

Discipline of Students in Special Education Series

How to Prepare for a Manifestation Determination Review:

A Handout for Parents

One of the most devastating calls you can receive as a parent is the School calling to tell you they have initiated an expulsion proceeding against your child due to poor behavior. If your child has an Individualized Education Program (“IEP”) before the expulsion process can start they must hold a Manifestation Determination review. This review must be held within 10 days of the conduct. At which time the IEP team must review the complete file and consider all relevant information, including the IEP, any teacher observations, and any information supplied by the parents. The IEP team must then answer two questions:

1. Was the conduct caused by, or had a direct and substantial relationship to the child’s disability;
and
2. Was the conduct the direct result of the School’s failure to implement the IEP.

The importance of this meeting is sometimes lost on the Parents and they show up unprepared and oblivious to the magnitude of this undertaking. If the answer to either of those questions is yes, then by law, the behavior was a manifestation of the disability and the expulsion process will stop immediately. If the answer is no to both questions, then the school personnel may then apply the same disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities. This means the expulsion process would be allowed to continue. It’s important to note that your child will not be expelled during a manifestation determination review but rather this will determine whether that process will be allowed to continue to an expulsion hearing.

While there is no guarantee of outcome, preparation for a Manifestation Determination review is crucial to increase the likelihood of success. Especially since most Schools will be highly reluctant to admit that the behavior was caused by the child’s disability or the School’s FAILURES to implement the IEP correctly.

Immediate First steps:

1. Send a letter to the School in writing requesting a complete copy of your child’s education records and an incident report of the alleged behavior. This is the file you will be reviewing in the meeting to answer the manifestation determination questions;
2. Review your State’s policy on tape recording IEP meetings and send a letter notifying the School that you will be recording the Manifestation Determination review (i.e. in California you need to give the School 24 hours notice to tape record);
3. If your child has private assessments that will be helpful during the review then provide copies to the School;
4. If your child has private physicians, therapists, psychiatrists or other providers contact them immediately and solicit their help in determining whether the behavior is symptomatic of your

child's disability. If any of them think the behavior is symptomatic of your child's disability ask them to attend the review meeting;

5. If you do not have private providers to solicit for help begin researching symptoms of your child's disabilities (i.e. ADHD children are impulsive and don't think things through). Print out credible information to bring to the manifestation determination review regarding your child's disability. Start researching at the National Association website for your child's disability (i.e. Autism Society, Attention Deficit Disorder Association, etc.); and
6. Contact a Special Education Advocate or Special Education Attorney that specialize in discipline issues to discuss your child's upcoming meeting. It is my opinion you should hire an advocate or attorney to attend the meeting with you but at minimum you should consult with a professional on the process.

These initial first steps should help you organize and strategize but these steps are just the tip of the iceberg in preparing for the manifestation determination review.

The next steps:

1. Review all of the documents highlighting all statements made in the IEP or assessments discussing your child's needs that can be directly related to the discipline issue. Statements that might include, acts impulsively, has difficulty processing spoken language, does not think through actions prior to acting, is highly stimulated by environmental factors. Statements like these can be used to make the case that your child's actions were a manifestation of their disability;
2. Create a list of all these statements and try to tie them back to your child's disability and the behaviors that caused the referral for expulsion;
3. Review all of the documents again this time highlighting all services that your child is supposed to be receiving, how the school is collecting data on IEP Goals and whether the IEP lists specific behavior goals and/or has a behavior support plan. Try to determine whether the School has been following the IEP and providing your child with all of the required services; and
4. Create a list of those services that the School has not been providing. These could include failure to provide adult supervision as provided in the IEP, failure to collect data on behavior goals as stated in the IEP or failure to follow the behavior support plan to name a few.

At this point you should be prepared to attend the Manifestation Determination review. When attending the meeting try to remain calm especially since you will be tape recording the meeting. Make sure the administrative designee for the meeting explains the process correctly to the entire IEP team and everyone reviews the complete file. The private therapists/doctors you have brought with you should be ready and willing to explain their qualifications, their experience with your child and how they have determined that the behavior was symptomatic of their disability.

You should also provide copies of both of the lists you created above and ask for the information to be reviewed during the process. Try to ask specific, direct questions and make sure the answers you receive are adequate. Are the team members answering the questions you ask or skirting around the issues?

If at the conclusion of the meeting the School still feels the behavior **WAS NOT** a manifestation of the child's disability then if the parents disagree they may appeal the decision by requesting a due process hearing. Due process hearings regarding discipline issues are handled on an expedited basis which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing. The tape recording you made at the manifestation determination review may also be used as evidence in the Due Process hearing.