

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. West Haven Board of Education

Appearing on behalf of the Parents: Attorney Jennifer D. Laviano, P.C.  
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Appearing on behalf of the Board: Attorney Michelle C. Laubin  
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Appearing before: Attorney Patricia M. Strong, Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Should the Student have been identified as Other Health Impaired (OHI) by reason of Attention Deficit Disorder (ADD) by the Planning and Placement Team (PPT) meeting on June 26, 2001?
2. Did the Board fail to provide an appropriate program, placement and/or modifications for the student to receive a free appropriate public education (FAPE) in the 2000-01 and 2001-02 school years?

**PROCEDURAL HISTORY:**

The hearing request was filed by the Parents' attorney on June 27, 2001. (Hearing Officer Exhibit 1.) A prehearing conference was held on July 6, at which time the Parents' attorney stated that the Mother was out of state for the month of July. The Board's attorney stated that the school personnel would not be available until August 24. At the mutual convenience of the parties the hearing was scheduled on August 30 and 31. At the hearing on August 30, the Parents' attorney stated that the medical witnesses were unavailable at that time. The hearing was cancelled for August 31. Additional hearing dates were agreed on for September 26, 28 and October 1, 4 and 5. On September 10, the Parents' attorney requested that two of those dates be cancelled because the medical witnesses were not available and the attorney had a hearing in New York on October 1.

After corresponding with both attorneys, the Hearing Officer ordered that the Parents would be permitted to call Dr. Shulik as a rebuttal witness and that the hearing would continue on September 28, October 4 and 5. On September 20, the Parents' attorney sent a letter to the Hearing Officer stating that Dr. Racusin would not be called and that the only witnesses would be the Mother and Dr. Shulik. (Exhibit HO-2.) The Board objected to starting its case before the Parents called Dr. Shulik. The Board's objection was overruled, however, it was allowed an opportunity to present surrebuttal evidence. On September 28, the Parents' motion to sequester witnesses was granted, however, the Board was permitted to have one representative seated with its attorney at all times in addition to any Board witness who was testifying. Additional hearing dates were scheduled on October 9 and 10. On October 5, the Parents' attorney requested that one of the student's teachers, Mrs. Cahill, be made available to testify as a rebuttal witness on October 9. The Board's attorney objected because of the short notice and the holiday on October 8. The Hearing Officer ordered the Board to make reasonable efforts to secure Mrs. Cahill's attendance, which was accomplished. The Parents filed 29 exhibits, designated herein as P-1 through P-29. Exhibit P-29 was offered on the last day of hearing and not provided to the Board five days prior to the hearing date. Therefore, it was marked in the record as "ID only" (identification only). The Board was allowed five days to object because of lack of authentication. Since no objection was made within the time allowed, it was thereby admitted as a full exhibit in this decision. The Board filed 101 exhibits, designated herein as B-1 through B-101. At the conclusion of the hearing, the Parents requested 30 days to file simultaneous briefs, so that they could obtain transcripts to assist them. The Board's attorney objected and requested that the Hearing Officer shorten the time for filing briefs to two weeks or order that the Board be provided transcripts at no cost. The Hearing Officer denied both requests of the Board's attorney and set November 9 as the deadline for briefs. The decision deadline was extended to November 28, 2001 at the Parents' request. The Parents' attorney requested an additional five days because of illness. Both parties filed briefs on November 14. The deadline was extended to December 17 by the Hearing Officer because of medical reasons.

### **SUMMARY:**

The student is a senior in the public high school. He has never been classified as eligible for special education and related services. He has never been referred by any of his teachers or school staff for special education needs. In April 2001 the Parents requested due process because of the alleged failure of the Board to classify the student as eligible for special education. There had been no PPT held at that time. The Parents sought to stay the action of the Board in proceeding with an expulsion hearing. The Parents withdrew the request and the due process hearing was dismissed. Parent requested a PPT meeting, which was held in May 2001. The PPT met again in June 2001 and determined that the student was not eligible for special education and related services. This second due process request was filed. The Parents claim that the Board did not do a full and fair evaluation and was biased in its assessment because of the pending expulsion hearing. The Board claims that there is no basis to conclude that the student is in need of special education and the Parents were motivated by the expulsion hearing to seek the student's eligibility for special education. The parties have filed proposed findings of fact and

conclusions of law and provided copies of cases in support of their legal claims. The findings and conclusions set forth herein, which reference specific exhibits or witness' testimony, are not meant to exclude other supportive evidence in the record.

**FINDINGS OF FACT:**

1. The student is currently 17 years old (DOB 12/6/84) and has been enrolled in the LEA since kindergarten. (Testimony of Mother and Exhibit B-70)
2. The student was never referred for special education services in elementary or middle school. (Testimony of Mother and Billie Ladd, Director of Pupil Services for the Board)
3. The Parents became concerned about the student in ninth grade because he did poorly in the first quarter in honors classes. The Mother spoke to his teachers and the guidance counselor after the first quarter report card. She requested progress reports from the student's teachers every two weeks. (Testimony of Mother; Exhibits P-1 through P-4.) This continued in tenth and eleventh grade. The student's grades would start off well, then drop until the Parents intervened. The student was periodically missing numerous homework assignments and at times his grades were in the D/F range on progress reports. (Testimony of Mother and Exhibits P-5 through P-10; P-12 through P-20; P-23 and P-28)
4. His final grades for ninth grade were as follows: English C+, Keyboarding A, Spanish B+, Algebra II Honors C, Physical Education (PE) A, Biology Honors B-, History A. He accumulated sufficient credits to be promoted to 10<sup>th</sup> grade on schedule. (Exhibits B-52 and B-97)
5. During the 1999-2000 school year, the student attended tenth grade at the public high school. His final grades were as follows: English B, Technology & Journalism Media B-, Spanish B+, Math (GTA) B-, Health A, Chemistry Honors C, History (Civilization) Honors C+. He accumulated sufficient credits to be promoted to eleventh grade on schedule. (Exhibits B-52 and B-97)
6. The Mother testified that the reason the student did so well was that she and his father spent hours every night helping the student with homework and staying in constant contact with the school to make sure the student was turning in his assignments. The Mother met resistance from the teachers and the guidance counselor, who felt she was expecting too much from the student. The school didn't care about the student because he wasn't a behavior problem. (Testimony of Mother)
7. On January 12, 1999, the student was diagnosed by Dr. Gary Racusin, Ph.D. Clinical Psychology, with oppositional-defiant disorder and dysthymic disorder. In or about April 2001, Dr. Racusin updated the diagnosis to conduct disorder, attention-

deficit/hyperactivity disorder not otherwise specified, and dysthymic disorder. (Exhibit B-38.) The Mother had called him because he had treated her older son. In the fall 1999, Dr. Racusin was seeing the student two to three times per month. Dr. Racusin suggested a referral to a psychiatrist, Dr. Paul Sadowitz, M.D. (Testimony of Mother.) Neither Dr. Racusin nor Dr. Sadowitz testified in this hearing. The only information from them, other than hearsay testimony from the Mother, were letters from each doctor, which were furnished to the Board in May and June 2001. (Exhibits B-38, B-64 and B-65.) It is not clear when Dr. Racusin referred the student to Dr. Sadowitz. It was apparently done after the student was tested by Dr. Alan Shulik in January and February 2001. Dr. Sadowitz, after a review of his records and a clinical interview with the student, diagnosed him with Attention Deficit Disorder, inattentive type, mild and prescribed a trial of stimulant medication. (Exhibit B-64.) On June 22 Dr. Racusin sent a letter to the Parents in which he expanded on the ramifications of his ADD NOS diagnosis: "ADD NOS is a diagnostic category assigned to individuals displaying symptoms of inattention or hyperactivity that do not meet full criteria for ADHD. . . . Dr. Shulik's recent psychological assessment found that [student's] score on a measure of ADHD symptoms fell in the borderline range, and the ADD NOS diagnosis addresses this finding coupled with [student's] difficulties with organization, planning for longer-term assignments, and following through with completing and turning in homework assignments without close supervision." Dr. Racusin ended the letter with a suggestion that "it may be appropriate for the PPT to consider whether a 504 plan might be helpful for [student]." (Exhibit 65)

8. On December 1, 2000, while in eleventh grade, the student was suspended from school for ten days for violation of the drugs/alcohol policy. (Exhibit B-10.) On April 9, 2001, the student was arrested and charged with 10 counts of illegal sale of controlled substance, 10 counts of illegal possession of controlled substance and 5 counts of larceny 6<sup>th</sup> degree. (Exhibit B-30.) The arrest was the culmination of a police investigation into the student's role in the theft of drugs from his place of employment, a local pharmacy, and was related to the reason he was suspended in December 2000. The High School principal, Ronald Stancil, requested that the Superintendent of Schools seek expulsion of the student. (Exhibit B-29.) A notice of an expulsion hearing was sent to the Parents on April 16, 2001 scheduling a hearing on April 27. (Exhibit B-31.) On April 24, a second notice was sent to the Parents, changing the hearing date to May 1, 2001. (Exhibit B-34)
9. The Parents complained to the Superintendent that the student was being treated unfairly. (Exhibits B-14 and B-32; Testimony of Mother and Mr. Martin Taylor, Assistant Principal of the high school.) On April 27, 2001 the Parents filed a due process hearing request, which was withdrawn by the Parents' attorney on May 1, 2001 and dismissed by another hearing officer in May 14, 2001. (Exhibits B-36, B-39, B-41 through B-43, B-46 and B-49.) No request was made by the Parents during ninth or tenth grade for a PPT. No one at the school was made aware that the student was receiving psychological treatment prior to May 2001. (Testimony of Ms. Ladd.) Although the student's older brother is identified as eligible as OHI because of ADD,

Mother claimed at this hearing that she did not know she could ask for a PPT to determine eligibility of this student. (Testimony of Mother.)

10. A PPT meeting was held on May 21, 2001 to discuss the Parents' referral for special education. The psychological testing report of Dr. Alan Shulik, Ph.D. in psychology and licensed school psychologist, was reviewed, as well as the student's grades for the first three quarters of the school year, general health and disciplinary reports. (Exhibit B-51 and Testimony of Mother, Ms. Ladd, Mr. Taylor, Mr. Robert Jeffords (guidance counselor), Mr. Anthony Pedevillano (teacher of video technology). Other PPT members, who did not testify, were the Father, Ms. Brita McGee (special education teacher) and Ms. Laurie Forsythe, R.N. (school nurse). The nurse noted that the student never visited the nurse's office. (Exhibit B-51.) The PPT recommended an evaluation of the school functioning, including cognitive, achievement, processing, attention/concentration/activity and behavior assessments. The school psychologist, Diane Keefe, was responsible for the report. (Exhibits B-51 and B-54; Testimony of Ms. Ladd and Ms. Keefe)
11. The evaluation by Dr. Shulik was conducted in January and February 2001. It was done on the referral of Dr. Racusin who had been treating the student for two years for conduct problems, academic problems and emotional issues. Dr. Racusin wanted an evaluation to explain why the student was not responding to outpatient treatment. Dr. Shulik met with the student and his parents and talked with Dr. Racusin several times. (Testimony of Dr. Shulik; Exhibit B-47.) Dr. Shulik's evaluation of the student did not focus on educational needs. He administered the Brown Attention Deficit Disorder (ADD) Scales to determine whether the student had an Attention Deficit Disorder. The rating scales were completed by the Mother and an overall rating based on reports from Dr. Racusin that the student is disorganized was used. Mother rated the student as having difficulty getting started on tasks and sustaining effort. Dr. Shulik noted that the overall score was in the "borderline range." Dr. Shulik also administered the following tests: House - Tree - Person Drawings (H-T-P), Kinetic Family Drawing (KFD), Thematic Apperception Test (TAT), Sentence Completion Test, Rorschach Test, Behavior Assessment System for Children (BASC) and Minnesota Multiphasic Personality Inventory - Adolescent Edition (MMPI-A). The test results, both objective and projective, are set forth in the report. On the Brown ADD Scales, Dr. Shulik found the student scored in the borderline range for ADD and recommended a trial of anti-hyperactivity medication. On the MMPI-A Dr. Shulik found a classic conduct-disorder profile, which supports the probability that the student is or has been involved in using drugs and/or alcohol. Dr. Shulik recommended a treatment plan which included random drug testing. He did not believe the student suffered from depression as a primary diagnosis. On the BASC both parents completed the ratings and differed markedly. The Father rated the student in one area of clinical elevation - conduct disorder. The Mother gave elevated clinical ratings for conduct disorder, hyperactivity, depression, withdrawal and attention. The report is dated February 4, 2001. (Exhibit B-47)
12. A full psycho-educational evaluation was completed in June 2001 by Ms. Keefe. (Exhibit B-54; Testimony, Ms. Keefe.) The student achieved the following scores on

the Wechsler Adult Intelligence Scale III (WAIS III): Verbal IQ 123, Performance IQ 122, Full Scale IQ 125. His scores on all of the subtests of the WAIS III were average to above average. Id. Ms. Keefe also administered the Woodcock Johnson Revised (WJ-R) Test of Achievement. He achieved average to superior scores on all aspects of the WJ-R. The Wide Range Assessment of Memory and Learning (WRAML) was administered to test for any memory or processing difficulties that might be present. No difficulties in memory or learning were discovered. The student exhibited average to well above average skills in all aspects of memory and learning, with an overall memory-screening index in the above average range. Id.

13. Ms. Keefe also administered checklists from the Behavior Assessment System for Children (BASC) to six of the student's teachers. Of the six checklists distributed, one was not scorable because too many responses were omitted. That was Ms. Cahill's checklist, the teacher who testified as a rebuttal witness for the Parents. Of the remaining five checklists, no teacher rated the student's behavior in the clinically significant range. The student checklist was given to the student to complete, who rated his own behavior as typical compared to his peers. (Testimony of Ms. Keefe; Exhibit B-54)
14. Ms. Keefe administered the Attention Deficit Disorder Evaluation Scales (ADDES). Six of the student's teachers completed the ADDES checklists, and all rated his behaviors as being in the average range compared to his peer group. None of the teachers rated the student in the clinical or at-risk range for problems associated with attention, concentration, or hyperactivity. Id.
15. Ms. Keefe concluded that: "While previous evaluation [Dr. Shulik's] conducted outside of the school system supports a diagnosis of conduct disorder and suggests AD(H)D, the behaviors associated with these disorders are not observed in the school setting." (Exhibit B-54 at 7)
16. The PPT reconvened to review the results of the Ms. Keefe's evaluation on June 26, 2001, the last day of school for the 2000-2001 school year. The Parents also provided Dr. Sadowitz' letter dated June 21, 2001 and a second letter from Dr. Racusin dated June 22, 2001. (Exhibits B-64 through B-66; Testimony, Mrs. Ladd and Mother.) The PPT was attended by the same individuals as the May 21 PPT, except there was a different school nurse, Carol Roche, present. The PPT reviewed the student's grades for the fourth marking period and final exams for the year, which are reported in the minutes of the PPT meeting:

Course 4<sup>th</sup> marking period Final Exam

English A+ A

Video B C

Math (GTA) C+ No grade

Physics Honors A- A-

Psychology A- A-

U.S. History A+ A+

The PPT agreed that the student did not have a Specific Learning Disability (SLD) or Serious Emotional Disturbance (SED). The only category of special education eligibility that was considered and rejected was OHI as a result of ADD. The school-based members of the PPT agreed with Ms. Keefe that two settings were required to establish the diagnosis of ADD under the DSM-IV and that the student had no clinically significant findings at school and borderline findings outside of school. He, therefore, did not meet the diagnosis. Further, there was no evidence of any need for special education instruction since he did very well on his grades. (Exhibit B-66 and Testimony of Ms. Keefe.) Although Ms. Ladd never met the student personally, she attended both PPTs, reviewed all school records, spoke to Mr. Taylor, Mr. Jeffords and the elementary and middle school principals and fully concurred with the school-based team that the student did not require special education services. Ms. Ladd also called Dr. Racusin, but he could not tell her anything beyond what was stated in his letters. (Testimony of Ms. Ladd)

17. The Mother claimed that the student would have received much lower grades if he had not been helped by his Parents and that he was taking Concerta (an anti-hyperactivity medication) during the testing. The PPT was not persuaded. (Exhibit B-66 and Testimony of Mother)
18. The Board presented teachers from each of the student's years of high school to testify regarding his lack of behaviors consistent with ADD. Mr. Richard Bradbury, the student's ninth grade English teacher, Mr. Pedevillano, tenth and eleventh grade video teacher, Ms. Mary Janeczek, eleventh grade SAT teacher and Math Department Head, testified that the student was a typical teenager who occasionally did not do his homework, that he was bright, able to sit in class and pay attention for long periods of time, including tests. Mr. Pedevillano testified that the student excelled in taking notes and quizzes, performing better than 95% of the class. He did 80-90% of his homework. He took advantage of extra credit opportunities, such as videotaping high school basketball games. Ms. Janeczek testified that the student was one of the strongest, if not the strongest, in the SAT math review class last year. He received a score of 630 on the SAT math test, which was the top score in the class of 25. He was able to focus and do his work on time. Her grading policy for the course was that if the student achieved a score of 600 or higher on the SAT math test and completed the course work, the student received an A, which this student did.
19. Mr. Jeffords, the student's guidance counselor since the end of ninth grade, testified that he spoke to the student's Parents numerous times and that he coordinated the progress reports, which the Parents wanted for the student and his older brother. Mr. Jeffords often delivered the progress reports to the student and talked to him about the results. The fact that the progress reports were done did not indicate the student needed special education, but the Parents had a right to request them and the school would provide them. He did not believe the student was in need of special education. The student had a very challenging course load. The student had no disciplinary or attendance issues at school. Although Mr. Jeffords had frequent calls from the Parents, prior to May 2001, neither mentioned concerns about special education,

ADD, psychological treatment or diagnoses or medication. (Testimony of Mr. Jefford)

20. Ms. Marguaret Cahill, the student's math teacher in tenth and eleventh grade, was called as a rebuttal witness by the Parents. She testified that the student was inattentive at times, but she did not think it was unusual. His homework was generally done. Her policy is that all homework must be turned in to get credit for the course. Sometimes the student would turn in homework late, which was not unique to him. On September 21, 2000, the progress report states that the student was sitting in her seat looking at her grade book. Ms. Cahill thought he was marking his homework as done. She confronted him and he admitted it. She did not recall any strange behavior by the student. In the GTA (Geometry, Trigonometry and Algebra III) course, a two-year course, which is the most difficult course in the high school, the student did as well or better than most. He received a passing score on the math portion CAPT test, so he did not have to take the final exam. That is why his grade is "N" on his report card. He had no problem sitting for two-hour exams in her class. In her experience with students with ADD, they are inattentive, unable to focus, not completing work, not staying on task. This student had a very high quality of work in a very demanding class and received A's on his notebook.
21. Dr. Shulik testified that the student has borderline ADD not hyperactivity type. There were no behaviors during testing and one to one with Dr. Shulik to indicate ADD. He did not focus his testing or report on educational needs. Dr. Shulik's impression from the Parents was that the student was doing well in school. He didn't think school performance was a high priority of theirs. Dr. Shulik has attended hundreds of PPTs and is familiar with them. He reviewed Ms. Keefe's report. He did not change his opinions about the ADD diagnosis and stated that his report and Ms. Keefe's dealt with different domains – cognitive and psychological. Dr. Shulik understood that the Parents would take his diagnosis of ADD to the PPT and they would decide if the student needed special education. Dr. Shulik could not say whether the student needs special education services. He appears to be functioning well according to the numbers. Dr. Shulik agreed that the DSM-IV diagnosis of ADD required two different settings. His report did not have available the school setting. If he had Ms. Keefe's report available when he wrote his report, he would have considered it a discrepancy and investigated further. In order to assess the validity of Ms. Keefe's report, he would need to review the raw scores. These had been destroyed after the testing was done by Ms. Keefe in accordance with a school policy. (Testimony of Dr. Shulik)
22. The Mother had also disputed the grades received by the student in ninth and tenth grade, which she contended should be higher, thereby making the student eligible for consideration to the National Honor Society. Initially, Mr. Stancil, the school principal had calculated the student's cumulative grade point average at 3.707. (Exhibit B-35.) He then corrected it to 3.239, which was less than the 3.35 needed for honor society applications. (Exhibit B-52.) (See also Exhibits B-25, B-40, B-44, B-45, B-50, B-56 and B-57) for other correspondence on this issue. For purposes of this decision, the grades reported by the school on the transcript were used, which indicate



that as of the end of the third marking period of eleventh grade, the student ranked 58 in the 359 students in the class of 2002 and had a cumulative grade point average of 3.239. (Exhibit B-97)

### **CONCLUSIONS OF LAW:**

1. The Parents argue that the student qualifies for and is entitled to receive a free and appropriate public education (“FAPE”) with special education and related services under the provisions of state and federal laws because the Board has failed to prove otherwise. Connecticut General Statutes, Sections 10-76 et seq. and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1401, et seq. A “child with a disability” is defined under the federal law as “a child evaluated in accordance with Sec. 300.530-300.536 as having . . . an other health impairment . . . and who, by reason thereof, needs special education and related services.” 34 C.F.R. 300.7(a)(1). See also IDEA Section 1401(a)(3). If a child with a disability is evaluated and found to need only a related service, as defined by state law, the child is not considered a child with a disability for purposes of IDEA. 34 C.F.R. 300.7(a)(2)(i).
2. OHI is defined in 34 C.F.R. Section 300.7(c)(9):

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.**

(Emphasis added.)
3. The Parents agreed that OHI by reason of ADD was the eligibility criterion they were claiming. They agreed that the student was not eligible under SED and LD. The Board limited its evaluation to a psycho-educational evaluation to determine whether ADD was affecting the student in the school environment. In their brief, however, the Parents argue that the Board’s evaluation was flawed because it did not do testing regarding the diagnosis of conduct disorder. It does not appear that this issue was raised at the PPT on May 21 when the Parents and their attorney agreed to testing for ADD, and, therefore, it is not considered in this ruling. Conn. Gen. Stat. Section 10-76h.
4. The Board has the burden of proof on the appropriateness of the program for 2001-02. *Walczak v. Florida Union Free School District*, 142 F.3d 119, 122 (2d Cir. 1998). Conn. State Regs. Section 10-76h-14. The standard for determining whether FAPE has been provided is set forth in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982). The two-pronged inquiry is first, whether the procedural requirements of IDEA have been met and second is whether

the IEP is “reasonably calculated to enable the child to receive educational benefits.” Id. at 206-207. The Board must establish these by a preponderance of the evidence. *Walczak v. Florida Union Free School District*, supra.

5. In order to qualify for special education services, the student must have a disability that “results in limited alertness with respect to the educational environment, that” . . . (ii) “adversely affects a child’s educational performance.” CFR Section 300.7(c)(9).
6. The Board is obligated to evaluate a student for all suspected areas of disability. 34 C.F.R. Sections 300.320 and 532(g). The Board is, however, entitled to an evaluation to be performed by qualified professionals who are satisfactory to school officials. *Dubois v. Conn. State Board of Education*, 727 F.2d 44, 48 (2d Cir. 1984). There is no question that Ms. Keefe is qualified as a certified school psychologist. Any dispute regarding the validity of the testing because of throwing out the raw scores could have been addressed by the Parents calling the teachers who completed the discarded rating scales to testify. The only teacher called by the Parents was Ms. Cahill, whose rating scale was not considered by Ms. Keefe because it had too many unanswered responses. Ms. Cahill’s testimony did not bolster the Parents’ case. Although the Parents attempted to cast doubt on the motivations of school personnel in failing to identify the student as OHI, I conclude that the Board’s evaluation was valid and that the school staff who testified were credible in their statements that the student did not exhibit traits of ADD at school which adversely affected his educational performance.

In this case, the Board has sustained its burden of proving that the student is ineligible for special education and related services based on the PPT’s determination that he does not qualify as OHI. It appears from the credible evidence that the student is of above average ability, that his academic performance is mostly in the above average range in an academically challenging program. His Parents are involved in an ongoing dispute with the Board as to whether his grade average meets the requirements for application to the National Honor Society. It is undisputed, however, that his grade average is in the B range. Other than help with homework and meeting deadlines, there is no service the Parents could articulate which the school should provide the student. These types of needs can be met in the regular education program through the progress reports and after school assistance from teachers, which is available to all students at the high school, including this student. 8. Even though the student has been diagnosed with ADD in the psychological domain, there is insufficient evidence to support a finding of ADD in the cognitive domain, and further, there is insufficient evidence to support a finding that his educational performance has been adversely impacted. See *J.D. v. Pawlet School District*, 33 IDELR 34 (2d Cir. 2000)

**FINAL DECISION AND ORDER:**

1. The student is not eligible for services as OHI by reason of ADD based on information provided to the PPT on May 21 and June 26, 2001. 2. The 2000-2001 program is appropriate in that the student is not in need of special education services and mainstream services currently provided to him do not deny him FAPE. 3. The 2001-2002 program is appropriate in that the student is not in need of special education services and mainstream services currently provided to him do not deny him FAPE. 4. There is no decision or order regarding the student's eligibility for a Section 504 accommodation plan.