

APPENDIX

The Manifestation Determination: *A Checklist*

Effective July 1, 2005

1. A manifestation determination IEP Team meeting must be held 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. A "change of placement" generally means A) a disciplinary removal from school for more than 10 consecutive school days in a row; or B) a series of removals totaling more than 10 school days in the school year that constitutes a pattern: i) because the behavior is substantially similar to the previous incidents that resulted in removals, and ii) because of additional factors such as length of each removal, the total removal time, and proximity of removals.
2. The manifestation determination must be made by the relevant members of student's IEP Team, including the parent, and not simply by school personnel. At the Team meeting, the 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.
3. The IEP Team should then answer the following questions:
 - A. Whether the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability?
 Yes No
 - B. Whether the conduct in question was the direct result of the local school unit's failure to implement the IEP?
 Yes No

If the answer to either of these two questions is yes, then the behavior in question must be considered a manifestation of the student's disability.

If the IEP Team determines that the misconduct is a manifestation of the student's disability, then the IEP Team must conduct and/or review a functional behavior assessment and behavior intervention plan for the student. In addition, the Team must return the child to his or her prior placement, unless the School and Parent agree that a change of placement is warranted.

If the Team determines that the misconduct is not a manifestation of the student's disability, then the school may use the regular disciplinary procedures applicable to students without disabilities in the same manner as would be applied to children without disabilities, except that the student must continue to receive educational services during any suspension or expulsion that may be ordered. These services need to target the behavior to limit its reoccurrence and enable the student to participate in the general education curriculum as well as to progress toward meeting the student's IEP goals

Regardless of the manifestation determination, the school officials may remove a disabled student for 45 school days if the child 1) carries or possesses a weapon to or at school, on school premises, or to or at a school function; 2) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function; or 3) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.

Definitions:

Weapon: a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.

Serious bodily injury: 1) a substantial risk of death; 2) extreme physical pain; 3) protracted and obvious disfigurement; or 3) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.