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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1537**

Lake Superior High School,
Relator,

vs.

Minnesota Department of Education,
by and through its Commissioner,
Respondent.

**Filed June 4, 2012
Affirmed
Peterson, Judge**

Minnesota Department of Education

Jack Y. Perry, Michael W. Kaphing, Briggs & Morgan, P.A., Minneapolis, Minnesota
(for relator)

Lori Swanson, Attorney General, Kathryn M. Woodruff, Assistant Attorney General, St.
Paul, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Peterson, Judge; and Collins,
Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

PETERSON, Judge

Relator-charter school challenges a decision by respondent department of education denying a request for a change of authorizer for relator, arguing that respondent exceeded its statutory authority and acted arbitrarily and capriciously by basing the denial on the authorizer's failure to follow its own, department-approved procedure for approving charter-school applications for authorization. We affirm.

FACTS

As a charter school, relator Lake Superior High School is required by statute to have an authorizer. Minn. Stat. § 124D.10 (2010). In March 2011, relator and its authorizer, Independent School District No. 709, mutually agreed to terminate their authorizer contract effective June 30, 2011.

In 2010, respondent Minnesota Department of Education had re-approved Audubon Center of the North Woods Education (Audubon) as a charter-school authorizer. As part of the re-approval process, Audubon agreed to take certain steps before submitting a change-of-authorizer request to respondent, including the following: require a request for a change of authorizer from the charter school at least six months before expiration of the current contract date; visit the charter school to “obtain a sense of the program’s quality, strengths, and needs” by observing the program and interviewing people, for example, staff, students, and parents; contact the current authorizer to determine its experience with and any concerns about the charter school; review by Audubon’s charter-school advisory pool of data from the school visit and the current

authorizer to make a recommendation to the Audubon board's charter-school subcommittee on whether to consider the request; obtain approval for the authorization from Audubon's board of directors following a recommendation by the subcommittee; obtain documents from the charter school, including documents addressing its statutory purposes, vision and mission statements, goals and student performance expectations, and financial-management, administration, and operations plans; and submit documents, including the last renewal report from the current authorizer.

In February 2011, Audubon visited relator's school building, interviewed teachers and students, and conducted a walk-through of the building. Audubon's charter-school subcommittee reviewed relator's transfer application on April 7 and April 25, 2011, and "agreed that relator's program was a good 'fit.'" On March 19, 2011, Audubon's board voted to authorize relator and to submit the transfer application to respondent. Audubon submitted a change-of-authorizer application to respondent on May 31, 2011, 30 days before the school district's contract with relator expired.

Respondent informed Audubon that the transfer request did not contain the required letter from the current authorizer "about the fiscal and operational status and student performance of the school pursuant to Minnesota Statutes, section 124D.10, subdivision 23(c) (2010)." In response, Audubon provided an evaluation from the school district that contained several pages of students' test scores and the following statement:

Upon review of [relator's] fiscal practices, [relator] had adjusted their budgets to ensure staff development for their teachers as well as expenditures that were directly for the benefit of their students. Their curriculum and assessments were under review and suggestions for improvement were

made by the [adequate-yearly-progress] facilitator from the Northeast Service Cooperative and followed up by the facilitator and the federal programs supervisor of our school district.

Respondent informed relator that this additional documentation was insufficient.

Audubon resubmitted its transfer request to respondent, and respondent sent Audubon an email stating that the transfer request still contained deficiencies, including that it was missing the evaluation by the school district of relator's current fiscal and operational status and student performance. The email also stated that the application was deficient because it only addressed one of six statutory purposes set forth in the charter-school law and did not contain a monitoring plan and timeline to "effectively address/resolve any concerns or deficiencies with this school."

On June 23, 2011, the school district provided a revised authorizer evaluation to respondent and Audubon. The letter stated that relator had failed to meet attendance requirements and academic goals stated in its charter contract. The letter also stated that the school district was unable to determine relator's progress with respect to Northwest Evaluation Association student test scores due to relator's failure to provide the school district with test information. Regarding relator's financial status, the letter stated that relator had a "healthy" fund balance but noted that relator's most recent audit suggested that changes were necessary to improve "internal control practices."

Audubon submitted a third change-of-authorizer application to respondent on June 26, 2011. The application included the June 23 authorizer evaluation from the school

district, additional language related to relator's six statutory purposes, and additional detail about how Audubon would oversee relator.

Respondent denied Audubon's application on the following grounds: although the June 26, 2011 application included the school district's evaluation, there was no evidence that Audubon's board had considered it; although the June 26, 2011 application included a description of the six statutory purposes, there was no evidence that Audubon's board considered the new information; and Audubon failed to present an adequate plan and timeline to resolve concerns or deficiencies noted by the school district.

D E C I S I O N

I.

Respondent argues that relator lacks standing to appeal from the denial of Audubon's change-of-authorizer application. The fact that a party is not named in the original action does not necessarily deprive that party of standing to appeal a decision as to that action. *See Annandale Advocate v. City of Annandale*, 435 N.W.2d 24, 27 (Minn. 1989) (holding that police chief not named in action to release information pertaining to meeting about his discharge had standing to appeal decision to release information); *In re Block*, 727 N.W.2d 166, 174-75 (Minn. App. 2007), *review denied* (Minn. Sept. 23, 2008) (holding that organization had standing to appeal conditional-use permit for dog kennel despite not being party to original action). "[T]he general rule is that a person may appeal from a judgment that adversely affects his or her rights, even if the person was not a party to the proceeding" *In re Marriage of Sammons*, 642 N.W.2d 450, 456 (Minn. App. 2002).

The adverse effect asserted by relator is that respondent's denial of Audubon's application resulted in relator's closing. Respondent argues that any injury to relator "is directly attributable to Audubon and its inadequate application," rather than to respondent's decision. But if respondent erred in denying the application, the injury to relator was caused by respondent. Relator, therefore, has standing to challenge the denial of Audubon's application.

II.

This court upholds an agency's quasi-judicial determination unless the determination exceeds the agency's statutory authority or is procedurally defective, based on an erroneous legal theory, unsupported by substantial evidence, or arbitrary and capricious. *Carter v. Olmsted Cnty. Hous. & Redev. Auth.*, 574 N.W.2d 725, 729 (Minn. App. 1998). Agency decisions "enjoy a presumption of correctness," and this court defers to the agency's expertise and special knowledge in its field. *In re Annandale NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 514 (Minn. 2007).

Relator argues that respondent exceeded its statutory authority and acted arbitrarily and capriciously in denying Audubon's change-of-authorizer application. Minn. Stat. § 124D.10, subd. 3 (2010), sets forth the procedure by which an eligible authorizer obtains the department's approval as an authorizer. The procedure includes the requirement that an eligible authorizer submit specified information to the department. *Id.*, subd. 3(d). In compliance with that statutory requirement, as part of the 2010 re-approval process, Audubon submitted a charter-school authorizing manual, which included the procedures for Audubon to become an authorizer for a charter school.

Respondent's denial of Audubon's change-of-authorizer application to become relator's authorizer was based on Audubon's failure to comply with the procedures in its authorizing manual. One deficiency identified by the department was Audubon's failure to show that its board considered the required evaluation, which the school district did not submit to Audubon and respondent until June 23, 2011, more than three months after Audubon's board approved relator's application. Minn. Stat. § 124D.10, subd. 23(c) (2010), requires the existing authorizer to inform the "eligible authorizer about the fiscal and operational status and student performance of the school." Although relator correctly argues that Audubon's authorizing manual does not specifically require that the existing authorizer's evaluation be submitted to or considered by the board, the manual does require that the board consider the school's financial health and the quality of its educational program. Without considering the existing authorizer's evaluation, the board could not make an accurate determination of relator's financial health and the quality of its educational program.

A second deficiency identified by the department was Audubon's failure to show that its board considered relator's statutory purposes. As of June 18, 2011, only one statutory purpose had been addressed in relator's application to Audubon. Audubon's authorizing manual requires that, if Audubon's board agrees to consider the change of authorizer, a document addressing the charter school's statutory purposes be obtained from the school. A flowchart in the manual "shows the process for existing charter schools to apply to [Audubon] for authorizing." The flowchart shows that it is the board's responsibility to approve an application and submit it to the department. Because

it is the board's responsibility to approve an application, it follows that the board must consider the information that Audubon is required to obtain from a school once the board decides to consider a school's change-of-authorizer request.

Respondent did not exceed its statutory authority or act arbitrarily and capriciously in denying Audubon's application based on Audubon's failure to follow its own procedures, which Audubon had agreed to follow as part of the 2010 re-approval process. Because Audubon's failure to follow the procedures that it agreed to follow supports the denial of Audubon's change-of-authorizer request, we need not address relator's argument that respondent exceeded its authority under Minn. Stat. § 124D.10, subd. 23.

Affirmed.