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**2021-2022 SPECIAL EDUCATION**

**YEAR IN REVIEW**

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**MINNESOTA ADMINISTRATORS FOR SPECIAL EDUCATION**

**SPRING CONFERENCE**

 **March 9, 2022**

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**Cases Before the Eighth Circuit Court of Appeals**

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| ***Osseo Area Schs. v. M.N.B.,* 970 F.3d 917 (8th Cir. 2020)** |

**Background Information**:

M.N.B. resides in Big Lake District. She requires special education. The Student’s IEP calls for individual transportation to and from school and places her at Karner Blue Education Center (“Karner”). The Student attended Karner during third and fourth grade. Accordingly, while the Student was in third and fourth grade, Big Lake District reimbursed M.N.B.’s mother based on mileage driven to and from Karner.

For M.N.B.’s fifth grade year, the mother applied under Minnesota’s open enrollment program for M.N.B. to enroll in Osseo Area Schools (“District”). Upon approval, M.N.B. was enrolled in the District and began attending the North Education Center (“School”), which is located five miles from the District and thirty-four miles from M.N.B.’s residence. The IEP developed at Big Lake District remained in effect during the court proceedings. As such, the School “is not located in the district where the student resides and is not the placement agreed upon by parents and school officials in the IEP that called for individual transportation.”

The mother sought reimbursement for mileage costs between M.N.B.’s residence and the School. The District maintained that because M.N.B. resided in Big Lake and attended the School via placement by it through the open enrollment program, it was only required to reimburse the mother for mileage costs from the border of the District to the School. The District declined to reimburse the mother for mileage costs between M.N.B.’s residence and the District’s border.

The District requested a due process hearing to address whether the District had to reimburse the full amount of transportation costs pursuant to IDEA. The ALJ ruled that the District was “required to reimburse the cost of transportation for the full distance between M.N.B.’s home and the school in which the Osseo District placed her.” The District challenged the decision in district court. The district court granted summary judgment in favor of the mother, reasoning that “[b]ecause the District is responsible for providing M.N.B. with a FAPE, it is necessarily responsible for providing her with specialized transportation as stated in her IEP.” The District appealed to the Eighth Circuit.

**Issues**:

“[W]hether the IDEA requires a school district that enrolls a nonresident student like M.N.B. to provide transportation between the student's home and the school district where her parent has chosen to enroll her?”

**Holding**:

IDEA does not require a school district that enrolls a nonresident student like M.N.B. to provide transportation between the student's home and the school district where her parent has chosen to enroll her.

First, the Eighth Circuit held that the State of Minnesota “satisfied the obligation to provide a FAPE when the Big Lake District reimbursed the cost of transporting M.N.B. to and from the school that was agreed upon in her IEP[, Karner,] … and the IDEA does not unambiguously require the State to do more because M.N.B.’s parent unilaterally chose to enroll the student elsewhere.”

Second, the Court held that “the IDEA does not require the District to reimburse M.N.B.’s parent for the cost of transportation between her home and the border of the District” under the circumstances in the case. The Eighth Circuit reasoned that “governing Minnesota statutes and rule provide that when a school district enrolls a student through the open enrollment program, it must provide transportation only ‘within its borders’ or ‘within the district.’” Relatedly, “Minnesota law … provides that an enrolling district is responsible for transportation costs only within the district.”

\*Laura Tubbs Booth of RRM represented the District

**Cases Before the United States District Court for the District of Minnesota**

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| ***Minnetonka Public Schools v. M.L.K.*, No. CV 20-1036 (DWF/KMM), 2021 WL 780723 (D. Minn. Mar. 1, 2021)** |

**Background Information**:

The Student has “average intelligence combined with severe dyslexia, significant ADHD, a speech/language disorder, and mild Autism (‘ASD’).” The District conducted special education evaluations of the Student in both 2015 and 2018. In 2015, the District found the Student eligible for services under the ASD category. In 2018, “the District found that Student remained eligible for special education—and, in part, had continued needs in reading, phonics skills, math, writing, speech, language, social-skills and ASD-related needs.”

The District implemented an IEP in 2015, “which it amended several times as Student progressed through the grade levels.” “ Student made progress in math, handwriting, speech and language, and social skills.” The Student also made “some slight progress in particular [reading] skills,” but “remained below or near a first-grade reading level for years.”

On August 8, 2019, the Student’s parents filed a special education due process complaint under the IDEA. Prior to the due process hearing, the ALJ issued an order denying the District’s motion arguing that the IDEA statute of limitations limits Student’s claims for compensatory education to those that occurred two years before the date Parents filed a due process complaint. The issues at the due process hearing included, but were not limited to, whether the Student met his burden to prove that the District failed to provide the Student with a FAPE and whether the District met its burden to prove that its 2018 evaluation of the Student was appropriate. The ALJ found that the Parents met their burden to prove that the District denied Student a FAPE and that the District did not meet its burden to prove that its 2018 evaluation was appropriate.

**Issues**:

1. What is the proper statute of limitations under the IDEA?
2. Did the District meet its burden to prove that its 2018 evaluation of the Student was appropriate and did the Student meet his burden to prove that the District did not provide the Student with a FAPE?

**Holding**:

1. The Court held that it was erroneous for the ALJ to use a limitations period that was longer than two years. Instead, the Court held that “unless and until the Eighth Circuit Court of Appeals rules otherwise, the proper statute of limitations under the IDEA is two-years.” Because the “Parents filed their due process complaint on August 8, 2019, any claims based on District actions before August 8, 2017 are untimely.” As such, “reimbursement for any costs for compensatory education incurred before August 8, 2017 are not recoverable.”
2. The Court affirmed the determination of the ALJ that the District did not meet its burden to prove that its 2018 evaluation was appropriate and that the District did not provide Student a FAPE. The Court found that “the District did not properly identify Student’s most debilitating disabilities—dyslexia and ADHD”—and that the failure was not harmless. Instead, “the misclassification hindered the proper design of an IEP that would have met Student’s reading needs” and “resulted in the District’s failure to provide appropriate services to Student to ensure appropriate educational progress.” As such, “the District did not respond with meaningful adjustments to Student’s IEP” despite “years of very limited progress.”

\*RRM represented the District

\*\* Appeal and Cross-Appeal filed to the Eighth Circuit

**Due Process Hearings**

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| ***A.J.T. v. Indep. Sch. Dist. 279*, OAH Docket No. 8-1300-37093 (Lipman, ALJ, Apr. 21, 2021)** |

**Background Information**:

The Student has a disability that makes her unavailable to start school before noon each day. The parents requested and the District agreed to allow the Student to start her school day after noon each day. The Parents and the District did not agree as to when the Student’s school day should end. The Parents filed a due process complaint to settle the dispute over the appropriate hours of services the Student needs.

**Issue**:

The Parents alleged that the District denied the Student a FAPE when it failed to provide the student hours of instruction, that were reasonably calculated to enable the Student to make appropriate educational progress in light of her circumstances.

**Holding**:

The ALJ found that the District failed to provide an individualized program formulated based on the Student’s individual needs. The Student established that the education and planning did not always account for “the special instruction and services which are appropriate to [the Student’s] needs.” Instead, whenever there was a conflict between the need to maintain the regular hours of the school’s faculty, and the student’s need for instruction, the regular hours of the faculty was always the prevailing and paramount consideration. The Student established that her educational program was not “appropriately ambitious in light of [her] circumstances” and that she did not have “the chance to meet challenging objectives.”

The ALJ found that 495 hours of compensatory education would fairly remediate the denial of FAPE, and the Student’s IEP should include the addition of services at home between 4:30 and 6:00 p.m. each school day.

\* RRM represented the District

\*\*Appeal filed to United States District Court for the District of Minnesota

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| ***Fargo Public School v. C.B.*, OAH Docket No. 20200396 (Hogan, ALJ, Mar. 5, 2021)** |

**Background Information**:

C.B. is a third grade student with diagnoses of ASD and PTSD in Fargo Public Schools (“FPS”). C.B. qualifies for special education services under the disability category of autism.

In 1st grade (2018-19 school year), C.B. attended Kennedy Elementary School (“Kennedy”). In March, the IEP team decided to place C.B. in a high functioning autism program at Madison Elementary School (“Madison Program”) beginning at the start of the 2019-20 school year.

In 2nd grade (2019-20 school year), C.B. began school in the Madison Program. It was a setting C placement (inside regular, general classroom for less than 40% of the day). The program was “designed for students with autism that are at grade level or above academically.” C.B. made a “lot of progress in C.B.’s school behavior and academic progress.” In July 2020, C.B.’s IEP team agreed upon a new IEP that designated the serving school as Madison and kept C.B. in a setting C education environment.

During 3rd grade (2020-21 school year), C.B. has not yet attended school in-person. This is the case because of the following events. First, FPS was unable to hire a special education teacher for the Madison Program and decided to close it. Second, FPS determined that C.B.’s IEP could best be implemented at Eagles Elementary (“Eagles”) in the Nest program and proposed it as the placement for C.B. Nest is a setting C program. “Much of the programming offered at Eagles was used successfully with C.B. at Madison” and multiple witnesses testified that Eagles would be a good placement for C.B. Third, C.B.’s parents objected to the placement at Eagles.

FPS filed a due process complaint requesting an order implementing C.B.’s IEP in the Nest program at Eagles Elementary.

**Issue**:

Whether changing the serving school from Madison to Eagles was a change of placement?

Whether FAPE could be provided to C.B. at Eagles?

**Holding**:

Change of Placement. The ALJ held that changing the serving school from Madison to Eagles did not constitute a change in placement. The ALJ’s conclusion was based on the following. First, implementing C.B.’s IEP at Eagles will not substantially alter his programing. The ALJ explained that the setting C placement will be the same, Eagles staff have appropriate training and experience to provide C.B.’s instruction, the programing is well suited for C.B. and maximizes the amount of time he can spend in a general education classroom, and C.B. will be academically near his peers. Moreover, while C.B.’s parents argued that C.B. struggles with changes, the ALJ noted that C.B. will be confronted with changes in educational instruction no what school he attends. Second, the change in schools was not because of C.B. or his behavior. Instead, it was due to the closing of the Madison Program.

FAPE. The ALJ held that FAPE can be provided at Eagles. The ALJ’s conclusion was based on the following. First, the Nest is not restricted to students with an emotional disturbance (“ED”) diagnosis and in fact currently has a student with autism in the program. Second, Eagles staff have received trauma training, are willing to attend training specific to C.B., and are prepared to develop and provide programming specifically designed for C.B.

\* RRM represented FPS

**Cases Before State Education Agencies**

1. **FAPE, Compensatory Education, and Transportation.**

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| **Minnesota Department of Education Complaint Decision 21-054C** |

**Background Information**:

The Student’s individualized education program (IEP) in effect during the 2019-20 included one speech/language goal related to the Student’s articulation needs and provided the Student with 20 minutes of direct speech/language services, nine times a month. In February of 2020 the Complainant obtained an outside evaluation of the student which described a new diagnosis of attention deficit hyperactivity disorder (ADHD). The Complainant alleges that the District failed to consider the results of this outside evaluation during the 2019-2020 school year and fall of 2020.

On June 4, 2020, the District proposed a new IEP. The June 2020 IEP updated the Student’s present levels of academic achievement and functional performance statement to include the following statement, “[Student’s] parents have shared with the team that [Student] received a medical diagnosis of ADHD which impacts [Student’s] ability to maintain attention” and contained the same amount of direct service minutes in speech/language as the November 2019 IEP. The Student’s IEP also included ESY services and program modifications including preferential seating near the teacher and away from distraction, repetition from teachers, and teachers checking in with Student to verify the Student’s understanding when new material is taught.

At the November 10, 2020 IEP team meeting, the District proposed a speech IEP as discussed during the IEP meeting and a comprehensive special education evaluation to determine if the diagnosis of ADHD was having an adverse impact on the Student’s education. As the District did not have any data to support an educational need for ADHD accommodations in the IEP. On December 10, 2020, the District proposed a reevaluation plan for the Student.

An evaluation was conducted in February 2021 which determined the student still had need for speech services related to his disability but did not find that the Student’s ADHD diagnosis adversely impacted his educational progress. On February 19, 2021, the District proposed an IEP and CLP with a prior written notice. The proposed February 2021 IEP and CLP provided 20 minutes, three times a month of direct speech/language services and added program modifications, supports, and adaptations in general and special education, such as preferential seating, a quiet workspace to complete work, access to written instruction and checklist/written reminders, and extra time to complete work. The Complainants objected to the proposed February 2021 IEP and CLP and requested mediation.

**Issues**:

Did the District fail to timely and appropriately respond to requests to reevaluate the Student after the Complainant repeatedly informed the District of the Student’s recent ADHD diagnosis and made a request for additional accommodation to address the Student’s needs?

**Holding**:

The District was not in violation of special education law. The MDE found that the District considered the outside evaluation provided by the Complainant when reviewing and revising the Student’s IEP. Specifically, the Student’s IEP team discussed the results of the outside evaluation, including the recommended accommodations contained within. Additionally, the District proposed to reevaluate the Student on December 10, 2020 after it determined that it did not have sufficient information to determine what the Student’s educational or related services needs were related to the Student’s inattention and ADHD diagnosis, consistent with 34 C.F.R. §§ 300.303 and 300.503(a) and Minn. R. 3525.3600.

The District used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the Student, including information provided by the parents and interviews with the Student’s teacher, in conformity with 34 C.F.R. § 300.304. While the Student has a health condition that could result in eligibility, the Student’s February 2021 evaluation concluded the Student’s difficulties did not result in additional qualification for eligibility. However, the District described additional special education and related services needs throughout the evaluation report, as required by 34 C.F.R. § 300.304. The February 2021 evaluation provided suggested accommodations and modifications, including repeated directions and/or visuals; seating options near the teacher; checklists for needed material and task completion; teacher check-ins for understanding, organization, and neatness; and non-verbal/discreet cues for redirection to address these needs.

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| **Minnesota Department of Education Complaint Decision 21-068C** |

**Background Information**: At the start of the 2020-21 school year, the Student’s school was operating in a hybrid model, and the Student’s family opted for the Student to receive instruction via distance learning. Therefore, the Student’s April 2020 IDLP was in effect at the start of the 2020-21 school year. The Student’s April 2020 IDLP indicated that, during distance learning, the Student would continue to work toward all three IEP annual goals. The Student’s April 2020 IDLP indicated that the Student would not participate in general education distance learning programming and would receive all distance learning instruction from special

education staff.

The Student’s October 2020 IEP also incorporated a CLP explaining how the Student’s services would change during periods of distance learning and hybrid learning. The Student’s October 2020 CLP did not indicate that any changes to the Student’s October 2020 IEP were needed when the District was operating in an in-person learning model.

In November the Student’s parent opted for the Student to discontinue the optional distance learning model, and the Student returned to hybrid instruction, with in-person learning four days per week (Monday, Tuesday, Thursday, Friday) and Wednesday designated as a distance learning day. The District’s regular school hours for in-person learning days were 7:50 a.m. to 3 p.m. However, from November 2 to 13, 2020, the District provided special transportation that brought the Student to school at 8:30 a.m. (40 minutes after the start of the regular school day) and departed school at 2:35 p.m. (25 minutes before the end of the regular school day), meaning the Student’s school day was shortened by approximately 65 minutes during this time period, without amending her IEP/CLP.

Starting in December, in-person learning for the Student was prioritized, and the Student returned to in-person instruction two days per week and distance learning instruction three days per week. From January 4, 2021 to the end of the time period covered by this complaint, the Student’s in-person instruction increased to five days per week, with the exception of one day every other week designated as distance learning instruction. The District reported that, beginning January 19, 2021, the Student’s special transportation again brought the Student to school at 7:35 a.m. (15 minutes before the start of the regular school day) and departed at 2:35 p.m. each day (25 minutes before the end of the regular school day), shortening the Student’s school day by 10 minutes. The Student’s IEP was not amended to reflect the change in the Student’s school day.

**Issue**:

Did the District provide the Student a FAPE?

**Holding**:

MDE held that the District denied the Student a FAPE when, due at least in part to limitations resulting from the COVID-19 pandemic and due to the Student’s disability-related needs, the Student did not receive special education direct services in conformity with the Student’s April 2020 IDLP and October 2020 IEP/CLP.

Here, when the District developed the Student’s October 2020 IEP and CLP, the District did not ensure that the Student’s October 2020 IEP and CLP included the anticipated frequency, location, and duration of the Student’s special education and related services during in-person learning days, in that the Student’s schedule included special education social skills and skills classes while the Student’s October 2020 IEP and CLP did not include any special education direct services in those areas.

Furthermore, when the Student’s family opted for the Student to return to hybrid learning beginning November 2, 2020, the District’s transportation schedule altered the Student’s school day and the provision of FAPE to the Student, and the District should have provided the Complainant with prior written notice and an opportunity to object to the District’s proposed change, in accordance with 34 C.F.R. § 300.503(a), Minn. Stat. § 125A.091, subd. 3a, and Minn. R. 3525.3600. The District’s failure to do so resulted in a violation of those provisions.

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| **Minnesota Department of Education Complaint Decision 21-072C** |

**Background Information**:

On April 24, 2020, the Distance Learning Period was extended through the end of the 2019-20 school year The Student’s April 2020 IEP referenced a behavior support plan. During the summer of 2020 the Complainant was informed the Student would have a new classroom and teacher prior for the 2020-21 school year. The Student attends the District’s Connect program which is a federal setting III. The Student’s school has two Connect classrooms. The Complainant alleges that the Student switching from one Connect classroom to the other is a change in setting and she did not receive proper notice.

On September 28, 2020, the District moved to a hybrid learning model. The Student was scheduled to attend school in person four days a week as outlined in the September 2020 CLP. The Student was having behaviors during the fall of the 2020-2021 school year, in particular he would elope from the classroom and police were contacted on multiple occasions to assist in these incidents. On November 4, 2020, police were again contacted to facilitate the Student’s return when he eloped from school property. On November 18, 2020, the Student eloped again, but District staff were able to get the Student to return to the school building. The District provided a restrictive procedures documentation form, describing the incident. As the Student began to escalate after returning to the school building, District staff offered choices and a break in the calming area. However, the Student continued to escalate and District staff implemented a physical hold and contacted police due to concern for the Student’s safety. When the Student calmed, the physical hold was ended. The Complainant alleges that the District did not properly document these incidents and has failed to implement the Students BIP.

**Issues**:

Did the District fail to appropriately plan for, and respond to, the Student’s behaviors?

**Holding**:

MDE found that the District was not in violation. There was no evidence in the record indicating the Complainant requested a new BIP for the Student prior to the beginning of the 2020-21 school year or that the District refused a request for a new BIP. The Complainant did, however, report a disagreement with the District’s administrative decision to move the Student to a different Connect classroom in the same building. However, the two Connect classrooms in the Student’s school building are the same federal level III placement described by the Student’s April 2020 IEP and September 2020 CLP, and thus a change in classroom was a change in location, not placement, and did not trigger the prior written notice requirements of 34 C.F.R. § 300.503(a) and Minn. R. 3525.3600.

The record supported that the District made multiple proposals to address the Complainant’s concerns with the Student’s BIP, in accordance with 34 C.F.R. § 300.503(a) and Minn. R. 3525.3600. Further, the District considered the Complainant’s concerns for enhancing the Student’s education and the Student’s academic, developmental, and functional needs during the 2020-21 school year, in accordance with 34 C.F.R. § 300.324(a)

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| **Minnesota Department of Education Complaint Decision 21-077C** |

**Background Information**:

The Complainant alleges that, during the past calendar year when using an in-person learning model, or when the Student was able to receive special education and related services on-site, the District failed to provide the Student with special education transportation as identified as a related service in the Student's individualized education program (IEP).

The Student began the 2019-20 school year in the School’s bussing area designated by the District and received special transportation to and from home and the School. On September 11, 2019, the Complainant moved out of the School’s bussing area designated by the District. The School’s special education supervisor approved for the Student to receive out-of-area special transportation to and from home and the School within the District. During the 2019-20 school year, the Complainant was made aware that the Student would not receive special transportation during the 2020-21 school year if the Student remained at the School and continued to live outside of the designated bussing area.

However, when the Student’s April 2020 IEP team met the IEP stated the Student would receive special transportation two times per day for 30 minutes each session, from April 24, 2020, through April 22, 2021. The Student required a smaller bus with fewer students, paraprofessional support, and special transportation between the Student’s home and school, due to disability-related needs. The April 2020 IEP also stated: “Transportation will be provided to the school in the student’s assigned area if transportation is on the student’s IEP. If the parent chooses a school option outside of the assigned area, the parent must provide all the transportation even if the transportation is on the student’s IEP.” The Student began distance learning on April 6, 2020. On April 24, 2020, the Distance Learning Period was extended through the end of the 2019-20 school year. At the start of January 2021, the District announced that students would return to in-person learning on February 1, 2021. The Complainant was aware that the Student would not qualify for special transportation when the Student returned to in-person learning, but believed the Student should receive it because it was written in the Student’s April 2020 IEP. The Complainant eventually stated she would provide the transportation when the District returned to in-person learning so the Student could continue to attend School and not need to switch to a new school.

On April 19, 2021, the Student enrolled in the virtual learning program at the School, because the Complainant reported she could not continue to provide the transportation herself. District staff reported that the Student was only enrolled in virtual learning for effectively one week, before enrolling in another school in the District. On May 4, 2021, the Student began attending another school within the District that the District categorized as in the Student’s assigned bussing area. The Student was present at the new school for approximately 15 school days before the end of the year. The District provided special transportation to this school through the end of the 2020-21 school year, on June 11, 2021, but, the Student would still miss the bus about one time per week.

**Issues**:

Did the District fail to provide the Student with transportation in accordance with his IEP?

**Holding**:

The District violated 34 C.F.R. § 300.101 and Minn. Stat. § 125A.03 when the District failed to provide the Student with special transportation as stated in the Student’s April 2020 and April 2021 IEPs, and instead relied on its policy and boilerplate language regarding intra-District boundaries to deny the Student the special transportation. The Student’s IEP team made an individualized determination, based on the Student’s unique needs, regarding special transportation, and included special transportation provisions in the Student’s April 2020 and April 2021 IEPs as necessary to ensure the Student received FAPE in resident district, the District. Specifically, according to the Student’s April 2020 and April 2021 IEPs, the Student required a smaller bus with fewer students, paraprofessional support, and special transportation between the Student’s home and school, due to disability-related needs, in order to receive FAPE. Minnesota law requires school districts to provide FAPE to students with disabilities, not merely make FAPE available, and *Osseo Area Sch. v. M.N.B*. reiterated that school districts must provide resident students with FAPE, including special transportation.

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| **Minnesota Department of Education Complaint Decision 21-080C** |

**Background Information**:

The Student began Distance Learning in the spring of 2020 due to the COVID-19 pandemic. The District did not draft an IDLP for the Student at the start of distance learning because they believed the student’s reading services could be provided remotely in conformity with the Student’s IEP. The Student’s services were provided by the Student’s special education teacher, primarily through recorded instructional videos and slideshows. The Student actively participated in the services provided to him. According to a progress report dated May 29, 2020, the Student made adequate progress toward all four of the Student’s April 2020 IEP annual goals. The Complainant reported that the Student received private tutoring in reading throughout the spring 2020 Distance Learning Period and attributed the Student’s progress to the private tutoring.

**Issue**:

Did the District fail to provide the Student with special education reading services in conformity with the Student’s IEP?

**Holding**:

Under the exceptional circumstances created by the COVID-19 pandemic, the asynchronous specialized reading instruction provided by the Student’s special education teacher, namely the recorded instructional videos and slideshows, constituted direct services as defined by Minn. R. 3525.0210, subp. 21, and therefore the District provided the Student with special education reading services in conformity with the Student’s April 2020 IEP and in accordance with 34 C.F.R. § 300.17 and Minn. Stat. § 125A.08(b)(1).

1. **Child Find**

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| **Minnesota Department of Education Complaint Decision 21-022C** |

**Background Information**:

During the 2017-18 school year, the Student received Title 1 services. The Student either met grade level expectations or was progressing in all areas. During the 2018-19 school year, the Student was provided Tier 2 interventions. Once again, the Student either met grade level expectations or was progressing in all areas. Nonetheless, the Student did have grades of “needs improvement” or “progressing” in many sub categories of reading and writing. During the 2019-20 school year, the Student met grade level expectations in all areas except for reading, writing, and math during the first trimester. In the aforementioned areas, the Student was deemed to be “progressing.” Nonetheless, by the end of the third trimester, the Student was meeting grade level expectations in reading, writing, and math.

During the 2019-20 school year, the Student’s teacher expressed “concern” with the Student’s “struggl[es] with reading.” According to the Student’s parent, the teacher reported that the Student was “reading and writing backwards” and “showing characteristics of dyslexia.” The District also reported that the Student’s grades and testing scores confirmed there was “some reason for concern.” Specifically, the Student scored in the “high risk” range in adaptive reading and math during the fall, as well as “some risk” in the reading curriculum-based measure. The Student’s scores, however, improved so much by winter that he was no longer considered high risk in any area. That winter the Student Intervention Team (“SIT Team”) concluded that Tier 2 interventions were “effective” and that the Student did not need to be referred for consideration of Tier 3 interventions because of the progress the Student was making with Tier 2 interventions. The District’s materials noted that for a student to be considered for Tier 3 interventions, the SIT Team needed to see evidence that Tier 2 interventions had been tried and were unsuccessful. Due to the COVID-19 pandemic, the District’s schools were closed for typical in-school instruction from March 18, 2020 on. The District was unable to conduct testing in the spring of the 2019-20 school year.

The District began the 2020-21 school year in a hybrid model. When the Student returned to school, the Student’s previously acquired skills had “significantly diminished” and the Student’s test scores placed the student in reading in the “high risk range” and math scores in the “slight risk range.” As such, the District provided the Student Tier 3 interventions. According to the District, the Student responded positively to the interventions. The special education director also stated a month after the Tier 3 interventions began that if the Student were not on a trajectory to grade-level skills after six to nine weeks, a referral for a special education evaluation would be appropriate.

**Issue**:

Did the District violate its child find obligations during the 2019-20 and 2020-21 school years when it did not propose a special education evaluation for the Student?

**Holding**:

The MDE found the District did not violate special education law. Minnesota law provides, in relevant part, that a school district “must conduct and document at least two instructional strategies, alternatives, or interventions using a system of scientific, research-based instruction and intervention in academics or behavior, based on the pupil’s needs, while the pupil is in the regular classroom” prior to referring a student for a special education evaluation. Minn. Stat. § 125A.56, Subd. 1. A special education team may waive the requirement if “it determines the pupil’s needs for evaluation [are] urgent.” *Id.*

Here, the MDE found that the Student’s grades and test scores supported the conclusion that the interventions had been successful as outlined in Minn. Stat. § 125A.56, Subd. 1. Therefore, the District did not have a reason to suspect the Student was a child with a disability in need of special education and related services or have a duty to initiate a request for an initial special education evaluation of the Student.

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| **Minnesota Department of Education Complaint Decision 21-064C** |

**Background Information**:

The Complainant alleged that the District failed to have the Student evaluated after she requested an evaluation. She first made the request in October 2019. The Student reportedly had behavior incidents in the fall of 2019 and was sent home from school early. The District referred the student to a program within the school. The Student’s behavior began improving after the Student began participating in the program. To enter the program, the Student had to undergo a diagnostic assessment, but the program is separate from the IEP process.

At the beginning of the 2020-2021 school year the Complainant again contacted the school to inquire about whether the Student could be evaluated and move forward with the IEP process. After the Complainant filed this special education complaint, the Complainant and District staff met to discuss an initial evaluation on March 12, 2021, and the Complainant signed consent to a prior written notice/evaluation plan on March 22, 2021. The Complainant provided an evaluation report dated May 5, 2021, which indicates that the Student was found eligible for special education and related services.

**Issue**:

Did the District violate its child find obligations during the 2019-20 and 2020-21 school years when it did not provide a prior written notice of its refusal to evaluate the Student after the Complainant requested an evaluation several times throughout the year?

**Holding**:

The MDE found The District violated 34 C.F.R. §§ 300.111(a) and 300.301(b) and Minn. R. 3525.0750, when it failed to have a system in place to timely identify, locate, or evaluate the Student. Here, the evidence, including the Complainant’s multiple requests for a special education evaluation, the Student’s continued behavioral concerns addressed via programming, the Student’s standardized test scores and grades, and both the Student’s classroom teachers’ completion of prereferral interventions, shows the District should have suspected the Student was a child with a disability in need of special education and related services and sought parental consent for an initial evaluation by the fall of 2020, following the Complainant’s August 24, 2020 email. Here, the District failed to have a system in place to meet its obligation to timely identify, locate, or evaluate the Student in violation of 34 C.F.R. §§ 300.111(a) and 300.301(b) and Minn. R. 3525.0750.

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| **Minnesota Department of Education Complaint Decision 21-039C** |

**Background Information**:

The Student began distance learning due to the COVID-19 pandemic in the Spring of 2020. The Complainant reported the Student’s issues with declining grades, late assignments, and focus increased during distance learning. The Complainant stated that the Student struggled with the lack of structure and lack of in-person teaching. District Staff reported distance learning was difficult for the Student; however, his issues were similar to other peers in distance learning. District Staff stated students at every ability level struggled during

distance learning.

The Student’s February 2020 STAR Reading assessment and STAR Math assessment scores showed the Student met standards for math; however, was below standards for reading. District Staff reported that students are placed on a watch list after two consecutive scores below standards and are placed in an intervention after three or more consecutive scores below standards.

District Staff did not have any concerns regarding the Student’s academic ability. District Staff

described the Student as very capable, smart, and able to pick up on lessons and make nice

connections. Though they did have concerns regarding the Student’s grades and missing assignments. District Staff reported the Student acted appropriately in class, and did not have any behavioral issues. District Staff stated the Student was quiet, but participated and answered questions. District Staff stated that Staff attempted to assist the Student with missing assignments and focus by giving extra time to complete assignments, help with homework completion, and frequent check-ins during class to make sure he was on task and on top of missing assignments.

**Issue**:

Did the District violate its child find obligations when it failed to evaluate a student whose grades and test scores were declining following distance learning?

**Holding**:

The MDE held that the District did not violate Child Find. Despite some concerns about a decline in grades during the first trimester of the 2020-21 school year and given the challenges of virtual learning during the COVID-19 pandemic, the District did not have a reason to suspect the Student is a child with a disability in need of special education and related services or have a duty to initiate a request for an initial evaluation of the Student prior to its initiation of a special education evaluation in February 2021, pursuant to 34 C.F.R. § 300.301(b). During the 2019-20 school year, the District noted a concern regarding the Student’s late assignments and addressed the concern by offering the Student access to a general education academic support program. During the 2020-21 school year, the District placed the Student on the watch list for monitoring to determine if the Student needed additional interventions to address the decline in the Student’s STAR reading score; and placed the Student in a structured study hall during Trimester 2 to address missing assignments.