

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

BREVARD COUNTY SCHOOL
BOARD,

Petitioner,

vs.

Case No. 26-2227E

**,

Respondent.

_____ /

FINAL ORDER

The due process hearing was held on June 22, 2026, via Zoom conference. Administrative Law Judge Jessica E. Varn, from the Division of Administrative Hearings (DOAH), presided over the hearing.

APPEARANCES

For Petitioner: Amy J. Pitsch, Esquire
Sniffen & Harmon, P.A.
123 North Monroe Street
Tallahassee, Florida 32301

For Respondent: (No appearance)

STATEMENT OF THE ISSUE

Whether the School Board is permitted to reevaluate the student, overriding the student's mother's lack of consent.

PRELIMINARY STATEMENT

On April 29, 2026, the School Board filed the request for a due process hearing (Complaint) with DOAH, utilizing the consent override provisions available to a school board pursuant to Florida Administrative Code Rule

6A-6.0331(7)(d). On May 3, 2026, the student's special education advocate, who represented Respondent at that time, acknowledged receipt of the Complaint in an email to the School Board. On May 14, 2026, the School Board filed a motion requesting that the due process hearing be scheduled. The following day, a pre-hearing conference was scheduled for May 19, 2026, by agreement of the parties.

The pre-hearing conference was held as scheduled, but the student's [REDACTED] did not attend. The student's [REDACTED] attended. Later that day, the School Board filed a Notice of Filing Proposed Hearing Dates, stating that the School Board had reached out to the student's mother to coordinate a mutually agreeable date for the hearing, but the student's [REDACTED] did not reply.

The School Board proposed June 22, 23, or 24, 2026, as possible dates for the due process hearing. On May 20, 2026, the undersigned issued a Notice of Hearing for June 22, 2026.

The due process hearing was held as scheduled. The School Board and the student's [REDACTED] appeared for the hearing, but the student's [REDACTED] did not. School Board Exhibits A through D, F, and H through N were admitted. The School Board presented the testimony of one witness, [REDACTED], School Psychologist.

At the end of the due process hearing, the School Board stated that it would not file a proposed final order and requested that the undersigned issue a final order by July 10, 2026. This Final Order was prepared without the benefit of a transcript.

Unless otherwise indicated, all rule and statutory references are to the versions in effect during the relevant period. For stylistic convenience, the undersigned uses male pronouns when referring to the student. The male pronouns are neither intended, nor should be interpreted, as a reference to the student's actual gender.

FINDINGS OF FACT

1. The student is [REDACTED] years old, eligible for exceptional student education (ESE) services under the educational category of Other Health Impaired (OHI) and Hospital/Homebound (HH). He is also eligible for the related services of occupational therapy (OT) and Language Therapy.

2. [REDACTED], a licensed school psychologist, evaluated the student in [REDACTED], when he was [REDACTED] years old.

3. On March 10, [REDACTED], the student's individualized education plan (IEP) team met. At that time, all members of the IEP team agreed that a three-year reevaluation of the student was necessary, because the team suspected that the student may be eligible under other educational categories, such as Autism Spectrum Disorder (ASD). The IEP meeting was held virtually, and the parents agreed to sign the consent for reevaluation form once it was sent for their signatures.

4. The school-based IEP team members sought to reevaluate the student using assessments for achievement, adaptive behavior, autism spectrum checklist/rating scale, functional behavior assessment, health/medical examination or physician statement, intellectual/cognitive functioning, language, observations, OT, social/developmental history, and social developmental or emotional/behavioral functioning.

5. The student's [REDACTED] signed the form, but the student's [REDACTED] did not. On April 23, [REDACTED], the student's [REDACTED] sent an email to the School Board, rescinding [REDACTED] consent to reevaluate [REDACTED] son.

6. Next, on May 3, [REDACTED], the student's special education advocate sent an email to the School Board indicating that the student's [REDACTED] would consent to the reevaluation, but with certain conditions.

7. As of the date of the due process hearing, the student's [REDACTED] had not signed the consent form.

CONCLUSIONS OF LAW

8. DOAH has jurisdiction over the subject matter of this proceeding and of the parties thereto. *See* §§ 120.65(6) and 1003.57(1)(c), Fla. Stat.; Fla. Admin. Code R. 6A-6.03311(9)(u).

9. Petitioner bears the burden of proof with respect to the issue raised herein. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

10. This case concerns the School Board's obligation to reevaluate this student, every three years, under the Individual with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et al.; its implementing regulations at 34 C.F.R. § 300; and Florida Administrative Code Rule 6A-6.0331(7), which states:

(7) Reevaluation Requirements.

(a) A school district must ensure that a reevaluation of each student with a disability is conducted in accordance with Rules 6A-6.03011-.0361, F.A.C., if the school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation or if the student's parent or teacher requests a reevaluation.

(b) A reevaluation may occur not more than once a year, unless the parent and the school district agree otherwise and must occur at least once every three (3) years, unless the parent and the school district agree that a reevaluation is unnecessary.

(c) Each school district must obtain informed parental consent prior to conducting any reevaluation of a student with a disability.

(d) If the parent refuses to consent to the reevaluation, the school district may, but is not required to, pursue the reevaluation by using the consent override provisions of mediation or due process. The school district does not violate its child find, evaluation or reevaluation obligations if it declines to pursue the evaluation or reevaluation.

(e) The informed parental consent for reevaluation need not be obtained if the school district can demonstrate that it made reasonable efforts to obtain such consent and the student's parent has failed to respond.

See also 20 U.S.C. § 1414(a)(2); 34 C.F.R. § 300.303.

11. The School Board has elected to pursue the triennial reevaluation of this student by filing the instant Complaint. The evidence in this case established that the parent never provided consent for the reevaluation of this student. *See, e.g., G.J. v. Muscogee Cnty. Sch. Dist.*, 668 F.3d 1258 (11th Cir. 2012) (finding that parents effectively withheld their approval for a triennial reevaluation by placing numerous restrictions on how the assessment would be conducted, the district judge had properly found that with the restrictions, the purported consent was not consent at all).

12. The evidence also established that the School Board suspected that the student may be eligible under the ASD educational category, which is why the school staff members of the IEP team sought parental consent for a reevaluation conducted by a licensed school psychologist. The School Board made reasonable efforts to secure the [REDACTED] consent, and it was never provided.

13. The School Board is authorized to immediately reevaluate this student, overriding the [REDACTED] lack of consent.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the School Board is authorized to immediately reevaluate the student, overriding the parent's lack of consent. The triennial reevaluation must begin within 30 days of this Final Order.

DONE AND ORDERED this 9th day of July, 2026, in Tallahassee, Leon County, Florida.


Case No. 26-2227E

JESSICA E. VARN
Administrative Law Judge
DOAH Tallahassee Office

Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of July, 2026.

COPIES FURNISHED:

Bryce D. Milton, Educational Program Director (eServed)	Amy J. Pitsch, Esquire (eServed)
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David Chappell, General Counsel (eServed)	Respondent (eServed)
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Dr. Mark Rendell, Superintendent
(eServed)

NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless, within 90 days after the date of this decision, an adversely affected party:

- a) brings a civil action in the appropriate state circuit court pursuant to section 1003.57(1)(c), Florida Statutes (2014), and Florida Administrative Code Rule 6A-6.03311(9)(w); or
- b) brings a civil action in the appropriate district court of the United States pursuant to 20 U.S.C. § 1415(i)(2), 34 C.F.R. § 300.516, and Florida Administrative Code Rule 6A-6.03311(9)(w).