

What is Manifestation Determination

Introduction

If a decision is made to change the child's placement because of a violation of a code of student conduct, then a manifestation determination must be conducted within 10 school days of that decision [§300.530(e)]. The purpose of the manifestation determination is to determine whether or not the child's violation of the student code of conduct is substantially linked to his or her disability. What's presented below is limited to summarizing what occurs if the determination is "yes" (the behavior was a manifestation of the child's disability) or "no" (the behavior wasn't a manifestation).

A determination of "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, or
- was the direct result of the LEA's (Local Education Agency) 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)]. 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:

The 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 weapons, drugs, or serious bodily injury—called special circumstances—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.^[2]

In addition to conducting an FBA (if necessary), the IEP team must also write a BIP for the student, unless one already exists. If a plan does already exist, then the IEP team will need to review 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; or
- 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). We'll talk about that in a moment. But first...there's a bit more to understand about the overall authority of school personnel.