's special-education provisions). The ALJ held that a parent may, by providing written refusal to consent, prevent the school district's initial evaluation of the child, notwithstanding the other parent's consent to the evaluation.

[1] The phrase "written refusal to consent" is based on statutory language and indicates that a parent has submitted, in writing, his or her refusal to consent to an initial evaluation. *See* Minn. Stat. § 125A.091, subd. 5(a) (2006) (stating that "[a] district may not override the written refusal of a parent to consent to an initial evaluation"). Our use of the phrase does not include a parent who takes no position on the issue of consent.

"The decision of an administrative agency will not be reversed unless 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) (quotation omitted). Relator Northfield Public School District No. 659 argues that the ALJ's decision reflects an error of law, is arbitrary and capricious, and exceeds the ALJ's authority and jurisdiction.

The issue before us is narrow: Does one parent's written refusal to consent to an initial evaluation to determine if a child is eligible for special-education services prevent a school district from proceeding with the evaluation, notwithstanding the other parent's consent? We begin our analysis with a review of the relevant federal legislation and regulations.

The purpose of the IDEA is to "ensure 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." 20 U.S.C. § 1400(d)(1)(A) (2006). The IDEA provides federal funds to states for educating disabled children. 20 U.S.C. § 1411 (2006). In furtherance of their obligations under the IDEA, school districts must identify, locate, and evaluate all children with disabilities so that their eligibility to receive special instruction and support can be determined. 20 U.S.C. § 1412(a)(3) (2006); *see also* 34 C.F.R. § 300.111 (2007) (describing find-child requirement); Minn. R. 3525.0750 (2007) (mandating that districts develop procedures for identifying children with disabilities). Pursuant to this "child-find" requirement, Minnesota has adopted legislation and rules requiring school districts to have in place

procedures for identifying and referring students who might be eligible for special-education services. *See* Minn. Stat. § 125A.56 (2006) (requiring that alternate forms of instruction be tried before an assessment referral); Minn. R. 3525.0750.

Before a school district can perform an initial evaluation to determine if a child is eligible for special-education services, the IDEA requires consent of "the parent." 34 C.F.R. § 300.300(a)(1)(i) (2007). Congress does not provide guidance as to what constitutes consent to conduct an initial evaluation when parents with equal rights disagree regarding decisions related to their child's education. *See generally* 34 C.F.R. § 300.300 (addressing parental consent in the context of IDEA). Indeed, the school district concedes that in accordance with the principles of federalism, Congress has left the issue of consent when parents are divorced or separated to the individual states. For example, federal law defers to state law on parental consent by allowing individual states to restrict a public agency's ability to pursue an evaluation through federal procedural safeguards if a parent refuses to consent. 34 C.F.R. § 300.300(a)(3)(i) (providing procedural safeguards that may be utilized by the public agency if the parent refuses to consent to an initial evaluation, "except to the extent inconsistent with State law relating to such parental consent").

Minnesota has such a restriction. Minn. Stat. § 125A.091, subd. 5(a), states:

> The district must not proceed with the initial evaluation of a child, the initial placement of a child in a special education program, or the initial provision of special education services for a child without the prior written consent of the child's parent. A district may not override the written refusal of a parent to consent to an initial evaluation or reevaluation.

The language in section 125A.091, subd. 5(a) is clear and unambiguous. If a statute is unambiguous, we apply its plain meaning. *Kersten v. Minn. Mut. Life Ins. Co.*, 608 N.W.2d 869, 874-75 (Minn. 2000). The statute restricts a school district's ability to proceed with an initial evaluation in two ways: (1) the district cannot proceed without obtaining a parent's written consent; and (2) the district cannot proceed if a parent provides written refusal to consent. Minn. Stat. § 125A.091, subd. 5(a). Thus, section 125A.091, subdivision 5(a), imposes a dual-consent requirement when more than one parent participates in the decision whether to grant or refuse consent. But dual consent is not required in all circumstances. The consent of one parent is sufficient as long as no other parent provides written refusal to consent.

Here, one parent provided written refusal to consent to an initial evaluation. Under the plain language of section 125A.091, subdivision 5(a), the school district could not override the parent's written refusal to consent and, therefore, could not proceed with the evaluation. The school district advances several arguments as to why it should be allowed to proceed with the evaluation despite one parent's provision of written refusal to consent. We address each in turn.

The school district asserts that once it obtains consent from one parent, state and federal law impose upon it an obligation to conduct the evaluation within a reasonable time and that receipt of consent from one parent triggers its obligation to timely respond regardless of the other parent's refusal. *See* Minn. R. 3525.2550, subp. 2 (2007) (establishing that the time to conduct the initial evaluation may not exceed 30 days); *see also* 34 C.F.R. § 300.301(c)(1)(i) (2007) (establishing a 60-day time requirement unless

state law requires a stricter time frame). But Minn. R. 3525.2550, subp. 2, must be read in conjunction with section 125A.091, subdivision 5(a): a school district must conduct the initial evaluation in a reasonable time, not to exceed 30 days, *unless* a parent provides written refusal to consent.

We note that this result is not inconsistent with the purpose of IDEA. Under the circumstances, the school district has met its obligation to seek out students in need of special education and related services and to make an evaluation available. *See*, *e.g.*, 34 C.F.R. § 300.300 (a)(1)(iii) (stating that "[t]he public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation"). But state law prohibits a school district from conducting the evaluation if a parent provides written refusal to consent. Minn. Stat. § 125A.091, subd. 5(a). When a parent has refused to provide consent, the school district's obligations end. 34 C.F.R. §§ 300.300(a)(3)(i) (stating that if a parent does not provide consent for an initial evaluation, "the public agency *may, but is not required to,* pursue the initial evaluation of the child by utilizing the procedural safeguards" (emphasis added)), (a)(3)(ii) (explaining that if a parent does not provide consent for an initial evaluation "[t]he public agency does not violate its obligation under [the child-find statute] and [statutes addressing evaluations, reevaluations, eligibility determinations, and specific learning disabilities] . . . if it declines to pursue the evaluation"); *see also* 34 C.F.R. § 300.300(b)(4)(i) (stating that if the child's parent refuses to consent to the initial provision of special education and related services, the public agency "[w]ill not be considered to be in violation of the requirement to make [Free Appropriate Public Education] available to the child").

The school district also cites to decisions from other states that allow a school district to proceed with an initial evaluation when one parent consents and another parent refuses. These decisions are not binding on this court. We need only look to our legislature's decision on the issue of parental consent as reflected in section 125A.091, subdivision 5(a).

The school district also argues that by allowing one parent's refusal to trump another parent's consent, the ALJ interfered with the consenting parent's parental and constitutional rights by rendering their consent meaningless. We do not consider whether the consenting parent's constitutional rights were violated because the consenting parent is not a party to this appeal, and the school district cites no authority for the contention that it has standing to assert a violation of the consenting parent's rights. *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996) (explaining that standing is the requirement that a party has a sufficient stake in a justiciable controversy to seek relief from a court and that a party obtains standing when the party has suffered some injury-in-fact or is the beneficiary of a legislative enactment granting standing).

The school district further argues that the ALJ did not have the authority or jurisdiction to adjudicate or terminate the right of the consenting parent to make educational decisions. The ALJ did not exceed her statutory authority or jurisdiction by adjudicating the rights of the parents. The ALJ's decision simply gives effect to the unambiguous language in section 125A.091, subdivision 5(a), which prohibits a school district from proceeding with an evaluation if a parent refuses consent in writing. It may be that one parent's refusal trumps the other parent's consent. But that result is mandated

by statute. The parents are free to litigate any dispute regarding their relative educational decision-making rights in district court.

Lastly, the school district argues that the ALJ's decision is based on the erroneous conclusion that the district could pursue the evaluation, despite the parent's written refusal to consent, through a federal due-process hearing. We agree with the school district. The federal regulation that provides public agencies with procedural safeguards, such as a due-process hearing, states that the safeguards are available "except to the extent inconsistent with state law regarding consent." 34 C.F.R. § 300.300(a)(3)(i). This final clause allows individual states to restrict a school district's use of procedural safeguards if a parent refuses consent. Minnesota law on parental consent clearly states that when a parent provides written refusal to consent, a school district "may not override" that refusal. Minn. Stat. § 125A.091, subd. 5(a). The very reason that the school district cannot request a due-process hearing in this case is the same reason it cannot proceed with the initial evaluation: statute prohibits the school district from overriding a parent's written refusal to consent.[2] *Id.*

Even though the ALJ's decision reflects an error of law, the ALJ's ultimate decision is consistent with the controlling statute. Therefore, we will not reverse the ALJ's decision. *Cf.* Minn. R. Civ. P. 61 (providing that an error that does not affect the substantial rights of the party cannot serve as the basis for reversal). Under the plain

[2] While the school district is not entitled to a due-process hearing, it has a remedy. If the school district believes that the child's educational needs are being neglected, it may pursue a child-in-need-of-protection-or-services proceeding. *See* Minn. Stat. § 260C.141, subd. 1(a) (2008) (stating that "[a]ny reputable person . . . having knowledge of a child . . . who appears to be in need of protection or services . . . may petition the juvenile court").

language of Minn. Stat. § 125A.091, subd. 5(a), the school district cannot override the written refusal of a parent to consent to an evaluation. Because the ALJ's decision is consistent with application of section 125A.091, subdivision 5(a), to the facts of this case and does not rely on factors not intended by the legislature, the decision is not arbitrary and capricious. *See Fine v. Bernstein*, 726 N.W.2d 137, 148 (Minn. App. 2007) (discussing when a decision is arbitrary and capricious), *review denied* (Minn. Apr. 17, 2007). Therefore, we affirm.

Affirmed.

Dated: _____ _____
The Honorable Michelle A. Larkin