Manifestation

Determinations

Manifestation Determinations: An Overview

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| **What is it?** | A determination of whether there is a relationship between the student’s disability and the behavior that is subject to the disciplinary action |
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| **By whom?** | CSE and other qualified individuals |
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| **Purpose** | * Ensure a student is not being suspended or removed for behaviors that **are** related to his/her disability * Determine if a disciplinary action may be imposed to the same extent as for a nondisabled student; and * Ensure the school identifies any deficiencies in the student’s IEP or placement in their implementation and remedy those deficiencies |
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| **When?** | When school officials seek to impose a suspension or removal that constitutes a disciplinary change of placement\*   * a suspension or removal of a student with a disability from his or her educational placement for more than **10 consecutive days;** or * a suspension or removal for a period of 10 consecutive days or less if the student is subjected to a series of suspensions or removals that constitute a **pattern** because they add up to more than 10 school days in the school year and because of such factors as the length of each suspension or removal, the total amount of the student is removed and the proximity of the suspensions or removals to one another   \*The CSE is **not** required to conduct a MDR for suspensions or removals of 10 days or less in the school year, or for subsequent short-term suspension removals (less than 10 cumulative days) that **do not constitute a pattern of removal.** |
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| **When must a CSE convene a MDR?** | 1.) Imposing a suspension or removal that constitutes a **disciplinary change in placement** (see above)  2.) Superintendent of schools places a student in an **interim alternative educational setting (IAES**) for behavior involving weapons, illegal drugs or controlled substances  3.) An impartial hearing officer places a student in an IAES when it has been determined that continuing the student’s placement is likely to result in injury to the student or to others |

Manifestation Determination Considerations & Determinations

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| **CONSIDERATIONS AND DETERMINATION CRITERIA** | | |
| **What** | **Who** | **When** |
| 1. Consider all **relevant** information pertaining to the behavior including:  * evaluation and diagnostic results and information supplied by the parents of the student; * observations of the student; and * the student’s IEP and placement. | CSE and other qualified individuals in a meeting. | Immediately, but in no case later than ten (10) school days **after the decision is made**   * **to impose a suspension or removal that constitutes a disciplinary change of placement; or to change the placement of a student with a disability to an IAES by a superintendent or an impartial hearing officer.** |
| 1. Then determine that, in relation to the behavior subject to disciplinary action,  * the student’s IEP and placement were appropriate and the special education services, supplementary aids and services and behavioral intervention strategies were provided consistent with the student’s IEP and placement. * the student’s disability did not impair the ability of the student to understand the impact and consequences of the behavior subject to disciplinary action; and * the student’s disability did not impair the ability of the student to control the behavior subject to disciplinary action. | CSE and other qualified individuals in a meeting |  |
| **DECISION**  **If any of the standards in #2 above are not met, the behavior must be considered a manifestation of the student’s disability.** | | |

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| **RESULTING ACTIONS** |
| * **A student with a disability may not be suspended or removed** from his or her current educational placement for violation of school rules following a determination by the CSE that the **behavior is a manifestation of the student’s disability, except for**: * instances when the parents and the school district otherwise agree; * removals to interim alternative educational settings by school superintendents for weapons, illegal drugs or controlled substances offenses; * removals by impartial hearing officers when it is determined that maintaining the student’s current placement is substantially likely to result in injury to the student or to others. * If the behavior is determined not to be a manifestation of the student’s disability, a disciplinary suspension or removal may be imposed to the same extent as for a nondisabled student, except that the student with a disability must receive a free appropriate public education. * If the CSE identifies any deficiencies in the student’s IEP or placement or in their implementation, it must take immediate steps to remedy those deficiencies. |

Manifestation Determination Checklist

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|  | Steps in the Process |
| 🞏 | Identify the student behavior subject to the disciplinary action. |
| 🞏  🞏  🞏  🞏 | Consider relevant information:   * + Evaluation and diagnostic results   + Observations of the student   + Student’s IEP and placement |
| 🞏  🞏  🞏  🞏  🞏 | Determine, in relationship to the behavior subject to disciplinary action if:   * + Student’s IEP and placement is appropriate   + Special education services, supplementary aides and services and behavioral intervention strategies were provided consistent with the student’s IEP and placement   + The student’s disability did not impair the ability of the student to understand the impact and consequences of the behavior   + The student’s disability did not impair the ability of the student to control the behavior |
| DETERMINATION: | |
| 🞏  🞏 | All of the above factors are met:  The behavior is NOT related to the student’s disability  One or more of the above factors were not met:  The behavior IS related to the student’s disability  Deficiencies in the IEP or Its Implementation to be Addressed: |

Question & Answer

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| ***1.  Must a manifestation determination be made at a separate meeting of the CSE?*** | No. The meeting to conduct a manifestation determination may be conducted at the same meeting convened to develop an assessment plan or behavioral intervention plan, or a meeting to review and modify a behavioral intervention plan or its implementation or at a meeting to determine the setting for an interim alternative educational setting placement. In deciding whether to conduct a manifestation determination at the same meeting at which other decisions (such as developing a behavioral assessment plan) are to accomplished, the CSE must recognize the complex decision making required for a manifestation determination. CSEs should allot sufficient time and structure to the meeting to complete the required task. In addition, the participants at the meeting to conduct the manifestation determination must include the required CSE members and other qualified individuals. The "other qualified individuals" may include individuals who are knowledgeable about how a student’s disability can impact on behavior or on understanding the impact and consequences of behavior and individuals who are knowledgeable about the student and his or her disabilities and strengths. |
| ***2.  Must a school district wait until a superintendent's hearing is convened pursuant to Education Law section 3214 and a finding of guilt is made before asking its CSE to meet and make a manifestation determination?*** | No. Nothing in federal or State law prohibits a school district from obtaining a manifestation determination prior to a determination of guilt at a superintendent's hearing. When appropriate, the CSE may meet to make a manifestation determination before, or simultaneously with, the superintendent's hearing. If it is later determined that the student did not commit the act that is subject to discipline, the question of record expungement would be handled the same way such matters are addressed for nondisabled students. |
| ***3.  After the first time a manifestation determination is made by the CSE, must a school district cause another manifestation determination to be made each time it is considering suspending a student thereafter?*** | The CSE must be convened to make a manifestation determination each time school officials decide to impose a suspension or removal that constitutes a disciplinary change of placement. Conversely, it is not necessary to conduct a manifestation determination for suspensions or removals of ten cumulative days or less in the school year or for subsequent suspensions or removals of ten consecutive days or less that do not constitute a disciplinary change in placement.  When school officials seek to impose a suspension that does not constitute a disciplinary change in placement, parents can request a CSE meeting to consider whether the student is receiving appropriate services, especially if they believe that there is a relationship between the student’s disability and the behavior resulting in the suspensions. In addition, when a student has already been suspended or removed for ten cumulative days or more during the school year and officials seek to impose other suspension(s) or removal(s) of ten school days or less, a parent or other individual could question whether a disciplinary change of placement, which would require a manifestation determination, has occurred because of an alleged pattern of removals. |
| ***4.  In conducting a manifestation review, must the CSE determine that all special education, supplementary aids and services and behavioral intervention strategies were provided, consistent with the IEP and placement?*** | No. The determination whether such special education, services and interventions were provided is made in relationship to the behavior that is the subject of the disciplinary action. For example, if a student with a physical disability is to be suspended for more than ten school days for possession of alcoholic beverages on school property, the district's failure to provide all occupational therapy sessions required by the IEP need not automatically result in a determination that the misconduct was a manifestation of the student's disability. However, if, during this review, the CSE identifies any deficiencies in the student’s IEP, placement or in the implementation of the IEP, the CSE must take immediate steps to remedy those deficiencies. |
| ***5.  What is the consequence of the manifestation determination for students who have been removed to an interim alternative educational setting (IAES) for up to 45 days by a superintendent for offenses involving illegal drugs, controlled substances or weapons, or by an impartial hearing officer when it has been determined that maintaining the student in his or her current educational placement is substantially likely to result in injury to the student or to others?*** | If the CSE concludes that the student’s behavior was not related to his or her disability, the student may be subjected to the same disciplinary measures applicable to nondisabled students. In these instances, the disciplinary removal from a regular placement could be as long as the disciplinary removal applied to a nondisabled student, except that appropriate services must be provided to the student. However, information derived through the process of making the manifestation determination may be helpful in identifying services and modifications that are designed to address the behavior in a manner that reduces the likelihood of recurrence and in identifying deficiencies in the student’s IEP or placement. |

Manifestation Determinations & FBAs/BIPs

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| ***When must an FBA be conducted?*** | A student’s need for an FBA must be considered whenever:   * a student with a disability is exhibiting persistent behaviors that impede his or her learning or that of others, despite consistently implemented general school-wide or classroom-wide interventions; * the student’s behavior places the student or others at risk of harm or injury; * the Committee on Special Education (CSE) or Committee on Preschool Special Education (CPSE) is considering more restrictive programs or placements as a result of the student’s behavior; and/or * the student is subject to disciplinary actions and a determination has been made that the behavior is related to the student’s disability. |

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| ***When must a behavioral intervention plan be developed?*** | The Committee on Special Education (CSE) or Committee on Preschool Special Education (CPSE) must consider the development of a behavioral intervention plan for a student with a disability when the:   * student with a disability is exhibiting persistent behaviors that impede his or her learning or that of others, despite consistently implemented general school-wide or classroom-wide interventions; * student’s behavior places the student or others at risk of harm or injury; * CSE or CPSE is considering more restrictive programs or placements as a result of the student’s behavior; and/or * student is subject to disciplinary actions and a determination has been made that the behavior is related to the student’s disability. |

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| Not a Manifestation | A Manifestation |
| * IEP team determines need for FBA/BIP * IEP team determines services/setting * Apply discipline as with all students | * Conduct FBA, if none previous * Develop or review and revise BIP * Determine educational services * Return student to prior placement, unless other agreement |