**Manifestation**

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Idea includes extensive provisions governing the discipline of children with disabilities. AU’s (Administrative Units) must take certain steps to determine whether the conduct was a function of the child’s disability or whether the child requires behavioral assessment and/or intervention in order to participate in school. AU’s that determine the child’s misconduct is NOT a manifestation of the child’s disability, the child may not be denied all access to special education services.

The law shows a preference for dealing with behavior/self control issues via the IEP process rather than a disciplinary process. A disciplinary change of placement occurs if a child with a disability is removed from his or her educational placement and: the removal is for more than 10 consecutive school days; or the child has been subjected to a series of removals that constitutes a pattern. A series of removals constitutes a pattern when: the series of removals totals more than 10 school days in a school year; the child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and additional factors exist such as the length of each removal, the total amount of time the child has been removed and the proximity of the removals to one another.

Out of school suspensions and removal to an interim alternative educational setting are always considered a removal. In school suspension, bus suspension and removals for portions of a school day are sometimes considered a removal. Time out, after school detention and lunch detention are not considered a removal. The AU determines on a case- by- case basis whether a pattern of removals constitutes a change of placement.

**Procedural Requirements /Manifestation Determinations**

***A. What are the parental notification requirements if a disciplinary change of placement has been imposed?***

Parental notification is a very important aspect of implementing IDEA’s discipline procedures. On the date when the decision is made to make a removal that constitutes a change of placement because of a violation of a code of student conduct, the AU must notify the parents of that decision and provide the parents with a copy of their procedural safeguards notice. The discipline regulations do not specify that the notification to the parents must be in writing, but a change of placement is an event that triggers the IDEA’s prior written notice (“PWN”) requirement, so AUs must provide written notice that complies with the requirements of 34 C.F.R. § 300.503.

 ***B. When is a manifestation determination necessary?***

A manifestation determination must occur within **10 school days** of any decision to change the placement of a child with a disability because of a violation of the code of student conduct.

***C. Who makes the manifestation determination?***

The manifestation determination must be conducted by appropriate AU staff, the parent(s), and relevant members of the IEP team, *as determined by the parent and AU.* Because the parent has a role in determine relevant members of the IEP team to take part in the manifestation determination, the AU must provide the parent with notice of the manifestation meeting, including notifying the parent of the relevant members of the IEP team invited or included by the AU, so that the parent can exercise their right to manifestation determination.

***D. How is the manifestation determination made?***

In making the manifestation determination, the team will review all relevant information in the student’s file, including the child’s IEP, any teacher observations, and any relevant information provided by the parents. This list is not exhaustive, however. It may include other relevant information in the child’s file, including placement appropriateness, supplementary aids and services, and if the behavior intervention strategies were appropriate and consistent with the IEP.29 The manifestation determination should be “done carefully and thoroughly with consideration of any rare or extraordinary circumstances presented.”30

Based upon the appropriate information, the team must determine:

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability; or

(ii) If the conduct in question was the direct result of the [AU’s] failure to implement the IEP.31

The link between the child’s behavior and his or her disability is obviously essential. As noted by the federal Department of Education, “the Act recognizes that a child with a disability may display disruptive behaviors characteristic of the child’s disability and the child should not be punished for behaviors that are a result of the child’s disability.”32

The relationship between the child’s behavior and disability, however, is not the only factor to be considered in a manifestation determination. A manifestation determination must also consider if the child’s conduct was the direct result of the AU’s failure to implement the IEP.33 If such a finding is made, the AU must take immediate steps to remedy those deficiencies.34 This will be discussed further below.

***E. What makes the answer to the manifestation determination a “yes”?***

There are two scenarios under which the “answer” to the manifestation determination would be “yes,” *i.e.,* the conduct resulting in the disciplinary change of placement must be deemed a manifestation of the child’s disability. These are when the conduct:

* *was* a manifestation of the child’s disability, *i.e.,* was caused by or had a direct and substantial relationship to the child’s disability, *or*
* was the direct result of the AU’s failure to implement the child’s IEP.  If **either** condition is met, the student’s conduct must be determined to be a manifestation of his or her disability.35 In other words, the manifestation determination is “yes.”  Importantly, it matters which of the two conditions was the basis for the determination of “yes.”
* ***F. What are the AU’s obligations if the conduct is a manifestation because of a failure to implement the IEP?***
* If the team determines that the child’s misconduct was the direct result of the AU’s failure to implement the child’s IEP, the AU “must take immediate steps to remedy those deficiencies.” The AU has an affirmative obligation to take immediate steps to ensure that all services set forth in the child’s IEP are provided, consistent with the child’s needs as identified in the IEP.36
* Unless the behavior involved one of the special circumstances—weapons, drugs, or serious bodily injury—the child would be returned to the placement from which he or she was removed as part of the disciplinary action. However, the parent and AU can agree to a change of placement as part of the modification of the behavioral intervention plan.37

***G. What are the AU’s obligations if the conduct is a manifestation because it was caused by the child’s disability?***

* If the team finds that the child’s misconduct was caused by or had a direct and substantial relationship to his or her disability, then the team must also reach a manifestation determination of “yes.” Such a determination carries with it two immediate considerations:
* Functional behavioral assessment (FBA)—Has the child had one? Does one need to be conducted?
* Behavioral intervention plan (BIP)—Does the child have one? If so, does it need to be reviewed and revised? Or if the child does not have one, does one need to be written?38  Thus, if a child’s misconduct has been found to have a direct and substantial relationship to his or her disability, the IEP team will need to immediately conduct a FBA of the child, unless one has already been conducted. An FBA focuses on identifying the function or purpose behind a child’s behavior. Typically, the process involves looking closely at a wide range of child- specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP Team in developing a BIP that will reduce or eliminate the misbehavior.  In addition to conducting an FBA (if necessary), the IEP team must also write a BIP for the student, unless one already exists. If the latter is the case, then the IEP team will need to review the plan and modify it, as necessary, to address the behavior.  The IEP team must also address a child’s misbehavior via the IEP process as well.  When the behavior is related to the child’s disability, proper development of the child’s IEP should include development of strategies, including positive behavioral interventions, supports, and other strategies to address that behavior... When the behavior is determined to be a manifestation of a child’s disability but has not previously been addressed in the child’s IEP, the IEP Team must review and revise the child’s IEP so that the child will receive services appropriate to his or her needs. Implementation of the behavioral strategies identified in a child’s IEP, including strategies designed to correct behavior by imposing disciplinary consequences, is appropriate... even if the behavior is a manifestation of the child’s disability.39  The child must be returned to the placement from which he or she was removed as part of the disciplinary action, with two exceptions:
	1. if the behavioral infraction involved special circumstances of weapons, drugs, or serious bodily injury; or
	2. if the parents and AU agree to change the child’s placement as part of the modification of the BIP.
* If either of these exceptions applies, then the child need not necessarily return to the same placement.

***H. What if the result of the manifestation determination is “no”?***

A manifestation determination of “no” means that:

* the child’s behavior was not caused by or did not have a direct and substantial relationship to the child’s disability; AND
* the child’s behavior was not the direct result of the AU’s failure to implement the IEP.  In this scenario, school personnel have the authority to apply the relevant disciplinary procedures to the child with disabilities in the same manner and for the same duration as the procedures would be applied to a child without disabilities, except for whatever special education and related services the school system is required to provide the child with disabilities under §300.530(d).

**VI. Services during removals**

***A. When must AUs provide educational services to students with disabilities who have been properly removed for disciplinary purposes?***

Even where a student with a disability is properly removed, suspended or expelled from his or her educational program for violating the student code of conduct (*i.e.,* to an IAES for 45 school days for behavior involving weapons, drugs or serious bodily injury, for conduct that is found to not be a manifestation of disability, or when the removal does not constitute a disciplinary change of placement), an AU is required to provide the student with educational services sufficient to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the IEP goals.

The only time a child with a disability may go without any services is during the first 10 school days (whether consecutive or not) of removal. During that time, services must only be provided if the AU provides services to children without disabilities who are similarly removed.40