

Discipline of Students in Special Education Series

Part 3 of 9

Manifest Determination

At specific times, and for certain violations of the student code of conduct, IDEA's discipline procedures require school systems to conduct what is known as a "manifestation determination review." The purpose of this review is to determine whether or not the child's behavior that led to the disciplinary infraction is linked to his or her disability.

Manifestation determinations were first introduced into IDEA with the 1997 amendments. The process has been simplified under IDEA 2004, which now:

- limits the requirement to perform a manifestation determination to removals that constitute a change of placement under IDEA's disciplinary procedures
- does not require a manifestation determination for removals for less than 10 consecutive school days that do not constitute a change in placement.

As the Senate HELP committee observed, what is now required is "a more simplified, common sense procedure for schools to use."

Under §300.530(e), a manifestation determination must occur within 10 days of any decision to change the child's placement because of a violation of a code of student conduct.

Who is Involved?

The LEA, the parent, and relevant members of the IEP team (as determined by the parent and the LEA) are involved in conducting the review. Their purpose is to determine:

- (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability
 - (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.
- .. [§300.530(e)(1)-(2)]

To make these determinations, the group 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.

The link between the child's conduct violation and his or her disability is important. As the Department notes:

- We believe 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. (71 Fed. Reg. 46720)

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 LEA’s failure to implement the IEP [§300.530(e)(1)(ii)]. If such a finding is made, the regulations require the LEA to take immediate steps to remedy those deficiencies [§300.530(e)(3)]. This will be discussed further below.

Here, first, a little review, by way of a little Q&A.

- **Under what circumstances must a manifestation determination be conducted?** (Whenever a decision is made to change the placement of a child with a disability because he or she has violated a code of student conduct.)
- **What’s the time frame for conducting a manifestation determination?** (The 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 a code of student conduct.)
- **Who is involved in conducting a manifestation determination?** (The LEA, parent, and relevant members of the child’s IEP Team.)
- **Who decides who’s a “relevant member” of the Team?** (The parent and the LEA.)

Scope of the Review

IDEA states that the LEA, the parent, and relevant members of the child’s IEP team must 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” as part of conducting a manifestation determination [§300.530(e)(1)]. This list is not exhaustive, according to the Department. 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. (71 Fed. Reg. 46719)

Consider this excerpt from the U.S. House of Representatives Conference Report 108-779. It clarifies both the scope of the manifestation review and the intent behind it.

[T]he Conferees intend to assure that the manifestation determination is done carefully and thoroughly with consideration of any rare or extraordinary circumstances presented.” The Conferees further intended that “if a change in placement is proposed, the manifestation determination will analyze the child’s behavior as demonstrated across settings and across time when determining whether the conduct in question is a direct result of the disability. (71 Fed. Reg. 46720)

Let’s move on and say the group has met, reviewed all relevant information in the child’s file, considered the child’s conduct in light of his or her disability, considered the LEA’s implementation of the IEP, and come to a determination.

What happens if that determination is yes—or no? Each answer leads to specific outcomes.

If the Determination is Yes

There are two scenarios under which the manifestation determination would be “yes.” These are when the conduct:

- was a manifestation of the child’s disability
- the direct result of the LEA’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 [§300.530(e)(2)-(3) and (f)]. In other words, the manifestation determination is “yes.”

But it matters which of the two conditions was the basis for the determination of “yes.”

“Yes,” for failure to implement the IEP. If the group determines that the child’s misconduct was the direct result of the LEA’s failure to implement the child’s IEP, the “LEA must take immediate steps to remedy those deficiencies.” As the Department explains, if such a determination is made:

[T]he LEA 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. (71 Fed. Reg. 46721)

What about placement? 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 LEA can agree to a change of placement as part of the modification of the behavioral intervention plan. [§300.530(f)(2)]

“Yes,” for conduct directly related to disability. If the group finds that the child’s misconduct had a direct and substantial relationship to his or her disability, then the group 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? [§300.530(f)]

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. According to the Senate HELP committee:

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. As the Department explains:

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. (71 Fed. Reg. 46720-21)

What about placement? The child must be returned to the placement from which he or she was removed as part of the disciplinary action, with two exceptions:

- if the behavioral infraction involved special circumstances of weapons, drugs, or serious bodily injury
- if the parents and LEA agree to change the child's placement as part of the modification of the BIP.

If either of these exceptions apply, then the child need not necessarily return to the same placement.

If the Determination is "No"

A manifestation determination of "no" means either that:

- the child's behavior was not caused by or did not have a direct and substantial relationship to the child's disability; or
- the child's behavior was not the direct result of the LEA's failure to implement the IEP.

In either case of "no," 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—and this is very important—for whatever special education and related services the school system is required to provide the child with disabilities under §300.530(d).

What IDEA requires under the services provision at §300.530(d) is the subject of the next issue of our series.

One, Two, Three

You may recall that we've twice mentioned the Senate HELP committee's summary of the three categories of disciplinary actions a school district can take under IDEA. The first was the 10-day

rule, and the third was special circumstances involving drugs, weapons violations, or serious bodily injury. What we've just described corresponds to the second category of disciplinary actions a school district can take. As the Senate HELP committee described in its Report [to Accompany S. 1248]:

In the second category, if a school chooses to discipline a child for a violation of the school code for a period beyond 10 consecutive school days, then the school can apply the same disciplinary procedures that it would apply to a child without a disability, as long as the school has determined that the violation in question was not a manifestation of the child's disability.

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