

Eligibility under IDEA for Other Health Impaired Children

by Kara Grice

In recent years, schools have faced increased pressure from some parents to qualify their children as eligible for special education services under the Individuals with Disabilities Education Act (IDEA). The act's regulations define *a child with a disability* as one "(1) with mental retardation, hearing impairments . . . speech or language impairments, visual impairments . . . serious emotional disturbance . . . orthopedic impairments, autism, traumatic brain injury, *other health impairments*, or specific learning disabilities . . . (2) who needs special education and related services because of his or her disability or disabilities."¹ The other health impaired (OHI) category often serves as a catchall to identify as eligible for special education services students who do not meet the qualifications for other, more clearly defined classifications or who have certain medical diagnoses, such as attention deficit disorder or attention deficit hyperactivity disorder (ADD/ADHD). In addition, in recent years schools have faced increased pressure from parents to identify children under the IDEA so students receive modifications and accommodations to the education program, including changes to end-of-grade and end-of-course tests.² Some school officials have used the

OHI category to placate parents or to provide special education services to students who do not qualify under the IDEA, even though they have a diagnosed medical condition.

This article attempts to provide a defensible basis for evaluating OHI disability placements, examines the federal and state definitions of OHI, reviews administrative decisions and case law on eligibility and placement, and summarizes the current state of the law on providing services to students classified as OHI.

Definition of OHI

The federal and state definitions of OHI are essentially the same. According to the federal regulations,

Other health impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and (ii) Adversely affects a child's educational performance.³

The *North Carolina Procedures* state that "other health impaired students have chronic or acute health problems which cause limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, to such an extent that special educational services are necessary." It lists the same conditions as the federal regulations, adding chronic lung disease, tuberculosis, and genetic impairment. And, like the federal guidelines, the *Procedures* require that the condition "adversely affect educational performance or developmental progress."⁴

Thus, to qualify as OHI eligible, a child must meet four conditions. First, he or she must suffer from a chronic or acute health condition. Second, the health condition must

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1. 20 U.S.C. § 1401(3)(A). North Carolina's *Procedures Governing Programs and Services for Children with Disabilities* (hereinafter *N.C. Procedures*), § .1501 A (North Carolina Department of Public Instruction, Exceptional Children Division, 2000) further states that the term *children with disabilities* includes, without limitation, all children who (1) need special education because of permanent or temporary mental, physical, or emotional disabilities; (2) are unable to have all their educational needs met in a regular class without special education and related services; or (3) are unable to be adequately educated in the public schools.

2. The terms *accommodation* and *modification* are used but not defined in the IDEA. One legal expert has defined *accommodation* as "changes in course/standards/test presentation, location, timing scheduling, expectations student responses and/or other attributes which are necessary to provide access for a student with a disability to participate in a course/standard/ test, and which do not fundamentally alter or lower the standard or expectations of the course/standard/test." *Modifications* are the same changes "but which do fundamentally alter or lower the standard or expectations of the course/standard/test." Miriam Kurtzig Freedman, "The IDEA and Section 504 Requirements for Doing It All: High Stakes, Accountability, Testing, Teaching, Due Process, and Children with Special Needs," a paper presented at the conference of the same name in Charlotte, N.C., March 5, 2001, 5–6.

3. 34 Code of Federal Regulations § 300.7(c)(9) (hereinafter C.F.R.).

4. *N.C. Procedures* at § .1501 A(8).

cause limited alertness to the educational environment due to limited strength, vitality, or alertness or heightened alertness to the surrounding environment. Third, the child's educational performance must be adversely affected by the disability. A child with limited alertness whose educational performance is not affected does not qualify for placement as OHI.⁵ Finally, OHI, like all other qualifying conditions, must create a need for special education services. Generally speaking, analysis of OHI eligibility first considers the child's health condition and its general effects on the child, then looks separately at the disability's effect on the child's educational performance.

Health Conditions That May Qualify a Child As OHI

A child who suffers from one of the conditions listed in the federal or state regulations listed above may be considered OHI. The list is not, however, exhaustive. Moreover, being diagnosed as suffering from one of these conditions does not automatically qualify a child as OHI eligible. The disabling condition must be chronic or acute and must result in limited strength, vitality, or alertness to the educational environment. Whether a particular student is classified as OHI will depend on the way the condition affects his or her alertness or responsiveness to the educational environment. Classification, therefore, must be determined on a case-by-case basis.

ADD/ADHD

The most frequent medical conditions under which students qualify for services as OHI are attention deficit disorder (ADD) and attention deficit hyperactivity disorder (ADHD). These conditions naturally lend themselves to the OHI classification in that both are characterized by an inability to focus,⁶ which usually contributes to decreased alertness to the educational environment. For example, a Pennsylvania hearing officer decided that a student qualified for OHI because his ADHD, and resulting impulsivity and inability to pay attention, adversely affected his educational performance.⁷ In New Hampshire, a hearing officer concluded that a student unable to control his motor activity and focus on

the tasks he was given was appropriately identified as OHI. The officer noted that the student did not remain seated, disrupted other students' work, and did not respond to directions.⁸

The Office of Special Education Programs in the U.S. Department of Education (OSEP) has issued several opinion letters regarding ADD and ADHD. Although such letters are not binding legal precedent, they do provide helpful guidance. The letters address several issues related to medical diagnosis.

First, OSEP has stated that a doctor's statement alone does not establish the basis for an ADD/ADHD student's OHI eligibility.⁹ Although a school district may choose to require a medical diagnosis to establish IDEA eligibility, a multidisciplinary team must independently determine that the student needs special education and related services due to the impairment.¹⁰ For example, in a New York case, a kindergarten child who was diagnosed with allergies, ADHD, and otitis media but demonstrated "generally satisfactory" work habits, social and emotional development, and readiness skills was found ineligible for special education services. A hearing officer determined that the child did not suffer limited strength, vitality, or alertness as a result of any condition.¹¹ Second, if the school system requires a medical diagnosis to help determine eligibility, the diagnosis must be provided at no cost to the parents. Third, if a school district uses alternative assessment measures administered by "qualified personnel" in place of a medical diagnosis by a licensed physician and these measures meet the evaluation procedures, the evaluation will be sufficient to establish OHI eligibility.¹²

In other guidance regarding ADD/ADHD, OSEP explains that, although students with ADD or ADHD are most often qualified for special education services under the OHI category, they may also qualify for these services as learning disabled (LD) or emotionally disabled (ED).¹³ Moreover, OSEP has further stated that even though the term *limited alertness* is not defined in IDEA or in the regulations, the condition it describes must be considered with respect to its effect on educational performance. For example, a student diagnosed with ADD may have a limited ability to attend to specific academic tasks because the disorder causes him or her to be overly alert to the general environment; evidence that the child's educational performance suffers as a result would

5. See, e.g., Lisbon Sch. Dist., 33 Individuals with Disabilities Education Law Report 172 (hereinafter IDELR) (State Educational Agency, Maine [hereinafter SEA Me. 2000]).

6. American Psychiatric Association, Fact Sheet on Attention Deficit/Hyperactivity Disorder (March 2001). Available at <http://www.psych.org> (last visited September 19, 2002).

7. Hempfield Sch. Dist., 29 IDELR 637 (SEA Pa. 1998); see also Pewaukee Pub. Sch., 23 IDELR 1015 (SEA Wis. 1995) (upholding student's classification as OHI where student was diagnosed with ADHD and suffered from seizures).

8. Derry Sch. Dist., EHLR 401: 217 [hereinafter Education for the Handicapped Law Report] (SEA N.H. 1988).

9. See also West Bend Sch. Dist., 34 IDELR 134 (SEA Wis. 2000) (noting that ADHD must cause limited alertness and an adverse educational effect to qualify a child for special education services).

10. Letter to Gallagher, 24 IDELR 177 (OSEP 1996).

11. Bd. of Educ. of the East Syracuse-Minoa Cent. Sch. Dist., 21 IDELR 1024 (SEA N.Y. 1994).

12. Letter to Williams, 21 IDELR 73 (OSEP 1994).

13. Joint Policy Memorandum, 18 IDELR 116 (Dept. of Education 1991).

satisfy the limited-alertness criterion and make the child eligible for special education services under the OHI category as long as the disability also causes a need for such services.¹⁴

Other Health Conditions

A number of specific health conditions qualify as disabling conditions, and some have met the limited-alertness criterion in particular cases. The Office of Special Education Program's admonition regarding medical diagnoses in the ADD/ADHD context applies to all health conditions: a medical diagnosis is insufficient in itself to qualify a child as OHI. For example, an Alabama child who never experienced asthma attacks at school and had no attendance problems did not qualify as OHI. The hearing officer determined that the child showed no signs of limited alertness, strength, or vitality.¹⁵

In the late 1980s, in several cases involving students with AIDS/HIV and hemophilia, students who continued to attend school were found ineligible for special education because they presented with no limitations of strength, vitality, or alertness that affected their educational performance.¹⁶ In Indiana, however, a student with AIDS and hemophilia who was hospitalized on several occasions did qualify as OHI. Because the student could not attend school, the hearing officer found AIDS and hemophilia to be chronic health conditions that limited his alertness in the educational environment.¹⁷

Allergies and chemical sensitivities may be considered in determining a child's placement as OHI as long as they cause limited alertness and adversely impact educational performance.¹⁸ In most of the published decisions, however, chemical sensitivities and allergies reported by a parent were not found to limit the student's strength, vitality, or alertness enough to adversely affect educational performance. In an Oregon decision, for example, a hearing officer determined that a student who suffered from "severe" chemical sensitivities and allergies did not qualify as OHI. Although the student had allergic rhinitis and benign idiopathic flushing, there was no evidence that her strength, vitality, or alertness were diminished sufficiently to affect her educational performance.¹⁹ In California, a parent claimed that her child suffered multiple chemical sensitivities to common waxes, cleaners, pesticides, and perfumes. Nonetheless, the student attended school regularly, performed well academically, was well behaved, and exhibited no symptoms of chemical exposure at

school. The hearing officer determined that as she exhibited no deficits in strength, vitality, or alertness at school and attended school regularly, she did not qualify as OHI. (The hearing officer did not consider the issue of educational performance.)²⁰ In an Indiana case, a child sensitive to formaldehyde, natural gas, and tobacco smoke and allergic to various plants and foods also suffered from a long list of ailments: asthma attacks, wheezing, nosebleeds, ear infections, breathing problems, headaches, abdominal pain, and lethargy. However, because the only physical condition observed by the child's teachers was a mild temperature, he was declared ineligible for special education services under the OHI classification.²¹

Chronic fatigue syndrome may also qualify a student for special education services as OHI. A California hearing officer determined that a student with this syndrome who had difficulty getting up in the morning and staying alert throughout the day qualified as OHI. He often missed school because of these symptoms and was described as "low energy."²² Like other conditions, such as ADD/ADHD, chronic fatigue syndrome may provide the basis for eligibility under another disability classification if the student meets the criteria for that classification.²³

In two cases, children with spina bifida did not qualify for special education services under OHI or any other disability category. In one case, the student was declared ineligible for special education services as OHI because she functioned in the average range intellectually and was socially well adapted. Although she was also receiving catheterization services, the Pennsylvania appeals panel noted that such services do not qualify as "related services" under IDEA unless the child is also receiving special education services.²⁴ In a similar case, an Alabama hearing officer determined that there was no evidence that a child's spina bifida adversely affected his educational performance. Even though he had no control over his bowels or bladder, he possessed normal strength, was alert, and was intellectually above average.²⁵

School districts and hearing officers have considered various other chronic health conditions with respect to special education services under the OHI classification. A Minnesota school's classification of a student suffering from epilepsy and spastic hemiparesis as OHI was upheld by a hearing officer because it would provide the most comprehensive services to meet the student's needs.²⁶ In another Minnesota case

14. Letter to Cohen, 20 IDELR 73 (OSEP 1993).

15. Jefferson County Bd. of Educ., 29 IDELR 690 (SEA Ala. 1998).

16. *Doe v. Belleville Pub. Sch. Dist. No. 118*, EHLR 559: 203 (S.D. Ill. 1987); *In re D. B.*, EHLR 507: 303 (SEA Conn. 1985) (finding student ineligible for special education because he could participate in school environment and was functioning within normal limits).

17. *In re Ryan W.*, EHLR 507: 239 (SEA Ind. 1985).

18. Letter to Sterner, 30 IDELR 266 (OSEP 1998).

19. Salem-Keizer Sch. Dist., 26 IDELR 508 (SEA Or. 1997).

20. Placentia-Yorba Linda Unified Sch. Dist., 22 IDELR 305 (SEA Cal. 1995).

21. *In re Christopher D.*, EHLR 508: 124 (SEA Ind. 1986).

22. Bret Harte Union High Sch. Dist., 30 IDELR 1014 (SEA Cal. 1999).

23. Letter to Fazio, 21 IDELR 572 (OSEP 1994).

24. Susquehanna Sch. Dist., 26 IDELR 779 (SEA Pa. 1997).

25. Mobile County Bd. of Educ., 26 IDELR 705 (SEA Ala. 1997).

26. Indep. Sch. Dist. No. 196, 23 IDELR 134 (SEA Minn. 1994).

involving an epileptic student, an administrative law judge determined that a student continued to qualify for special education services as OHI even though his seizures were controlled by medication.²⁷ A New York hearing officer held a child with Tourette's syndrome ineligible for OHI classification because she exhibited no symptoms of Tourette's in class. The officer also found that the same child's ADHD did not impair her academic performance.²⁸ A Maine hearing officer denied eligibility under OHI to a student with diabetes whose disease caused occasional inattentiveness and missed class time for blood-sugar testing and administration of glucose. The diabetes did not limit the student's alertness to the degree that her educational performance was adversely affected.²⁹

Most of the health conditions described in the federal and state regulations are chronic by nature; a limited number are acute health conditions brought about by accidents. In a Texas decision, a student who had sustained multiple injuries was declared ineligible for OHI classification. During one eighteen-month period, she suffered a shoulder injury, received a blow to the head at school, was involved in two automobile accidents, underwent surgery for an ovarian cyst, developed a lung infection following surgery, and was diagnosed with a blood disorder. The fact that she had failed some classes and that her achievement scores were below grade level did not qualify her for special education services. Subsequently, after she was diagnosed with epilepsy, she was found eligible as OHI.³⁰ In a Maine case, a hearing officer declared a student eligible for special education services as OHI after she missed school for health reasons on ninety-two days of the academic year. She was injured in an automobile accident in September; by December she had lost so much weight that she could not have surgery on her damaged jaw; and in February she had oral surgery that included wiring her jaws shut. This decision does not appear to be reflective of the established law, however. The hearing officer seemed to be motivated by his concern that the student was not benefiting from her education, even though he acknowledged that she had many absences "for which no reasonable account has been given."³¹

To summarize, any acute or chronic health condition—regardless of whether it is mentioned above—can meet the OHI definition if it results in limited alertness to the educational environment. This limited alertness may be manifested by a low level of strength, vitality, or general alertness or by heightened attentiveness to environmental stimuli. Determina-

tion of OHI eligibility must be made on a case-by-case basis. A medical diagnosis is not a necessary, nor by itself a sufficient, criterion for establishing OHI eligibility. A school system may require a medical assessment, but if it does, the school, not the child's parents, must bear the costs of such an assessment. The finding of a medical condition that causes limited alertness is not enough, however. The condition and diminished alertness caused by the condition must also adversely affect the student's educational performance.

Adverse Effect on Educational Performance

To qualify a child for the disability categories established under IDEA, including OHI, the disability must adversely affect his or her educational performance and create a need for special education services.³² The term *educational performance* is not defined in IDEA or in the regulations, and OSEP has consistently chosen not to define it. Instead, OSEP directs school officials to consider both academic and nonacademic skills and progress in determining whether a child's impairment adversely affects his or her educational performance: "The assessment is more than the measurement of the child's academic performance as determined by standardized measures."³³ Information regarding learning support received outside of school should also be used in assessing whether the child's achievement is commensurate with his or her age and ability levels. An OSEP opinion letter states that even students who are making progress within the regular educational environment, as well as students with physical impairments who perform well in school, may require special education services. Moreover, OSEP has repeatedly stated that the meaning of the terms *educational performance* and *adversely affects* must be established on a case-by-case basis in light of particular facts and circumstances.³⁴

Courts, administrative law judges, and state hearing officers express differing views about the meaning of *educational performance*. The issue arises most frequently in cases of children with poor socialization skills who exhibit behavioral problems.³⁵ For example, in one case, a student diagnosed with ADHD scored in the average to superior range on almost all standardized tests but experienced social problems. The parents challenged the hearing officer's determination that the student was not OHI, arguing that his difficulties in "social emotional" development had not been taken into account.

27. Indep. Sch. Dist. No. 281, 33 IDELR 265 (SEA Minn. 2000).

28. Bd. of Educ. of the City Sch. Dist. of the City of New York, 26 IDELR 1331 (SEA N.Y. 1997).

29. Lisbon Sch. Dept., 33 IDELR 172 (SEA Me. 2000).

30. Rockwall Indep. Sch. Dist., 21 IDELR 403 (SEA Tex. 1994).

31. Maine Sch. Admin. Dist. 17, 20 IDELR 298 (SEA Me. 1993).

32. Letter to Sawyer, 30 IDELR 540 (OSEP 1998).

33. Letter to Lillie/Felton, 23 IDELR 714 (OSEP 1994).

34. Letter to Pawlisch, 24 IDELR 959 (OSEP 1995).

35. See, e.g., Leslie B. by and through John C. v. Winnacunnet Coop. Sch. Dist., 28 IDELR 271 (D.N.H. 1998, CV-94-530-SD) (holding that a student's

The court upheld the hearing officer's decision, stating that "the achievement of passing marks is one important factor in determining educational benefit."³⁶

The majority of courts and administrative officers have considered the consistency of a student's performance at or above grade level in assessing his or her educational performance, focusing primarily on grades and achievement test scores over time.³⁷ For example, a federal appeals court held that J. D., an academically gifted student with emotional and behavioral problems, did not qualify for services under the IDEA because his emotional disability did not have an adverse effect on his educational performance. The court based its decision on Vermont's regulations, which mandated that grade or age norms be considered, and on J. D.'s consistent performance at or above grade level. Throughout his academic career, J. D.'s grades were above or well above the norm for his age group, and his achievement test scores indicated that he had "superior" verbal and language skills and "highly developed" conceptual and abstract thinking skills. One of his teachers rated his academic ability as "outstanding." A psychologist who evaluated J. D. found that he suffered from frustration, boredom, alienation, apathy, and hopelessness as a result of not having intellectual peers at school and that these emotions led to passive resistance and aggressive behavior at school. Although the psychologist recommended that J. D. be identified as emotionally disabled, the court found that his emotional disability did not adversely affect his basic educational skills.³⁸

Similarly, the U.S. Court of Appeals for the Fourth Circuit determined that a student who had advanced from grade to grade until the eleventh grade was not eligible for special education services. He had a C+ average in the tenth grade. In the eleventh grade, however, he stopped attending class, used drugs and alcohol on a regular basis, and participated in other criminal activities. The court, holding that the drop in his grades was a direct result of his delinquent behavior rather than of emotional disturbance, declared him ineligible for special education services. The court stated emphatically that the adverse impact on educational performance must be caused by the disability.³⁹

In an Oregon case, a student diagnosed with Asperger's syndrome earned above-average grades in her academic

subjects and demonstrated "satisfactory" progress in social skills, work, and study habits. Her achievement test scores indicated that she was at or above grade level in all areas and significantly above grade level in reading and math. Her intelligence test scores placed her overall cognitive abilities within the average range. The state hearing officer determined that the child had no need for special education because accommodation and related services she was receiving under a 504 plan allowed her to make progress within the regular educational environment, as indicated by her grades and performance on academic achievement tests. She remained eligible for services under Section 504 (Rehabilitation Act of 1973).⁴⁰ Similarly, a Pennsylvania hearing officer determined that a student with chronic fatigue syndrome who was receiving homebound instruction for two hours per week was ineligible for special education services. Evaluations and standardized tests indicated that she was functioning within the average range of intelligence and that her level of academic achievement was in keeping with her abilities. She was also making good grades in her regular classes and progressing normally from grade to grade. The hearing officer determined that although chronic fatigue syndrome qualified as a disability, the student was ineligible for special education services because her disability did not adversely affect her academic performance.⁴¹ On the other hand, a Texas hearing officer determined that a student with ADHD was eligible under OHI because his incompletes and low grades were a result of his attention and behavior problems.⁴²

Grades and achievement test scores are not the only factors that some courts and administrative agencies consider in determining whether a health condition or other disability has an adverse effect on a child's educational performance. Some courts have not been persuaded that it is sufficient to look at high or average grades or a student's progression from one grade to the next; they have also taken into account the extra services or modified instruction a student has received, as recommended by OSEP. For example, an orthopedically impaired student who received A's in her classes was provided special instruction in one-handed typing and was given shorter writing assignments, multiple textbooks, and mobile assistance services. A federal appeals court held that special

social difficulties were a product of her disability and contributed to the adverse affect on her educational performance); Christopher T. v. San Francisco Unif. Sch. Dist., 553 F. Supp. 1107, 1120 (N.D. Cal. 1982) ("[E]motional and social needs [may be] . . . unseverable from [a] child's educational needs.")

36. Lyons v. Smith, 829 F. Supp. 414 (D.D.C. 1993).

37. See, e.g., Pocono Mountain Sch. Dist., 36 IDELR 224 (SEA Pa. 2002).

38. J. D. by J. D. v. Pawlet Sch. Dist., 224 F.3d 60 (2d Cir. 2000).

39. Springer by Springer v. Fairfax County Sch. Bd., 134 F.3d 659 (4th Cir. 1998).

40. Corvallis Sch. Dist. 509J, 28 IDELR 1026 (SEA Or. 1998).

41. Wayne Highlands Sch. Dist., 24 IDELR 476 (SEA Pa. 1996); see also Unified Sch. Dist. No. 489, 22 IDELR 390 (SEA Kan. 1994) (finding student with seizure disorder ineligible for special education because student did "quite well and [was] within the average range overall."); see also West Haven Bd. of Educ., 36 IDELR 221 (SEA Conn. 2002) (determining that student did not qualify as learning disabled or emotionally disabled where diagnoses of conduct disorder and dysthymia [a mild, chronic form of depression] did not affect his classroom behavior, class participation, consistently high grades, high SAT scores, or high achievement scores).

42. Ingram Indep. Sch. Dist., 35 IDELR 143 (SEA Tex. 2001).

education services were justified because if the student had not received personalized instruction and supplementary services, her impairment would have adversely affected her performance.⁴³ In Arizona, an administrative law judge ruled that a student who was visually impaired was eligible for special education services and related services, even though he received straight A's in age-appropriate classes in the private school where he was enrolled. The student received a number of modifications within the regular environment, including preferential seating, use of special equipment and visual aids, and individualized instruction from the teacher.⁴⁴

Extensive help from a parent may also be considered by a court in determining a child's eligibility for special education services. A federal district court recently held that a Pennsylvania student with ADD qualified for special education services, even though his test scores demonstrated high average intellectual functioning. His grades ranged from A's to C's, but his psychological evaluation demonstrated weaknesses in auditory memory, organization, and concentration. The court, considering this evaluation and the extensive help provided by the student's mother, determined that his ADD adversely affected his educational performance and qualified him for special education services.⁴⁵

Behavior is also a factor in some cases. A federal district court determined that a student with ADHD qualified for special education as OHI despite well-above-average grades and test scores. The behavior scales submitted by the child's teachers indicated significant levels of oppositional behavior, hyperactivity, restlessness, impulsivity, anxiety, and problems with social interaction.⁴⁶ The court stated that "'educational need' is not strictly limited to academics, but also includes behavioral progress and the acquisition of appropriate social skills as well as academic achievement."⁴⁷

Thus average performance in a regular educational environment will not necessarily disqualify a child from receiving special education services. For example, a federal district court determined that a child with ADHD, a seizure disorder, asthma, stuttering, articulation problems, a lateral lisp, and hearing difficulties was eligible for special education services, even though he was performing at the average level for his

grade and progressing on schedule from one grade to the next. "The fact that a child, despite a disability, receives some educational benefit from regular classroom instruction should not," the court held, "disqualify the child from eligibility for special education benefits if the disabilities are demonstrated to adversely affect the child's educational performance."⁴⁸ Similarly, a student with AIDS was found eligible to receive special education services as OHI. In spite of numerous absences from school, he was able to earn average grades, which the hearing officer considered evidence of the educational appropriateness of his placement in the regular classroom.⁴⁹

Although most courts, administrative judges, and hearing officers assessing whether a health condition is adversely affecting a child's educational performance focus on grades and test scores, school officials also need to consider the child's progress from grade to grade, work and study habits, and social skills and behavior. Taking into account the type and degree of outside or additional learning support the child receives from a teacher, parent, or tutor will also assist school administrators to assess whether the child is progressing in accordance with his or her age and ability.

Summary

School officials deciding whether a child qualifies for special education services as OHI can begin by asking the following questions:

1. Does the student have a chronic or acute health problem?
2. Does the student have limited strength, vitality, or alertness? If not, does he or she have heightened alertness to general environmental stimuli?
3. If so, do the student's limited strength, vitality, or limited alertness reduce his or her alertness in the educational environment? Or does the child's heightened alertness to the surrounding environment limit his or her alertness to the educational environment? If so, is the limited, or heightened, alertness due to a chronic or acute health problem?
4. If so, is the student's educational performance adversely affected by the limited alertness?
5. Finally, if so, does the disability create a need for special education services? ■

43. *Yankton Sch. Dist. v. Schramm*, 93 F.3d 1369 (8th Cir. 1996).

44. *Tucson Unified Sch. Dist.*, 30 IDELR 1000 (SEA Ariz. 1999).

45. *West Chester Area Sch. Dist. v. Bruce and Suzanne C. ex rel. Chad C.*, 194 F. Supp. 2d 417 (E.D. Pa. 2002); but see *West Haven Bd. of Educ.*, 37 IDELR 56 (SEA Conn. 2001) (holding that a student with a B average was ineligible for special education services despite the mother's testimony that she spent hours every day helping the student with homework).

46. *Venus Indep. Sch. Dist. v. Daniel S.*, 2002 U.S. Dist. LEXIS 6247 at * 33-34 (N.D. Tex., Apr. 11, 2002).

47. *Id.* at *34.

48. *Corchado v. Bd. of Educ.*, 86 F. Supp. 2d 168, 176 (W.D.N.Y. 2000).

49. *In re Ryan W.*, EHLR 507: 342 (SEA Ind. 1986).