STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0487

Complaint Decision File 23-010C on behalf of D.V.G.
from South Washington County Schools 0833-01.

Filed February 5, 2024
Affirmed
Larson, Judge

Minnesota Department of Education
File No. 23-010C

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Considered and decided by Slieter, Presiding Judge; Cochran, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

Relator Independent School District No. 833 (the school district) appeals an administrative decision from the Minnesota Department of Education (MDE) regarding a special-education student (the student). The school district contends MDE: (1) wrongly assumed jurisdiction to determine the school district violated suspension procedures under

the Minnesota Pupils Fair Dismissal Act (PFDA), Minn. Stat. §§ 121A.40-.56 (2022); (2) improperly concluded that the school district failed to adequately respond to a parent's request for an independent educational evaluation under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1482 (2018); and (3) decided without an adequate basis that the school district had to pay the student compensatory services of 60 tutoring hours at $50 per hour. We affirm.

FACTS

The student attended Park High School in Cottage Grove, Minnesota. She received special-education services beginning in the first grade and had an individualized education plan (IEP). Throughout the 2021-2022 school year, the student had multiple behavioral incidents and suspensions. In October 2021, the school district proposed performing a stand-alone functional behavioral assessment (FBA) because the student's behavioral plan did not reflect her recent conduct at school. The school district told the student's parent that the student could get an outside evaluation if the parent disagreed with the FBA. In December 2021, the school district provided the parent with its completed FBA. In the FBA, the school district detailed the student's various difficulties with attendance, schoolwork, and verbal and physical outbursts.

Prior to providing the FBA, the school district proposed changes to the student's IEP. Those changes included moving the student to homebased instruction before transitioning her to a different school. The parent objected to these changes. The school district then requested a mediation session with MDE. The parent and the school district participated in mediation in January 2022. There, the parent's advocate requested that the

school district provide an independent educational evaluation (IEE) to address the parent's objection to the student's FBA.

In February 2022, the school district provided the parent with a prior written notice rejecting her advocate's request for an IEE. The school district emphasized that the request stemmed from only the parent's disagreement with its description in the FBA that the student exhibited "aggression." The parent objected and continued to request an IEE.

In August 2022, the parent filed a complaint with MDE on the student's behalf, alleging that the school district violated numerous IDEA provisions. In January 2023, after an investigation, MDE issued its final decision. Among other violations, MDE found that the school district contravened (1) PFDA because, "on at least three occasions," the school district did not provide the parent or the student with a written notice regarding pending suspensions, *see* Minn. Stat. § 121A.46, subd. 3, and (2) IDEA because it did not appropriately respond to the parent's IEE request. MDE also directed the school district and the parent to reach an agreement on compensatory services for the student.[1]

The parties could not agree on compensatory services, and MDE ordered the parties to submit proposals to MDE for a final determination. The parent proposed 117 tutoring hours at $50 per hour. The school district proposed 59.4 tutoring hours at $30 per hour. In March 2023, MDE decided that "to make up for loss in the Student's skills, including academic, functional, or behavioral skills, and lack of expected progress in the general

[1] MDE ordered the school district to provide compensatory services because the school district removed the student from her educational placement for ten days and "did not provide educational services" for continued compliance with her IEP during that time, violating 34 C.F.R. § 300.530(b)(2) (2022).

education curriculum," the school district was responsible for 60 tutoring hours at $50 per hour.

The school district petitioned for a writ of certiorari to review MDE's decision.

DECISION

The school district challenges MDE's decision that it (1) violated PFDA; (2) failed to appropriately respond to the IEE request; and (3) had to pay for the student to receive 60 tutoring hours at $50 per hour.[2] MDE's decision was a quasi-judicial agency decision not subject to the Minnesota Administrative Procedure Act, Minn. Stat. §§ 14.001-.69 (2022). *See Anderson v. Comm'r of Health*, 811 N.W.2d 162, 165 (Minn. App. 2012), *rev. denied* (Minn. Apr. 17, 2012). Accordingly, our review is limited "to questions affecting . . . jurisdiction[,] . . . the regularity of [MDE's] proceedings, and, as to the merits of the controversy, whether the order or determination . . . was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it." *Dietz v. Dodge County*, 487 N.W.2d 237, 239 (Minn. 1992) (quotation omitted).

I.

We begin with a description of the laws governing this dispute. Under IDEA, Congress set minimum requirements for the education of public-school students with disabilities. *Special Educ. Complaint 22-027C ex rel. V.S.*, 981 N.W.2d 201, 211 (Minn.

[2] On appeal, the school district only challenges MDE's method for calculating compensatory services, not the underlying violation that made compensation necessary.

App. 2022). "States may impose greater requirements for special education than federal law." *Id.*

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). 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 educational 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 (2022); *see also* 20 U.S.C § 1401(9) (substantially similar).

IEPs are "the centerpiece of [IDEA]'s education delivery system" for children with disabilities. *Honig v. Doe*, 484 U.S. 305, 311 (1988). "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." *V.S.*, 981 N.W.2d at 211 (citing 20 U.S.C. § 1414(d)(1)(A)(i)). School districts create IEPs using IEP teams that include teachers, school representatives, and the student's parents or guardians. 20 U.S.C. § 1414(d)(1)(B). An IEP is largely based on the results of statutorily required evaluations. *See, e.g.*, *id.* § 1414(b)(2)(A)(ii), (c)(1)-(2), (d)(3)(A),

(d)(4)(A). IDEA requires a student with a suspected disability to receive a "full and individual initial evaluation" to determine whether they are entitled to special education and related services. *Id.* § 1414(a)(1). The student is then reevaluated periodically. *Id.* § 1414(a)(2), (d)(4)(A).

In Minnesota, when evaluating a student with "an emotional or behavioral disorder," a school district must use an FBA. Minn. R. 3525.1329, subps. 2a, 3(A)(8) (2021); *see also Indep. Sch. Dist. No. 283 v. E.M.D.H.*, 960 F.3d 1073, 1080 (8th Cir. 2020) ("Minnesota's special-education regulations require that when a student is evaluated for 'emotional or behavioral disorders'" an FBA must support the evaluation, "among other sources." (quotation omitted)).[3] A school district may also conduct an FBA "as a stand-alone evaluation without conducting a comprehensive evaluation of the student." Minn. Stat. § 125A.08(d) (2022). An FBA is "a process for gathering information to maximize the efficiency of behavioral supports." Minn. R. 3525.0210, subp. 22 (2021).

For evaluations performed under IDEA, certain procedural safeguards are in place for parents. As relevant here, IDEA entitles a parent to a publicly funded IEE "if the parent disagrees with an evaluation obtained by the public agency." 34 C.F.R. § 300.502(b)(1) (2022). The IEE is "conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question." *Id.* § 300.502(a)(3)(i). If a

[3] Although we are only bound by U.S. Supreme Court and Minnesota Supreme Court decisions interpreting IDEA, other federal court decisions provide persuasive authority. *See Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 20 (Minn. App. 2003) (recognizing that we are "bound by decision[s] of the Minnesota Supreme Court and the United States Supreme Court," but not "by any other federal courts' opinion[s]" though such opinions "are persuasive and should be afforded due deference").

parent disagrees with an evaluation and requests an IEE at public expense, "the public agency must, without unnecessary delay, either— (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) Ensure that an [IEE] is provided at public expense." *Id.* § 300.502(b)(2).

"IDEA places primary responsibility on state education agencies" to ensure a proper education for children with disabilities. *John T. ex rel. Robert T. v. Iowa Dep't of Educ.*, 258 F.3d 860, 864 (8th Cir. 2001); *see also* 20 U.S.C. § 1412(a)(11) (requiring state education agencies to administer both state and federal special-education law). In Minnesota, MDE is the state education agency. *See* Minn. Stat. § 120A.02(b) (2022). MDE plays a "unique role in supervising local school districts' compliance with federal and state special-education law" and has "broad oversight responsibility to ensure that local school districts provide free appropriate public educations to students with disabilities." *Indep. Sch. Dist. No. 192 v. Minn. Dep't of Educ.*, 742 N.W.2d 713, 723 (Minn. App. 2007), *rev. denied* (Minn. Mar. 18, 2008) (*Farmington*).

As part of its duties, MDE investigates complaints that school districts are not providing required services to children with disabilities.[4] *See* 34 C.F.R. §§ 300.151-.153 (2022). If MDE finds that a school district violated special-education requirements, it must

[4] "If a dispute arises in which the parent of a child with disabilities objects to special-education programming matters, a parent may choose from two procedures in order to report and seek resolution of the complaint: (1) participating in an impartial due-process hearing; or (2) filing a complaint with [MDE]." *Farmington*, 742 N.W.2d at 719-20 (citations omitted). Here, the parent chose the administrative-complaint procedure.

order the school district to remedy its denial of those services, including with "corrective action appropriate to address the needs of the child." *Id.* § 300.151(b)(1).

With these provisions in mind, we turn to the school district's arguments.

II.

The school district first challenges MDE's decision that the school district violated section 121A.46, subdivision 3, on the ground that MDE does not have jurisdiction to require compliance with PFDA's suspension procedures. Specifically, the school district argues MDE can only use IDEA to ensure compliance with a "special education law," which, according to the school district, PFDA is not.[5]

The scope of an agency's authority presents a legal question, which we review de novo. *See Partners in Nutrition*, 995 N.W.2d 631, 640 (Minn. App. 2023). To comply with IDEA, school districts must comply with both federal and state laws. 20 U.S.C. § 1412(a)(11)(A); 34 C.F.R. § 300.149(a)(2)(ii) (2022). And MDE may use IDEA procedures when a school district fails to comply with a state law, even when state law exceeds minimum federal standards. *See Indep. Sch. Dist. No. 281 v. Minn. Dep't of Educ.*, 743 N.W.2d 315, 324-26 (Minn. App. 2008) (*Robbinsdale*). Because "IDEA regulations incorporate state law," a school district must comply with state standards that exceed federal standards. *Id.* at 326.[6]

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[5] The school district does not dispute that it did not comply with PFDA's suspension procedures. Its sole argument is that MDE lacked jurisdiction to make such a determination.

[6] Our precedent is consistent with federal caselaw interpreting IDEA. *See, e.g.*, *Special Sch. Dist. No. 1v. R.M.M. by O.M.*, 861 F.3d 769, 778 (8th Cir. 2017); *Sch. Bd. of Indep.*

PFDA is an education statute that, as relevant here, requires school districts to hold "an informal administrative conference" before suspending a student unless "it appears that the pupil will create an immediate and substantial danger." Minn. Stat. § 121A.46, subd. 1. School districts must also personally serve the suspended student with a written suspension notice "at or before" the suspension and mail the written notice to the student's parent or guardian "within 48 hours of the [informal administrative] conference." Minn. Stat. § 121A.46, subd. 3. The Minnesota legislature explicitly applied the suspension provision to students with disabilities under a separate PFDA provision. *See* Minn. Stat. § 121A.43(a).

As an initial matter, we do not discern from our prior cases that we have limited IDEA's application only to statutes labeled "special education," so long as the impacted student qualified as disabled under IDEA. *See Indep. Sch. Dist. No. 709 v. Bonney*, 705 N.W.2d 209, 214 (Minn. App. 2005) ("Generally, courts have upheld *state educational requirements* that go beyond those delineated in the IDEA." (emphasis added)); *Robbinsdale*, 743 N.W.2d at 326 ("If a state statute requires a district to provide *educational services* that exceed the minimum federal standards, those state standards are enforceable through the IDEA." (emphasis added)); *Blackmon by Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, 658-59 (8th Cir. 1999) (collecting federal cases for the proposition that "[w]hen a state provides for *educational benefits exceeding the minimum*

Sch. Dist. No. 11 v. Renollett, 440 F.3d 1007, 1012 (8th Cir. 2006); *CJN by SKN v. Minneapolis Pub. Schs.*, 323 F.3d 630, 639 (8th Cir. 2003).

federal standards . . . the state standards are thus enforceable through the IDEA" (emphasis added)).

But even if such a limitation exists, it would not apply to the PFDA provisions at issue here. The Minnesota legislature explicitly made PFDA's suspension procedures applicable to students with disabilities. *See* Minn. Stat. § 121A.43(a). Under section 121A.43(a), "[c]onsistent with federal law governing days of removal *and section 121A.46*, school personnel may suspend a child with a disability." (Emphasis added.) Section 121A.46, subdivision 3, in turn, requires the school district to provide a student with a written suspension notice before or at the time the suspension takes effect and mail the written notice to the student's parent or guardian within 48 hours of an informal administrative conference.[7] Thus, because the legislature specified that the appropriate procedure for suspending a Minnesota student with a disability is found in section 121A.46, the school district's argument is unavailing.

Relying on *Eason v. Independent School District No. 11*, 598 N.W.2d 414 (Minn. App. 1999), the school district also argues that MDE lacked authority to enforce PFDA's suspension procedures because PFDA does not contain a private right of action to challenge a school district's suspension decision. Again, we are not persuaded.

[7] The school district also argues that we cannot consider section 121A.43(a) because MDE concluded the school district violated only section 121A.46, subdivision 3. But in its decision, MDE explicitly referenced that the legislature applied section 121A.46, subdivision 3, to students with disabilities through section 121A.43(a). And even if MDE had referenced an incorrect statute, we remain "free to exercise [our] independent judgment" over legal questions. *See Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 523 (Minn. 1989).

In *Eason*, we reversed a district court's decision to issue a temporary injunction relying on PFDA's suspension procedures. 598 N.W.2d at 417-18, 420. In deciding the plaintiff was unlikely to succeed on the merits, we explained that PFDA does not "contain any explicit language creating a cause of action to challenge an alleged violation of the act's suspension provisions" and declined to create an implicit cause of action.[8] *Id.* at 417 (emphasis omitted).

But the absence of a private right of action does not preclude an agency from enforcing a statute within its purview. *See, e.g.*, *Horne v. Flores*, 557 U.S. 433, 456 n.6 (2009) (observing that because a statute lacked a private right of action, it was "enforceable only by the agency charged with administering it").[9] And the Minnesota legislature expressly charged MDE with carrying "out the provisions of chapters 120A to 129C and other related education provisions under law." Minn. Stat. § 120A.02 (2022). PFDA, therefore, falls within the scope of MDE's authority, and the absence of a private right of action does not preclude MDE from ensuring compliance using the procedural mechanisms set forth in IDEA when the suspended child has a disability.

For these reasons, we affirm MDE's decision that the school district violated PFDA's suspension procedures.

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[8] While noting *Eason* concluded that PFDA's suspension procedures are discretionary, rather than mandatory, *see* 598 N.W.2d at 417-18, the school district did not argue MDE lacked authority because the provisions were discretionary. We do not reach this issue.

[9] In fact, federal courts have been unwilling to imply a private right of action to IDEA because of the regulatory and enforcement authority granted to the federal Secretary of Education. *See, e.g.*, *Traverse Bay Area Intermediate Sch. Dist. v. Mich. Dep't of Educ.*, 615 F.3d 622, 630 (6th Cir. 2010); *County of Westchester v. New York*, 286 F.3d 150, 153 (2d Cir. 2002).

III.

The school district next challenges MDE's decision that it failed to respond adequately to the parent's IEE request. The school district argues that (1) MDE improperly relied on confidential information and (2) IDEA does not require a response to an IEE request that objects to an FBA. We review these issues de novo. *See Bonney*, 705 N.W.2d at 214 (stating we retain "authority to review de novo questions of law, which arise when an agency decision is based upon the meaning of words in a statute").

A. Confidential Information

The school district asserts that MDE improperly relied on confidential mediation discussions to make its decision. The school district also argues that its disclosure of confidential information in the prior written notice does not negate the confidentiality of the information.

Under Minnesota law, for disputes that involve "the provision of a free appropriate public education to a child with a disability[,] . . . . mediation discussions are confidential and inadmissible" during subsequent proceedings, unless, among other exceptions, the "evidence is otherwise available." Minn. Stat. § 125A.091, subd. 9 (2022). IDEA regulations provide that mediation discussions "must be confidential and may not be used as evidence in any subsequent due process hearing." 34 C.F.R. § 300.506(b)(8) (2022).

We disagree with the school district's characterization that MDE relied on confidential information to reach its decision. Instead, the record shows that MDE very

carefully[10] relied on only non-confidential information to reach its decision. Specifically, MDE relied on the school district's non-confidential prior written notice rejecting the IEE request the parent made during mediation. Further, to the extent the non-confidential document contained confidential information, it was the school district, not the parent, that improperly disclosed that information.

MDE carefully tailored its decision to avoid using confidential information. Therefore, we reject the argument that MDE's decision violated state or federal protections for confidential mediation discussions.[11]

B. IEE Request After FBA

The school district also argues that MDE erred when it concluded IDEA required the school district to respond to the parent's IEE request because the parent disagreed with the findings in an FBA rather than a more comprehensive evaluation. The school district asks us to apply a recent Second Circuit decision, *D.S. by M.S. v. Trumbull Board of Education*, 975 F.3d 152 (2d Cir. 2020).

We acknowledge disagreement among the federal courts regarding whether a parent can make an IEE request following an FBA. *Compare Trumbull Bd. of Educ.*, 975 F.3d at

[10] In its decision, MDE mentioned mediation only in a footnote in which it expressly stated that the school district's prior written notice included details about a mediation discussion, but that MDE would not include those details in its decision. MDE's legal conclusion on the IEE issue does not mention mediation and was carefully worded to focus on the school district's failure to respond to the IEE request, rather than the context of the request itself.
[11] The school district argues that, without the evidence in the prior written notice, MDE's decision was unsupported by substantial evidence. Because we conclude MDE carefully tailored its decision to avoid using confidential mediation materials, we do not reach this issue.

163 (concluding that a parent cannot request an IEE in objection to an FBA), *with Harris v. District of Columbia*, 561 F. Supp. 2d 63, 64 & n.1, 67-68 (D.D.C. 2008) (deciding the opposite). The disagreement stems from whether an FBA is an "evaluation" under federal regulations. *Compare Trumbull Bd. of Educ.*, 975 F.3d at 165 ("[A]n FBA is best considered as an 'assessment tool' or 'evaluation material' that a school can use in conducting an evaluation."), *with Harris*, 561 F. Supp. 2d at 68 ("The FBA's fundamental connection to the quality of a disabled child's education compels this Court's determination that an FBA is an 'educational evaluation.'"). Neither case addresses an IEE request when a state statute, like that in Minnesota, specifically allows a school district to conduct an FBA "as a stand-alone *evaluation*," Minn. Stat. § 125A.08(d) (emphasis added), which is precisely what occurred here.

But we need not decide whether a school district must respond to an IEE request after an FBA in all situations. In this case, the school district explicitly told the parent that she could "request an outside special education evaluation" if she disagreed with the school district's findings in the FBA. On this basis, we affirm MDE's decision that the school district failed to adequately respond to the parent's IEE request.

IV.

Finally, the school district challenges MDE's order that the school district pay for the student to receive 60 tutoring hours at $50 per hour. The school district asserts that MDE's decision is arbitrary and unsupported by substantial evidence.[12]

[12] MDE relies on *In re Haugen* for the proposition that the relevant standard is abuse of discretion. *See* 278 N.W.2d 75, 80 n.10 (Minn. 1979). In *Haugen*, the supreme court

An agency must support its quasi-judicial decisions with substantial evidence. *Am. Fed'n of State, Cnty. & Mun. Emps., Council No. 14 v. County of Ramsey*, 513 N.W.2d 257, 259 (Minn. App. 1994); *see also Dietz*, 487 N.W.2d at 239 (allowing appellate review for whether an agency decision is "without any evidence to support it" (quotation omitted)). "Substantial evidence" means "1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; 2) more than a scintilla of evidence; 3) more than 'some evidence'; 4) more than 'any evidence'; and 5) evidence considered in its entirety." *Rsrv. Mining Co. v. Herbst*, 256 N.W.2d 808, 825 (Minn. 1977) (quotation omitted).[13]

An agency also cannot issue an arbitrary quasi-judicial decision. *Dietz*, 487 N.W.2d at 239. An agency engages in arbitrary decisionmaking when it (1) relied "on factors which the legislature had not intended it to consider"; (2) "entirely failed to consider an important aspect of the problem"; (3) "offered an explanation for the decision that runs counter to the evidence"; or (4) made a decision that "is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Minn. Transitions Charter Sch. v.*

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applied an abuse-of-discretion standard for reviewing "penalties and sanctions by an administrative agency." *Id.* It is not clear that compensatory services are a sanction on the school district. *See Bonney*, 705 N.W.2d at 215 (applying substantial-evidence test when reviewing compensatory-education plan); *Miener by Miener v. Missouri*, 800 F.2d 749, 753 (8th Cir. 1986) ("[I]mposing liability for compensatory educational services . . . 'merely requires [the school district] to belatedly pay expenses that [it] should have paid all along'" (quoting *Sch. Comm. v. Dep't of Educ.*, 471 U.S. 359, 370-71 (1985))). In any event, under either standard we would affirm MDE's compensatory-services decision.

[13]Although *Reserve Mining* applied the Minnesota Administrative Procedure Act, we have applied the same "substantial evidence" definition to quasi-judicial decisionmaking. *See, e.g.*, *Am. Fed'n of State, Cnty. & Mun. Emps.*, 513 N.W.2d at 259.

Comm'r of the Minn. Dep't of Educ., 844 N.W.2d 223, 235 (Minn. App. 2014) (quoting *Trout Unlimited, Inc. v. Minn. Dep't of Agric.*, 528 N.W.2d 903, 907 (Minn. App. 1995)).

The school district challenges MDE's decision on the appropriate compensatory-services award, but not MDE's underlying factual findings that the school district failed to provide required services to the student. When MDE concludes that a school district failed to provide required services, it has broad "authority to order . . . compensatory education plans." *Bonney*, 705 N.W.2d at 215; *see also* 34 C.F.R. § 300.151(b)(1) (providing that a state educational agency may order "corrective action appropriate to address the needs of the child," including through "compensatory services"); 71 Fed. Reg. 46,602 (Aug. 14, 2006) (commenting that under 34 C.F.R. § 300.151(b) state educational agencies have "broad flexibility to determine the appropriate . . . corrective action" when a school district "has failed to provide appropriate services to children with disabilities, including awarding . . . compensatory services"). Compensatory services are "designed to address any loss of educational benefit that may have occurred." Minn. Stat. § 125A.091, subd. 21 (2022) (describing compensatory-educational services for the purpose of due-process hearings).

Here, MDE's decision that the school district needed to provide the student with compensatory services in the form of 60 tutoring hours at $50 per hour is neither arbitrary nor unsupported by substantial evidence. The record shows that MDE directed the school district and parent to attempt to reach an agreement on the compensatory services necessary to address the school district's failure to provide required services. When the parties were unable to reach an agreement, MDE ordered the parties to submit proposals for MDE's

consideration. The parent proposed 117 tutoring hours at $50 per hour; the school district proposed 59.4 tutoring hours at $30 per hour.

The record shows that MDE largely adopted the school district's proposal on the number of tutoring hours. The school district explained in detail its basis for calculating the number of tutoring hours, and it is clear from MDE's order that it relied on those calculations to reach its decision to award 60 tutoring hours. Thus, the record supports MDE's calculation of the appropriate number of tutoring hours.

The record also shows that MDE adopted the parent's proposal regarding the rate to pay for the tutoring hours. Although the school district proposed compensating the student at the $30 per hour rate it pays special-education teachers to work beyond their contracts, the parent presented evidence that tutoring costs in her area generally stretched from $35 to $60 per hour and went as high as $100 per hour. MDE's order indicates that it relied on this information to reach its decision on the appropriate hourly rate. Therefore, the record supports MDE's calculation.

Given MDE's broad authority to fashion a compensatory-services award and the evidence in the record, we affirm MDE's decision to award compensatory services in the form of 60 tutoring hours at $50 per hour.

Affirmed.