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Manifestation Determinations

MO-CASE Fall Conference 2018

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Manifestation Determination

Manifestation determinations are limited to removals that constitute a change in placement.

Manifestation Determination

When is a manifestation determination required?

Within 10 school days of any decision to **change the placement** of a child with a disability because of a violation of a code of student conduct.

Manifestation Determination

On the date on which the decision is made to make a removal that constitutes a **change of placement ... the LEA must notify the parents of that decision, and provide the parents the procedural safeguards.**

Manifestation Determination

A manifestation determination **must** be completed **each time** there is a disciplinary change of placement. That is, each time there is:

- (1) A removal of more than 10 consecutive school days (including a 45 school day removal for weapon, drugs, or serious bodily injury), or
- (2) A removal that is a part of series of removals that constitute a pattern.

Quick IDEA procedural requirements
refresher:

Disciplinary change of placement

Disciplinary Change of Placement

- Long-term suspension or expulsion
- Short-term suspensions in excess of 10 days cumulatively where a pattern of suspension has been created
- 45 school day IAES for drugs, weapons, or serious bodily injury

Pattern of Suspensions

What are the factors to be analyzed?

- Duration (length of time)
- Frequency (proximity)
- Total exclusion for school year
- Behavior/conduct substantially similar?

Manifestation Determination

What does substantially similar mean?

One definition of “substantial” is “considerable.

Factors Analyzed

Historical perspective:

- *Honig v Doe* – 10 day rule
- OCR and OSEP implementation
- Red flags?

Factors Analyzed

OCR Decisions- No Pattern

- Letter to Legasse (August 5, 2003) (45 days)
- Letter to Winn (July 19, 1993) (23 days)

OCR decision, NYC, 2012 – pattern found with 18 days of suspension. Aberration?

Factors Analyzed

Scenario #1

September 9: Student suspended for 4 days for pushing another student

October 20: Student suspended for 2 days for not complying with teacher directive.

January 12: Johnny suspended for 10 days for punching another student and then slapping the teacher's hand when the teacher tried to break it up.

Factors Analyzed

Scenario #2

November 1: Janice suspended for 10 days for throwing a textbook across the room, aimed at a student, but hits a wall

March 15: Janice suspended for 10 days for smoking and graffiti in the girls' bathroom

Factors Analyzed

Scenario #3

September 5: Bill suspended for 2 days for smoking in bathroom

October 10: Bill suspended for 1 day for cursing in class

November 15: Bill suspended for 1 day for refusing to work

January 5: Bill suspended for 5 days for stealing another student's jacket

February 28: Bill suspended for 5 days for vandalizing science lab.

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Pattern Analysis:

The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

- The determination is subject to review through due process and judicial proceedings
- If the determination is that there has been no change of placement, there is no need to provide parents with a notice of action

Manifestation Determination

What about In-School-Suspension?

Do the days of ISS count toward the days used to calculate a long-term suspension?

- No if IEP services and IEP PLACEMENT are implemented,
- Yes if either the IEP services or the IEP Placement are not implemented.

In-School-Suspension

IEP implementation

- Self-contained setting: ISS room can't have non-disabled peers for the portion specified
- Regular education setting: ISS room can't be a room with only kids with disabilities

Manifestation Determination

What about removals from the bus?

Do bus removals count toward the days used to calculate a long-term suspension?

- No if the student's IEP does not provide for bus transportation as a "related service."
- Yes if the student's IEP does provide for bus transportation as a "related service."

Manifestation Determination

Is It Necessary to Conduct a Manifestation Determination When the Behavior at Issue Is One of the “Special Circumstances” Behaviors?

- Special Circumstances: Weapons, Illegal Drugs, the Infliction of Bodily Injury
- Can remove for 45 school days regardless of the outcome of the manifestation determination
- Yes, it is still necessary to conduct a manifestation determination

Manifestation Determination

Purpose?

Determine—

If the conduct in question was caused by, or had a **direct and substantial** relationship to, the child's disability; or

If the conduct in question was the **direct** result of the LEA's failure to implement the IEP.

Manifestation Determination

Who makes up the team?

- The LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA)."
- Parents cannot demand that certain persons attend. They can invite persons to attend.
- School team members must be able to talk about the student's behavior while at school.
- A school team member who can discuss the conduct for which discipline is being imposed must be present.

Manifestation Determination

What should they consider?

“...all relevant information in the student’s file, including the child’s IEP, any teacher observations, and any relevant information provided by the parents...”

Manifestation Determination

Who answers the questions?

- All participants can provide input, but it isn't a majority vote.
- If there is disagreement, the school decides, and provides a notice of action to the parent.

Manifestation Determination

Question F-1: What occurs if there is no agreement on whether a child's behavior was or was not a manifestation of his or her disability?

Answer: If the parents of a child with a disability, the LEA, and the relevant members of the child's IEP Team cannot reach consensus or agreement on whether the child's behavior was or was not a manifestation of the disability, the public agency must make the determination and provide the parent with prior written notice pursuant to 34 CFR §300.503. The parent of the child with a disability has the right to exercise his or her procedural safeguards by requesting mediation and/or a due process hearing to resolve a disagreement about the manifestation determination. 34 CFR §300.506 and §300.532(a). A parent also has the right to file a State complaint alleging a violation of Part B related to the manifestation determination. See 34 CFR §300.153.

Manifestation Determination

Remember:

A manifestation determination does NOT
require a meeting!!!!

Manifestation Determination

And the impact of the answers:

If either determination is in the “yes” then the behavior is deemed to be a manifestation of the child’s disability:
Result: disciplinary change of placement **cannot** be imposed.

Manifestation Determination

Going back to the purpose of the determination and the questions the team members are asking: what is meant by the “conduct in question”?

The conduct for which the student is being disciplined, as determined by the school.

Manifestation Determination

Whether the student committed the conduct in question is NOT for the IEP team members to consider in the manifestation determination.

Manifestation Determination

And going back to the purpose of the determination and the questions the team members are asking: what is meant by “the child’s disability”?

- Not the generic IDEA disability as defined and not the medical diagnosis. Every child identified as OHI based on a diagnosis of ADHD is not impulsive.
- Why was the child found to meet criteria for an IDEA disability? What are the disability-related needs being addressed?
- Look to the evaluation report, PLAAFP section of the IEP, and IEP goals.

Manifestation Determination

What if the parent brings information of another disability/impairment to the meeting?

- If the school was not aware of the information previously or had no reason to suspect it, move ahead based on what was known.
- If in doubt, adjourn the meeting.

Manifestation Determination

And what is meant by “direct and substantial”?

One court said: “. . . conduct that is caused by, or has a direct and substantial relationship to, the child’s handicap. Put another way, a handicapped child’s conduct is covered by this definition only if the handicap significantly impairs the child’s behavioral controls.”

Manifestation Determination

And what is meant by a failure to implement the IEP?

The question is **not** simply whether there was a failure to implement the IEP in some way.

The question is whether the conduct was a **“direct” result of failing to implement the IEP.**

Manifestation Determination

Does a student who has not been identified under IDEA have the right to a manifestation determination before receiving a disciplinary change of placement?

Sometimes!

Evaluation pending?

Suspecting of a disability?

Manifestation Determination

Students not yet identified-

- Basis of knowledge – Parent concern (written)
- Basis of knowledge – Parent request for evaluation
- Basis of knowledge – Teacher/staff expressed specific concerns about a pattern of behavior directly to special education administrator or other supervisory personnel.

Manifestation Determination

Exceptions: conditions resulting in “no knowledge” – Parent

Exceptions: conditions resulting in “no Knowledge” - District

Manifestation Determination

Child may be subjected to discipline:

If request for evaluation is made during the period when child is subjected to disciplinary measure, evaluation is expedited;

While evaluation is taking place, student remains in suspended status without services.

Manifestation Determination

What procedural steps are to be followed if the team determines that the conduct is a manifestation of the disability?

- Conduct a functional behavioral assessment and implement a behavior intervention plan; or
- If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary.

Manifestation Determination

And:

If the group determines that the behavior is a manifestation of the child's disability because the conduct in question was the **direct result of the LEA's failure to implement the IEP**, then the LEA must take immediate steps to remedy those deficiencies.

Manifestation Determination

What about where the team determines that the conduct is not a manifestation of the disability? Procedural requirements?

“Receive, as appropriate, a functional behavioral assessment, and behavioral interventions, services and modifications, that are designed to address the behavior violation so that it does not recur.”

Manifestation Determination

IDEA no longer requires that the appropriateness of the child's IEP and placement be considered when making a manifestation determination.

Manifestation Determination

What Is the Child's "Stay-Put" Placement if the Parents File a Due Process Complaint Over the Manifestation Determination?

Manifestation Determination

The child remains in the interim alternative educational setting (the setting as determined by the IEP team following the decision to change the child's placement for disciplinary reasons).

Manifestation Determination

Which Party Has the Burden of Proof in a Due Process Hearing Regarding the Manifestation Determination?

The party requesting the hearing.

Manifestation Determination

Court decisions

- Examples where MD was “related”
- Examples where MD was “unrelated”

Manifestation Determination

- *Danny K. v Dept. of Ed, Hawaii* (2011)
- MD is “unrelated”
- 14 years old with ADHD
- Detonated explosive device in bathroom
- Confession

Manifestation Determination

- *Fitzgerald v Fairfax County School Board* (U.S. District Court, E.D. VA 2008)
- MD is “unrelated”
- 11th grader with ED
- Paintball raid on H.S. during weekend
- Parent argued low self-esteem and bad judgment due to disability

Manifestation Determination

C.C. individually, by and through his next friends, Charles Cripps and Kristie Cripps, Plaintiff, v. Hurst-Eules-Bedford Independent School District

- U.S. District Court (Texas) 2015
- ADHD & SLD
- Photographed another student on toilet
- 60 day suspension
- Court upheld MD unrelated
- Decision of prosecutor not to prosecute irrelevant

Manifestation Determination

Bristol Township School v Z.B., by and through his parents, K.B. and R.B.

U.S. District Court (PA) 2016

- “Global” approach to MD was rejected by court
- Team didn’t discuss whether the conduct had a direct and substantial relationship to the disability yet concluded unrelated
- Team only considered whether ADHD had a connection in general to aggressive behavior
- Student had assaulted teacher

Scenario #1-

Joe has an IEP and hit another student in the face with his fist. School District wants to suspend Joe for 30 days.

Is a manifestation determination required? And if so, What kind of information do you need to know in order for the team to reach a conclusion?

Scenario #2 - It is April, and Joe, who has an IEP, called a teacher a really, really, really bad name in front of everyone during a school assembly. School District wants to suspend Joe for 5 days. Joe was suspended (OSS) for 2 days in August for calling a teacher a really bad name and had received 10 days of ISS during the year for smoking on school grounds (during 2 of those days Joe did not receive IEP services).

Is a manifestation determination required?

Scenario #3

It is November. Joe has an IEP that includes bus transportation as a related service. Joe was involved in an extremely violent fight on the bus. School District wants to suspend Joe from the bus for the rest of the school year.

Is a manifestation determination required? Does it make a difference if Joe's parents say they will transport him to school?

Scenario #4 - It is April. Joe, who has an IEP, hit another student. School District wants to suspend Joe for 5 days. So far during the school year, Joe has the following suspensions:

- 1 day OSS in August for class disruption.
- 3 days OSS in October/ verbal aggression against a student.
- 3 days OSS in January/verbal aggression against a teacher.
- 3 days OSS in February/stealing another student's phone.
- 6 days ISS during the year for various things. Joe received all IEP services during the suspensions.

Is a manifestation determination required?

Scenario #5- Joe has an IEP. His IDEA disability is ED based on displaying inappropriate types of behaviors and feelings under normal circumstances. His evaluation report and current IEP do not mention physically aggressive behavior by Joe and Joe has not been physically aggressive at school. He has displayed verbal aggression on a few occasions. Joe hit another student with his fist in the face after the student took Joe's dessert at lunch. It was Joe's favorite dessert. School District wants to suspend Joe for 30 days. What would be the result of a manifestation determination?

Scenario #6- Jim has an IEP based on the IDEA disability of OHI. The OHI identification is based on a medical diagnosis of ADHD. The medical report stating the ADHD diagnosis says that Jim can be very impulsive.

Jim was caught with a pipe used for smoking marijuana. (Jim's teacher saw Jim trying to hide the pipe in a closet.) Jim said he made it in his word-working class. The teacher found a drawing Jim made of the pipe and information from the internet about the best wood to use for making a pipe. Jim acknowledged that he sketched the drawing and printed the information before he made the pipe. School District wants to suspend Jim for 20 days.

What is the result of the manifestation determination?

Disclaimer

PLEASE NOTE: The information provided in this training is for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem.

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