STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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Petitioner,

vs. Case No. 25-2922E

BREVARD COUNTY SCHOOL BOARD,

Respondent.
_____/

FINAL ORDER

The due process hearing was held, by agreement of the parties, via Zoom conferencing on December 4 and 5, 2025. Jessica E. Varn, an Administrative Law Judge with the Division of Administrative Hearings (DOAH), presided over the hearing.

APPEARANCES

For Petitioner: Krista Ann Barth, Qualified Representative
My Educational Solutions
3475 Sheridan Street, Suite 215B
Hollywood, Florida 33021

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

STATEMENT OF THE ISSUES

(1) Whether the School Board's recommended placement for this student is the least restrictive environment (LRE), within the meaning of the Individuals with Disabilities Education Act (IDEA);[1] and

[1] Based on the stay-put injunction provided by the IDEA, during the pendency of this case, the student has remained in the last agreed upon placement.

(2) Whether the School Board has discriminated against the student based on his disability, in violation of Section 504 of the Rehabilitation Act of 1973.[2]

PRELIMINARY STATEMENT

Petitioner filed a request for a due process hearing (Complaint) on or about May 28, 2025. The School Board promptly referred the Complaint to DOAH. On June 6, 2025, the School Board filed a Notice of Insufficiency. On June 9, 2025, the undersigned issued an Order on Notice of Insufficiency, finding the Complaint insufficient, and allowing Petitioner to amend the Complaint by June 18, 2025.

On June 10, 2025, Petitioner filed a Response to Notice of Insufficiency, amending the Complaint. On that same day, an Amended Case Management Order was issued, with amended deadlines. On June 20, 2025, the School Board filed its Response to the Complaint. A resolution session was held on July 3, 2025. At the resolution session, the parties agreed to place the case in abeyance. The parties agreed to convene the student's individualized education plan (IEP) team in mid-August, and agreed to include the student's physician and private Applied Behavior Analysis (ABA) therapist at the next IEP meeting. The case was placed in abeyance until August 20, 2025.

On August 21, 2025, the School Board filed a Status Report. In it, the School Board explained that the parties did not hold the IEP meeting because the student's physician conveyed that [redacted] does not participate in IEP meetings. The School Board was, based on this development, prepared to schedule the due process hearing, and conduct discovery.

[2] The Rehabilitation Act of 1973, 29 U.S.C. § 795, *et seq.* (Section 504).

After consultation with the parties, the undersigned scheduled a pre-hearing conference for September 19, 2025. Unfortunately, only the School Board appeared for the pre-hearing conference. A second attempt was made to secure Petitioner's attendance, and the parties agreed to reschedule the pre-hearing conference for October 3, 2025.

At the pre-hearing conference, the parties agreed to schedule the due process hearing on December 4 and 5, 2025, via Zoom conferencing. Discovery ensued, and Petitioner, on October 24, 2025, filed a "Motion to Require Comprehensive and Independent Mold Assessment and Environmental Testing" on DOAH's docket, but the pleading was intended for the Eighteenth Judicial Circuit Court for Brevard County.

On November 19, 2025, the School Board filed a Motion to Submit Deposition Transcript in Lieu of Live Appearance. On November 21, 2025, Petitioner filed a Motion to Recognize [redacted] as Petitioner's Qualified Representation, which the undersigned granted. On November 25, 2025, on the eve of the five-day disclosure deadline, Petitioner filed a Motion for Continuance, seeking an eight-week continuance, to provide more time for the Qualified Representative to prepare for the due process hearing.

On December 1, 2025, the School Board filed an objection to Petitioner's request for a continuance of the due process hearing. On the next day, the undersigned held a motion hearing. Although the time and date for the motion hearing was mutually agreed to by the parties, Petitioner failed to appear for the motion hearing. The undersigned issued an Order on Pending Motions that same day, granting the admission of a deposition in lieu of live testimony, and stating, in part:

> Third, Petitioner filed a Motion for Continuance on November 25, 2025, seeking to reschedule the due

> process hearing that the parties had mutually agreed to schedule on December 4 and 5, 2025. The explanation for this request was that [redacted], who had been working with the family for months, needed additional time to prepare for the due process hearing. Based on [redacted] Qualified Representative affidavit, [redacted] has worked as an advocate for the student for months; therefore, Petitioner has not established good cause to continue this matter. The School Board has objected to the Motion for Continuance. The parties were notified on December 1, 2025, that the Motion for Continuance is DENIED, and this Order memorializes the decision.

The due process hearing was held as scheduled. Petitioner called the student's [redacted] to testify on behalf of [redacted] son. The School Board presented the testimony of [redacted], Assistant Director of Student Services; [redacted], Board Certified Behavior Analyst (BCBA); [redacted], Supervisor for Environmental Health and Safety; [redacted], Exceptional Student Education (ESE) teacher; [redacted], Speech Language Pathologist (SLP); [redacted], Occupational Therapist (OT); [redacted], ESE teacher; [redacted], SLP; and [redacted], ESE teacher. The School Board also introduced the sworn testimony of [redacted], a Board Certified Allergist and Immunologist, via deposition.

Petitioner's Exhibit 1 was stipulated into evidence as a Joint Exhibit. School Board Exhibits A, C through L, and N through P were admitted into the evidentiary record.

At the end of the due process hearing, the parties agreed to file proposed final orders 14 days after the Transcript was filed with DOAH. The parties also agreed to extend the final order deadline to 14 days after the proposed

final order deadline. The Transcript was filed on January 5, 2026. Accordingly, the deadline for the proposed final orders was January 20, 2026, and the Final Order is due on February 3, 2026.

Both parties filed proposed final orders, which were considered in preparing this Final Order. All of the witnesses' testimony was considered and all exhibits were reviewed, although they may not be referred to in the Findings of Fact below.

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 an [redacted]-year-old, [redacted] grade student, who is eligible for ESE services under the eligibility categories of Other Health Impaired (OHI) and Hospital/Homebound. He also receives related services in occupational and language therapy. He receives instruction in the general education curriculum and communicates using an augmentative and alternative communication device, an iPad.

2. The student has been diagnosed with autism, attention-deficit/hyperactivity disorder (ADHD), depressive disorder, and an immunodeficiency disorder. He has a significant communication impairment, difficulty with self-regulation, pronounced challenges with transitions and environmental change, and complex, ongoing medical needs.

3. Since he entered [redacted], he has received all instruction in the home setting. The condition that required home instruction was the immunodeficiency disorder. According to [redacted], the student has a

decreased IgG1 level, which places him at a higher risk than his peers for bacterial or viral illnesses such as viral infections, respiratory infections, bacterial ear infections, sinus infections, and pulmonary infections such as bronchitis or pneumonia.

4. In November [redacted], when the student was in [redacted] grade, the student's mother submitted a new Hospital/Homebound medical form, signed by [redacted]. The next month, the IEP team convened to discuss reevaluation and to review the Hospital/Homebound eligibility. The school-based IEP team members proposed to continue the student's two eligibilities for OHI and Hospital/Homebound until May [redacted]. During the remaining period of eligibility, the school-based IEP team members sought to obtain additional information from the student's physician regarding his medical condition and his instructional needs. Second, the school-based team members proposed an amendment to the IEP dated May [redacted], to change the location of services to a private, dedicated classroom at [redacted] School.

5. During his home-based instruction, the student never received instruction from teachers or therapists while in his home. He had received the instruction and therapies in shared spaces, such as areas described as a clubhouse, a shared lobby space at his apartment complex, or in a separate "therapy" apartment that the student's [redacted] had provided for the services. Since the student was not confined to his home or a hospital, the school-based team members sought more information from [redacted], to see if the student could access his education in a less restrictive environment.

6. The student's [redacted] consented to the school team conferring with [redacted]. On March 7, [redacted], a Program Specialist/Nurse Liaison sent an email to [redacted]. [redacted] inquired (1) whether the student could receive services in any shared spaces and (2) whether he could receive services in a dedicated space on campus that is not shared by other students at all during the day.

7. [redacted] sent a reply the same day answering these two questions. [redacted] stated:

> Even in a clean facility, respiratory viral pathogen exposure will be inevitable, most commonly from exposure to classmates, sharing spaces would not work. Could [**] receive services in a dedicated space that is not shared by other students, yes, but [**] is best going to be served in a homebound learning environment.

8. During [redacted] deposition, [redacted] confirmed that, in [redacted] medical opinion, the student could receive instruction and services in a dedicated classroom on the school campus, if he was the only student in the classroom.

9. Throughout [redacted], [redacted] grade, and [redacted] grade, Registered Behavior Technicians (RBTs), employed by a private company called [redacted], provided behavioral services to the student. [redacted] provides services to Brevard County School students. Unfortunately, due to the [redacted] interference and [redacted] critiques of the RBTs, four of seven RBTs asked to be removed from the student's case. Ultimately, [redacted] informed the parent and school that they would only provide services at the student's [redacted] house or at their own site. They refused to continue the services at the student's "therapy" apartment.

10. School-based teachers and therapists reported that the [redacted] would interfere with their lessons or therapies, and they found that the student has a difficult time focusing when his [redacted] is present.

11. On May 15, [redacted], the IEP team convened an annual review and developed a new IEP for the student. At this meeting, the school-based team members proposed to deliver the student's services in a clean, dedicated classroom, which he could access without walking through the school. Their reasoning was multi-faceted. First, [redacted] had stated that the student could access his education safely in this way. Second, the student had never been confined to his home or a hospital. Third, coming onto campus is less

restrictive than receiving services in a "therapy" apartment. Fourth, they believed that receiving on-campus services would enhance the student's social skills, promote independence, help him generalize learned skills in real-world situations, and provide opportunities to practice transitions. The student's [redacted] disagreed with this proposal, but the student's [redacted] agreed with the rest of the IEP team.

12. [redacted] is five minutes away from the student's home. The dedicated classroom has its own bathroom, its own entrance, and it is near the bus loop. The student would see, from a safe distance, many more individuals, both peers, and faculty moving around the campus.

13. Although [redacted] expressed no concerns about the student's exposure to mold, the School Board commissioned an environmental health and safety evaluation of the proposed, dedicated classroom. In September [redacted], the School Board completed a Phase 2 indoor air quality analysis of the proposed classroom for the student, at the [redacted] request. The result of the inspection, which was undertaken by appropriately qualified assessors and laboratory personnel, indicates the proposed classroom is a clean room with no air quality concerns, fit for occupancy.

14. Without exception, the student's current teachers and therapists persuasively testified that the student will benefit from instruction at a school campus, and they believe that he will make more progress on his educational, social, communication, and behavioral IEP goals if he is on the school campus—in a safe classroom.

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).

19. 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*.

20. 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).

21. In the Complaint, Petitioner asserts that the School Board failed to provide him with an appropriate location, or placement, in the LRE. Put

differently, Petitioner argues that the recommended location, a private dedicated classroom, in the May [redacted] IEP cannot meet his needs, and is not safe for him due to his complex medical conditions.

22. The IDEA provides directives on students' placements or educational environments in the school system. Title 20 U.S.C. § 1412(a)(5)(A) provides:

> Least Restrictive Environment.
>
> In general. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

23. Under the IDEA's implementing regulations, states must have in effect policies and procedures to ensure that public agencies in the state meet the LRE requirements. 34 C.F.R. § 300.114(a). Additionally, each public agency must have a continuum of alternative placements available to meet the needs of children with disabilities for special education and related services. 34 C.F.R. § 300.115. Florida's Department of Education has enacted rules to comply with the LRE mandate. *See* Fla. Admin. Code R. 6A-6.03028(3)(i) and 6A-6.0311(1).

24. In determining the educational placement of a child with a disability, each public agency must ensure that the placement decision is made by a group of persons, including the parent(s), and other persons knowledgeable about the child; the meaning of the evaluation data; and the placement options. 34 C.F.R. § 300.116(a)(1). Additionally, the child's placement must be

determined at least annually, based on the child's IEP, and as close as possible to the child's home. 34 C.F.R. § 300.116(b).

25. With the LRE directive, "Congress created a statutory preference for educating [disabled] children with [nondisabled] children." *Greer v. Rome City Sch. Dist.*, 950 F.2d 688, 695 (11th Cir. 1991). "By creating a statutory preference for mainstreaming, Congress also created a tension between two provisions of the [IDEA], school districts must both seek to mainstream [disabled] children and, at the same time, must tailor each child's educational placement and program *to his special needs*." *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1044 (5th Cir. 1989) (emphasis added).

26. In *Daniel*, the Fifth Circuit set forth a two-part test for determining compliance with the mainstreaming requirement:

> First, we ask whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily for a given child. *See* § 1412(5)(B). If it cannot and the school intends to provide special education or to remove the child from regular education, we ask, second, whether the school has mainstreamed the child to the maximum extent appropriate.

Id. at 1048.

27. The Eleventh Circuit has adopted the *Daniel* two-part inquiry. *See Greer*, 950 F.2d at 697.

> In determining the first step, whether a school district can satisfactorily educate a student in the regular classroom, several factors are to be considered, including a comparison of the educational benefits the student would receive in a regular classroom, supplemented by aids and services; what effect the presence of the student in a regular classroom would have on the education of other students in that classroom; and the cost of the supplemental aids and services that will be necessary to achieve a satisfactory education for the student in a regular classroom.

Id.

28. Moreover, deference should be paid to those involved in education and administration of the school system. *A.K. v. Gwinnett Cnty. Sch. Dist.*, 556 Fed. Appx. 790, 792 (11th Cir. 2014) ("In determining whether the IEP is substantively adequate, we 'pay great deference to the educators who develop the IEP.'") (quoting *Todd D. v. Andrews*, 933 F.2d 1576, 1581 (11th Cir. 1991)). As noted in *Daniel*, "[the undersigned's] task is not to second guess state and local policy decisions; rather, it is the narrow one of determining whether state and local officials have complied with the [IDEA]." *Daniel*, 874 F.2d at 1048.

29. In Florida, a homebound or hospitalized student is defined as:

> a student who has a medically diagnosed physical or psychiatric condition that is acute or catastrophic in nature, a chronic illness, or a repeated intermittent illness due to a persisting medical problem and which confines the student to home or hospital, and restricts activities for an extended period of time.

See Fla. Admin. Code R. 6A-6.03020.

30. The rule states the following with respect to how homebound students may access instructional services:

> (5) Instructional services. The following settings and instructional modes, or a combination thereof, are appropriate methods for providing instruction to students determined eligible for these services:
>
> (a) Instruction in a home. The parent, guardian or primary caregiver shall provide a quiet, clean and well-ventilated setting where the teacher and student will work; ensure that a responsible adult is present; and establish a schedule for student study between teacher visits that takes into account the student's medical condition and the requirements of the student's coursework.

> (b) Instruction in a hospital. The hospital administrator or designee shall provide appropriate space for the teacher and student to work and allow for the establishment of a schedule for student study between teacher visits.
>
> (c) Instruction through telecommunications or electronic devices. When the IEP or IFSP team determines that instruction is by telecommunications or electronic devices, an open, uninterrupted telecommunication link shall be provided at no additional cost to the parent, during the instructional period. The parent shall ensure that the student is prepared to actively participate in learning.
>
> (d) Instruction in other specified settings. The IEP or IFSP team may determine that instruction would be best delivered in a mutually agreed upon alternate setting other than the home, hospital or through telecommunications or electronic devices.
>
> (e) Instruction in a school setting on a part-time basis may be appropriate as the student transitions back to the student's regular class schedule, if the IEP or IFSP team determines this meets the student's needs.

31. As noted in subsection (d), students eligible under this section may access instruction in an alternate setting other than the home, hospital, or through telecommunications or electronic devices. Subsection (e) contemplates that some students may benefit from instruction in a school setting on a part-time basis, if appropriate.

32. The Eleventh Circuit has held that school districts need not provide homebound instruction where the evidence shows that a student can receive educational services in a less restrictive setting, even when parents present medical concerns. In *Stamps v. Gwinnett County School District*, the court upheld a district's decision to educate children with immune and neurological disorders in public school rather than at home, emphasizing that the doctor's

testimony did not establish a medical necessity for homebound instruction and that the school could maintain an educational environment in a manner that was safe and clean. 481 F. App'x 470 (11th Cir. 2012).

33. Applying these principles here, the more persuasive evidence establishes that the School Board's recommended placement and location, a dedicated and safe classroom on the school campus, does comply with the LRE mandate. The School Board's recommended change in placement is tailored to meet the student's special needs because it provides more opportunity for the student to separate home from school, and, as all his teachers and therapists opined, will meet his educational, communication, social, and behavioral needs.

34. Lastly, Petitioner asserts that the School Board discriminated against him based on his disability, in violation of Section 504. To establish a prima facie case under Section 504, Petitioner must prove that he: (1) had an actual or perceived disability; (2) qualified for participation in the subject program; (3) was discriminated against only because of his disability; and (4) the relevant program is receiving federal financial assistance. *Moore v. Chilton Cnty. Bd. of Educ.*, 936 F. Supp. 2d 1300, 1313 (M.D. Ala. 2013)(citing *L.M.P. v. Sch. Bd. of Broward Cnty.*, 516 F. Supp. 2d 1294, 1301 (S.D. Fla. 2007)); *see also J.P.M. v. Palm Beach Cnty. Sch. Bd.*, 916 F. Supp. 2d 1314, 1320 (S.D. Fla. 2013).

35. Though unclear, Petitioner appears to base his Section 504 claim on the recommendation made by the school-based IEP team members on the placement issue. Petitioner presented no evidence that the School Board's actions discriminated against Petitioner. Thus, this claim fails.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner failed to meet his burden of proof, and all requests for relief are DENIED. The School Board's recommended placement is appropriate for the student, and does comply with the LRE mandate in the IDEA.

DONE AND ORDERED this 30th day of January, 2026, in Tallahassee, Leon County, Florida.

JESSICA E. VARN
Administrative Law Judge
DOAH Tallahassee Office

Division of Administrative Hearings
2001 Drayton Drive
Tallahassee, Florida 32311
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of January, 2026.

COPIES FURNISHED:

Bryce D. Milton, Educational Program Director
(eServed)

William D. Chappell, General Counsel
(eServed)

Dr. Mark Rendell, Superintendent
(eServed)

Amy J. Pitsch, Esquire
(eServed)

Amy D. Envall, Senior Counsel
(eServed)

Krista Ann Barth
(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).