**Good Grades and IDEA Eligibility**

1. **Application of the Eligibility Criteria for OHI** – Federal law controls in this area.

Federal law defines Other Health Impairment as follows:

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, sickle cell anemia, and Tourettes syndrome; and

      (ii) Adversely affects a child’s educational performance. [§300.8(c)(9)]

The Florida criteria for eligibility requires “evidence of another health impairment that results in reduced efficiency in schoolwork and adversely affects the student’s performance in the educational environment”. I would draw your attention to the Florida Department of Education Exceptional Student Education Compliance Manual which clarifies that the requirement in Rule 6A-6.030152(4)(a), F.A.C. of “reduced efficiency in school work and adversely affecting the student’s performance in the educational environment” to require documented evidence of a health impairment that adversely affects the student’s performance in the **educational environment.**

Please see also OSEP’s *Letter to Lillie Fenton* (copy enclosed) and *Letter to Lybarger* (copy enclosed). OSEP’s Letter to Lybarger clearly states that consideration of impact on educational performance should be made on an individual basis and includes both non-academic and academic areas. It also states that educational performance means more than “academic standards as determined by standardized measures.” *Letter to Lillie Fenton* clarifies this position with regard to an eligibility determination.

See also, the attached order involving the Manatee School Board and a very intelligent and high performing student with ADHD. The District had determined the student was ineligible because of his good grades and high achievement scores. The ALJ held that the student was a student with a disability and rejected the District’s contention that educational performance was limited to academic performance. The ALJ determined it was inappropriate to use passing grades or achievement test scores as a “litmus test” in eligibility determination decisions.

1. **Unique Educational Environment** –I would direct your attention to OSEP’s *Letter to Lillie Fenton* which states that consideration should be given to extra learning support given to a student because such information might indicate that the student’s current educational achievement reflects the “service augmentation” not what the student’s achievement would be without such help. This would include both the work being done with the student by his parents, his own extraordinary efforts, and “informal” accommodations or instruction by the school.

This research is a brief resume of the state of the law. There is considerable further case law and advisory opinions available, including a federal case out of Maine (Mr. and Mrs. I v. Maine School Administrative District, 04-165-P-H, ), and OSEP Letter to Annoymous, Letter to Clark, and Letter to Pawlish. This documents are available upon request.

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