

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**,

Petitioner,

vs.

Case No. 26-1703E

ESCAMBIA COUNTY SCHOOL BOARD,

Respondent.

FINAL ORDER

This case came before Administrative Law Judge (ALJ) Sara Marken of the Division of Administrative Hearings (DOAH) for final hearing via Zoom conference on June 2, 2026.

APPEARANCES

For Petitioner: Petitioner's Parent, pro se
 (Address of Record)

For Respondent: Amy D. Envall, Esquire
 Sniffen & Harmon, P.A.
 123 North Monroe Street
 Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

Whether the student should have been found eligible for exceptional student education (ESE) services.

PRELIMINARY STATEMENT

Petitioner filed a request for due process hearing (Complaint) with the Escambia County School Board (School Board) on March 26, 2026, and the School Board forwarded the Complaint to DOAH on April 1, 2026. The case

was initially assigned to ALJ Jessica Varn. ALJ Varn issued a Case Management Order on April 2, 2026. On April 3, 2026, Respondent filed a Notice of Insufficiency, alleging that the Complaint failed to meet the pleading requirements of Florida Administrative Code Rule 6A-6.03311(9)(d). On April 6, 2026, ALJ Varn issued an Order finding the Complaint sufficient. The following day, Respondent filed a Response to the Complaint.

The parties mutually agreed to attend a pre-hearing conference on April 30, 2026. The School Board attended, but Petitioner did not. ALJ Varn issued an Order Requiring Response that same day, directing the parties to provide mutually agreeable dates for the final hearing by May 6, 2026. The parties timely filed a status report identifying their availability for the final hearing. ALJ Varn issued a Notice of Hearing by Zoom Conference on May 7, 2026. That same day, the case was transferred to the undersigned.

The undersigned held a pre-hearing conference on May 14, 2026, with all parties in attendance. During the conference, Petitioner requested additional time to prepare for the due process hearing, and Respondent did not object. The undersigned granted the request and issued an Order Granting Continuance on the same day. The undersigned later issued a Notice of Hearing by Zoom Conference, scheduling the final hearing for June 2, 2026.

The undersigned conducted the final hearing as scheduled. Petitioner's parent testified on Petitioner's behalf. Respondent presented the testimony of [REDACTED], Director of Student Services and District 504 Coordinator; [REDACTED], the student's teacher; [REDACTED], school counselor and Section 504 Coordinator; and [REDACTED], school psychologist. The exhibits entered into the record are memorialized in the final hearing Transcript.

At the conclusion of the due process hearing, the parties agreed to file proposed final orders no later than ten days after the transcript was filed, and that the undersigned would issue the final order ten days after the proposed final orders. The Transcript of the due process hearing was filed on June 17, 2026. Accordingly, the proposed final orders were due by June 29, 2026, and this Final Order is due by July 9, 2026. Both parties timely filed proposed final orders, and the undersigned considered them in drafting his Final Order.

Unless otherwise indicated, all rule and statutory references refer to the version in effect at the time of the alleged violations. For stylistic convenience, the undersigned uses male pronouns in this Final Order when referring to Petitioner. The male pronouns neither intend, nor should anyone interpret them, as a reference to Petitioner's actual gender.

FINDINGS OF FACT

1. At the time of the due process hearing, the student attended [REDACTED] grade at an Escambia County public school. The student has a medical diagnosis of attention-deficit/hyperactivity disorder (ADHD), Autism Spectrum Disorder (ASD), and hearing loss.

2. The student's medical diagnoses affect one or more major life activities. Accordingly, he has a Section 504 Student Accommodation Plan (Section 504 Plan) under the Rehabilitation Act of 1973, 29 U.S.C. § 794.

3. The student's Section 504 Plan identifies hearing loss and impulsivity as his primary areas of need. To address these needs, the plan provides for a classroom sound system and voice amplification during instruction to support the student's access to auditory information. The plan also requires staff to redirect the student when necessary, clarify his understanding of instructions, and address him directly before giving directions.

4. When the student began the [REDACTED] school year, he performed academically on par with most of his classmates. As the first weeks passed, he failed to make the expected progress. He struggled to stay focused and complete work during independent work time. In September, his teacher, [REDACTED], reported he was performing on grade level in math and reading comprehension, but below grade level in reading decoding and fluency, language arts, grammar, and writing.

5. In response, the school implemented academic and behavioral interventions, and [REDACTED] continued to implement the student's Section 504 Plan.

6. On October 14, [REDACTED], the school convened a Response to Intervention (RtI) meeting. During the meeting, the team reviewed the student's academic and behavioral progress and evaluated the effectiveness of the interventions already in place. The team reviewed classroom observation data showing that, at the beginning of the school year, the student struggled to remain on task, complete work independently, and frequently expressed frustration by stating, "I can't do this." The team also discussed whether the student's behavior affected his ability to complete classroom tasks. [REDACTED] reported that the student had begun responding positively to Tier I instruction and the accommodations outlined in his Section 504 Plan.¹ Based on the student's progress, the team determined that he no longer needed additional RtIs and discussed discontinuing RtI supports.

7. The team also discussed the parent's request for an evaluation to determine eligibility under the Individuals with Disabilities Education Act (IDEA) and explained the evaluation process. Although the School Board offered to conduct an evaluation, the parent declined to provide consent.

¹ Tier I instruction consists of general education interventions that address a student's identified areas of concern. *See*, Fla. Admin. Code R. 6A-6.0331.

8. At the hearing, the parent explained that ■■■ refused consent because ■■■ did not trust school staff and believed it had already predetermined that the student would not qualify for ESE services under the IDEA.

9. Despite declining to consent to an evaluation, the parent testified that ■■■ believed the student required one. ■■■ explained that the student experienced behavioral meltdowns, struggled to write his name, and continued to require support to complete written assignments. Although ■■■ acknowledged that the student earned good grades, ■■■ believed his academic performance did not reflect the impact of his disabilities on his educational needs.

10. The student continued to improve throughout the fall and winter of ■■■. ■■■ credibly explained that the student made significant progress after returning from winter recess:

I think just the shift that I saw with him is something I haven't seen in a student in a long time. When -- when we first met, it was kind of like, okay, we've got a road ahead of us. We've got some work to do. And we chugged along. We chugged along. And then it was like after Christmas or so; it was just like something flipped. And he's reading. He's motivated. He's coming in -- I started a sticker chart for his writing, which is probably his biggest concern in my eyes. And he was writing three sentences without me having to sit there and stand over his shoulder. So just seeing that growth in such a short time was an incredible thing for me to witness as a teacher.

11. On February 18, ■■■, the school counselor, ■■■, and the parent reviewed the student's Section 504 Plan. The team reviewed data from multiple sources, including grades, standardized test scores, intervention data, teacher and parent input, and medical evaluations. After reviewing the available information, the team determined that the existing accommodations continued to meet the student's needs and decided to leave the Section 504 Plan unchanged. The parent agreed with that decision.

12. By the Spring of [REDACTED], the student had earned mostly A's.

[REDACTED] noted the following on his report card.

[**] is working so hard to be the student he can be! He is reading on grade level, but he still lacks the motivation to do it on his own. He loves to sit and read with me, but when asked to do it at his desk or with a friend, he just doesn't want to. We will continue to work on ways to motivate him to be intrinsically driven and not just driven by praise or rewards. I was having a little bit of a struggle with getting him to write, but he seems to be getting past that! He is doing so much better with regulating his emotions or asking for breaks when he needs them. I am so proud of him!

13. Throughout the [REDACTED] school year, the School Board consistently maintained that it would have evaluated the student if the parent had provided written consent.

14. The better evidence established that the student responded positively to the general education interventions and accommodations the School Board implemented during the [REDACTED] school year. The student's academic and behavioral progress did not demonstrate a need for special education and related services.

CONCLUSIONS OF LAW

15. DOAH has jurisdiction over the parties and the subject matter of this proceeding under sections 1003.57(1)(b) and 1003.5715(5), Florida Statutes, and Florida Administrative Code Rule 6A-6.03311(9)(u).

16. The burden of proof is on Petitioner to prove the claim by a preponderance of the evidence. *See Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Devine v. Indian River Cnty. Sch. Bd.*, 249 F.3d 1289, 1291 (11th Cir. 2001).

17. Congress passed the IDEA "to ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasize[s] 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); *Phillip C. ex rel. A.C. v. Jefferson Cnty. Bd. of Educ.*, 701 F.3d 691, 694 (11th Cir. 2012).

18. In enacting the IDEA, Congress intended to address inadequate educational services offered to children with disabilities and to combat the exclusion of such children from the public education system. *See* 20 U.S.C. § 1400(c)(2)(A)-(B). To achieve these aims, Congress provides funding to participating state and local educational agencies and requires such agencies to comply with the IDEA’s procedural and substantive requirements. *Doe v. Ala. State Dep’t of Educ.*, 915 F.2d 651, 654 (11th Cir. 1990). The School Board, a local educational agency under 20 U.S.C. § 1401(19)(A), receives federal IDEA funds and is thus required to comply with certain provisions of that Act. *See* 20 U.S.C. § 1401, *et seq.*

19. The IDEA provides parents and children with disabilities with substantial procedural safeguards. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). Among other protections, parents can examine their child’s records and participate in meetings concerning their child’s education; receive written notice before any proposed change in the educational placement of their child; and file an administrative due process complaint about any matter relating to the identification, evaluation, or educational placement of their child, or the provision of FAPE. *See* 20 U.S.C. § 1415(b)(1), (b)(3), & (b)(6).

20. The first and arguably most important procedural obligation, logically, is to identify and evaluate students for IDEA eligibility, most often referred to as the School Board’s ongoing child-find obligation. Child find “refers to a school’s obligation, under relevant federal law, to identify students with disabilities who require accommodations or special education services proactively rather than waiting for a child’s parents to confront them with evidence of this need.” *Culley v. Cumberland Valley Sch. Dist.*, 758 Fed. Appx. 301, 306 (3d Cir. 2018).

21. The IDEA sets forth the child-find obligation as follows:

All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a).

22. In compliance with the child-find mandate, rule 6A-6.0331 sets forth the school district's ongoing responsibilities related to students suspected of having a disability. This rule provides that school districts are responsible for ensuring that students suspected of having a disability are subject to general education intervention procedures. Additionally, they must ensure that all students with disabilities and who need ESE are identified, located, and evaluated, and FAPE is made available if it is determined that the student meets the eligibility criteria.

23. As an initial matter, the school district has the "responsibility to develop and implement a [multi-tiered system of support, or RtI], which integrates a continuum of academic and behavioral interventions for students who need additional support to succeed in the general education environment." Fla. Admin. Code R. 6A-6.0331(1).

24. The general education intervention requirements include parental involvement, observations of the student, review of existing data, vision and hearing screenings, and evidence-based interventions. Fla. Admin. Code R. 6A-6.0331(1)(a)-(e). Rule 6A-6.0331(1)(f) cautions, however, that nothing in this section should be construed to either limit or create a right to FAPE or to delay appropriate evaluations of a student suspected of having a disability.

25. Rule 6A-6.0331(2)(a) then sets forth a non-exhaustive set of circumstances that would indicate to a school district that a student may be a student with a disability who needs special education and related services. As applicable to this case, those circumstances include the following:

1. When a school-based team determines that the kindergarten through grade 12 student's response to intervention data indicate that intensive interventions implemented in accordance with subsection (1) of this rule are effective but require a level of intensity and resources to sustain growth or performance that is beyond that which is accessible through general education resources; or
2. When a school-based team determines that the kindergarten through grade 12 student's response to interventions implemented in accordance with subsection (1) of this rule indicates that the student does not make adequate growth given effective core instruction and intensive, individualized, evidence-based interventions; or
3. When a child age three (3) to kindergarten entry age receives a developmental screening through the school district or the Florida Diagnostic and Learning Resource Center and based on the results of the screening it is suspected that the child may be a child with a disability in need of special education and related services; or
4. When a parent requests an evaluation and there is documentation or evidence that the kindergarten through grade 12 student or child age three (3) to kindergarten entry age who is enrolled in a school district operated preschool program may be a student with a disability and needs special education and related services.

26. Petitioner failed to prove by a preponderance of the evidence that the School Board violated its child-find obligations under the IDEA. The evidence established that the School Board identified the student's academic and behavioral concerns, implemented and monitored appropriate general

education interventions and Section 504 accommodations. The student responded positively to those interventions, demonstrated academic and behavioral progress, and earned grades consistent with grade-level expectations. Although the parent requested an IDEA evaluation and the School Board offered to conduct one, the parent declined to provide consent. Based on this, Petitioner failed to establish that the School Board knew or should have known that the student required special education and related services, or that it otherwise failed to satisfy its child-find obligations.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner failed to satisfy his burden of proof related to the claim asserted in Petitioner's Complaint. The requested relief is DENIED.

DONE AND ORDERED this 9th day of July, 2026, in Miami, Dade County, Florida.

~~Case No. 26-1703E~~

SARA M. MARKEN
Administrative Law Judge
DOAH Miami Office

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

COPIES FURNISHED:

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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).