

When is a FAPE “Provided” Under Minnesota Law?

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Under both the Individuals with Disabilities Education Act (“IDEA”) and Minnesota law school districts are required to provide children with disabilities a free appropriate public education (“FAPE”).^[1] The IDEA defines a FAPE as:

special education and related services that—

(A) have been provided at public expense under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.^[2]

Minnesota law also defines a FAPE in essentially the same way.^[3] Minnesota school districts must provide a FAPE to students in the district who are eligible for special education services regardless of whether those students attend a public or nonpublic school.^[4]

Recently, courts have considered what exactly it means to “provide” a student with a FAPE under Minnesota law. In 2017, the United States Court of Appeals for the Eighth Circuit addressed this issue in *Special Sch. Dist. No. 1, Minneapolis Pub. Sch. v. R.M.M. by & through O.M.*, 861 F.3d 769 (8th Cir. 2017). *R.M.M.* involved a child who attended a private school and received special education instruction in reading, writing, and math from Minneapolis Public Schools (“MPS”).^[5] Twice each week MPS bussed the child to and from the private school to the public school for the special education instruction sessions. The child’s parents became dissatisfied with the sessions and ultimately filed a complaint with the Minnesota Department of Education (“MDE”).

On appeal, the primary issue before the Eighth Circuit was whether “Minnesota state law goes beyond the minimum requirements of IDEA and entitles private school students the right to a FAPE.”^[6] The Court determined not only that private school students have a right to a FAPE, but that under Minnesota statute section 125A.03 it “must be *provided* to disabled children.”^[7] MSP argued that “Minnesota law requires only that public schools make a FAPE available to private school students.”^[8] MSP reasoned that it had provided a FAPE to R.M.M. because it offered her instruction and services, but the student’s parents had simply refused to use the services. The

Court did not explicitly analyze this argument. The Court reasoning seems to suggest a difference between making a FAPE *available* to a student and *providing* a FAPE to a student.^[9] However, the Court did not elaborate on this distinction and instead simply held that Minnesota law requires that every district must provide a FAPE to disabled children.^[10]

Following the reasoning in *R.M.M.*, in a separate case, MDE issued a corrective-action order requiring Waconia Public Schools to provide compensatory services to three students with disabilities after their parent refused the special education services the school provided to them.^[11] MDE interpreted the term “provided” in Minnesota statute 125A.08(b)(1) to mean students had “received” a FAPE.^[12] MDE based this interpretation on the holding in *R.M.M.* Waconia appealed the decision, arguing that MDE’s interpretation was incorrect.

Waconia had made extensive efforts to provide special education services to the students at issue in case. The parent refused the services because she did not agree with the school’s face mask policy for the 2021-2022 school year. While the students’ IEPs specifically addressed the COVID-19 pandemic, the parent wanted the students to receive special education services in a “pod situation” with a private classroom, private bathroom, and a teacher who had limited exposure to the general school population.^[13] The school incorporated the majority of these requirements into a plan that would be feasible for the school and also offered homebound or virtual instruction to the students.^[14] The parent declined this offer and the many subsequent proposals made by the school.^[15] The parent ultimately filed a complaint with MDE alleging a denial of a FAPE.

On appeal, the Court found that MDE’s decision was based on an error of law. The Court held that “the term ‘are provided,’ as used in section 125A.08(b)(1) and the corresponding federal regulation defining a FAPE, is unambiguous” and 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.”^[16]

The Court further noted that MDE’s interpretation was unreasonable because it failed to “recognize that parents have a ‘reciprocal obligation’ to operate within the procedural framework of IDEA.”^[17] The Court went on to distinguish the holding in *R.M.M.* as unapplicable here:

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.^[18]

The Court reasoned that the Eight Circuit decision distinguishing *provide* and *make available* is not applicable to “a situation where a school district offered or made available educational services that were not received due to a parent’s conduct.”^[19]

Therefore, as long as the school district offers or makes available special education services in conformity with a student's existing IEP, the school will not be found to have failed to provide the student with a FAPE simply because the parent refused the services and declined to work with the school in developing a new IEP.

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^[1] See 20 U.S.C. § 1400(d)(1)(A); Minn. Stat. § 125A.03.

^[2] 20 U.S.C. § 1401(9).

^[3] See Minn. Stat. § 125A.03(a).

^[4] See Minn. Stat. § 125A.18.

^[5] *R.M.M.*, 861 F.3d at 771.

^[6] *Id.* at 774.

^[7] *Id.* at 776 (emphasis original).

^[8] *Id.*

^[9] *Id.* at 769.

^[10] *Id.*

^[11] See *Special Educ. Complaint 22-027C on behalf of V.S.*, 981 N.W.2d 201 (Minn. Ct. App. 2022).

^[12] *Id.* at 204.

^[13] *Id.* at 207–08.

^[14] *Id.*

^[15] *Id.* at 209.

^[16] *Id.* at 213–14.

^[17] *Id.* at 214.

^[18] *Id.* at 215.

^[19] *Id.*