



MANIFESTATION DETERMINATION—Instructional Guidance

PURPOSE: The purpose of the Manifestation Determination is to ensure that a student with a disability is not discriminated against by imposing disciplinary sanctions for behavior that is a manifestation of his or her disability.

FORM USE: These forms are to be used when the behavior subject to disciplinary action will result in a change of placement, a removal for more than 10 consecutive days (i.e., placement in an alternative educational setting), or when there is a pattern of behavior resulting in cumulative removals that would exceed 10 days within a school year.

Use of this form is not required for removals that are less than 10 consecutive school days and/or do not constitute a change of placement.

An in-school suspension does not count toward the 10 days as long as the child is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the child's IEP, and continue to participate with non-disabled children to the extent they would have in their current placement.

Short term removals (i.e, abbreviated removals from the classroom, time-out, and being sent to the principal) do not count toward the 10 days.

INSTRUCTIONS:

Manifestation Determination

- 1) A Manifestation Determination must be held within 10 school days of a decision to change a student's placement as a result of an infraction to the school's code of conduct. If the student is placed in an alternative educational setting pending the manifestation determination review, services consistent with the IEP must be provided. Manifestation reviews may be conducted on as little as 24 hours notice to the parents.
- 2) Persons involved in the manifestation determination should include the parent/guardian, local education agency (LEA), and relevant members of the IEP team as determined by the parent and LEA. The team is required to review all relevant information in the child's file including the student's IEP, any teacher observations, and any relevant information provided by the parent/guardian in making its determination.
- 3) When conducting the manifestation review, the team must determine:
 - a. if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or
 - b. if the conduct in question was the direct result of the local education agency's failure to implement the IEP.

Note: Conduct which has merely an attenuated association to a student's disability, such as low self esteem, would not equal a manifestation. Similarly, failure to implement the IEP would require something more than an attenuating circumstance. It is important for the team to look across time and settings to see whether the student has controlled his or her conduct in similar situations or settings in the past.

If either condition is true, then the conduct subject to disciplinary action would be considered a manifestation of the student's disability.

- 4) When the conduct **IS** a manifestation of the student's disability, the school must address his or her behavior through a functional behavior assessment (FBA), unless one has been recently completed examining similar conduct. A behavior plan must be developed or modified to address the behavior in question. The student is returned to the placement from which he or she was removed unless the parent and school agree to a change of placement as part of the modifications of the behavior intervention plan and/or LRE. This does not apply to the IDEA Special Exceptions clause for drugs, weapons, and serious bodily injury as outlined in the *IDEA Discipline* document. <http://www.state.tn.us/education/speced/doc/73112ideadisc.pdf>
- 5) When the conduct **IS NOT** a manifestation of the student's disability, the school may discipline him or her just as it would a non-disabled child. However, the student must continue to receive services during any period of removal. It is advisable to review, and modify as necessary, any behavior plan which might be in place to address the conduct so that it does not reoccur. Removal or suspension to an alternative educational setting is, in most cases, a change of placement. The IEP team determines the interim alternative educational setting for services.

Disciplinary Appeals

- 6) If the parents desire to challenge a finding of no manifestation, they may request an expedited due process hearing. The hearing must be conducted within 20 days and a decision rendered within 10 school days of the hearing. The student remains in the disciplinary placement pending the outcome of the expedited hearing. Stay put, in disciplinary matters, is the interim alternative setting determined by the school, not the placement from which the student was removed.
- 7) If the school desires to challenge a finding of no manifestation, it may also request an expedited due process hearing. The school must show that continuing the child in his or her placement is substantially likely to result in injury to the child or others. If the school prevails, the due process hearing officer may order the child to remain in the interim alternative setting for not more than 45 school days. The parties could agree on a longer placement upon expiration of the 45 school day placement order.

Court Petitions/Disciplinary Hearings/Law Enforcement

- 8) In instances where private security personnel and school officials charge a student and pursue prosecution, it is incumbent on the school to contact law enforcement and to conduct a manifestation review within 10 days.
- 9) Prior to a school official filing a court petition in juvenile court against a student with a disability, the school must ensure that a manifestation review has been conducted.
- 10) In disciplinary cases involving a student with a disability, it is advisable to conduct the special education manifestation determination review prior to conducting a student disciplinary hearing.
- 11) If a referral to special education is made after the behavioral incident, the school should conduct an expedited evaluation, but the student remains in whatever placement may have been in effect.

Bus Suspensions

- 12) If transportation is part of the IEP, bus suspension counts toward the 10 days, unless the LEA provides alternative transportation. If transportation is not part of the IEP, it does not count toward the 10 days and the child must provide his or her own transportation.