

ANCHORAGE SCHOOL DISTRICT  
ANCHORAGE, ALASKA

MEMORANDUM

DECEMBER 12, 2008

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FROM: JERRY SJOLANDER, EXECUTIVE DIRECTOR, SPECIAL EDUCATION

SUBJECT: Common Questions Regarding Manifestation Determinations

This memo is written to provide guidance regarding best practices in conducting and documenting Manifestation Determination meetings.

- 1) *What is a manifestation determination and it's relation to the district's ability to discipline students eligible for special education services?*

The IDEA uses the term "manifestation determination" to mean the evaluation of the relationship between a student's disability and act of misconduct that must be undertaken when a district proposes to take specified serious disciplinary actions.

Only if the district concludes, after performing a manifestation determination, that the misconduct was not related to the student's disability, can it impose the proposed disciplinary sanction.

- 2) *When must a Manifestation Determination be completed?*

The 2006 regulations at 34 CFR 300.530(e) require that the manifestation determination be made 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 is defined by ASD as 10 school days within a school year.

3) *Does ASD utilize this federal standard identified by IDEA?*

IDEA requires that a manifestation determination must be conducted whenever the removal of a student due to a violation of a code of student conduct constitutes a "change of placement." The 2006 regulations at 34 CFR 300.536 describe when a change of placement under those circumstances takes place. According to that section, a change of placement occurs if:

- (1) The removal is for more than 10 consecutive school days; or
- (2) The child is subjected to a series of removals that constitute a pattern;

ASD School Board Policy uses a stricter standard than IDEA. ASD requires a manifestation determination every time a student is removed for more than 10 school days within the same school year.

4) *Does the IEP team need to complete a manifestation determination when a new suspension occurs and they've previously completed a manifestation determination that school year?*

Yes, teams are required to conduct a manifestation determination after the 10<sup>th</sup> cumulative day and every suspension or removal thereafter. IDEA 2004 and the 2006 regulations are consistent with OSEP's interpretation of prior law that a manifestation determination does not have to take place in circumstances when a student is removed for less than 10 days in any school year.

5) *Who makes a manifestation determination?*

The manifestation review is conducted by the district, the parent, "and relevant members of the IEP team (as determined by the parent and the district). It appears that the manifestation determination does not have to be conducted by the full IEP team. ASD indicates that the administrator is required so he or she can describe the conduct in question. A special education and regular education teacher should also be present. The attendance of the school psychologist is also strongly recommended.

6) *How to define "relevant" information?*

The individuals involved in making the manifestation determination are charged with reviewing all relevant information in the student's file, including the IEP, any teacher observations and any relevant information provided by the parent.

7) *What records are required to be reviewed?*

The team needs to review the current IEP, FBA and PBISP. ASD also advises the team review a minimum of 3 years of discipline records and all ESERs completed in the past 3 years.

8) *What is "the conduct" and how should it be described by ASD personnel?*

An ASD administrator must summarize the conduct based on the investigation completed by the administrator relevant to discipline. It is NOT sufficient to identify the behavior by labels, like "stealing". The team needs to understand the alleged conduct – facts known to ASD administration to address the question of causality.

9) *Is misconduct resulting from impulsive behavior or poor judgment a manifestation of a child's ADD or ADHD?*

Parents and team members are often asked if impulsivity related to ADHD cause the student's misconduct. Teacher reports and observations of everyday conduct are key to making the manifestation determination. A statement of a student's grade(s) is, in itself, insufficient. Teams need to review the student's behavior to compare prior impulsive behavior with the conduct in question. It is important to remember that impulsivity is related to ADHD, but poor judgment is not.

10) *Why is it so important that the team understand a student's disability?*

The ADHD example is a good illustration. The DSM IV [Diagnostic and Statistical Manual of Mental Disorders – Fourth Edition] provides that the essential feature of Attention-Deficit/Hyperactivity Disorder is a persistent pattern of inattention and/or hyperactivity-impulsivity that is more frequent and severe than is typically observed in individuals in a comparable level of development. According to the manual, impulsivity manifests itself as impatience, difficulty in delaying responses, blurting out answers, difficulty waiting one's turn, and frequently interrupting or intruding on others. The manual further states that impulsivity may lead to accidents and to engagement in potentially dangerous activities without consideration of possible consequences. Finally, DSM IV describes associated features which may include low frustration tolerance, temper outbursts, bossiness, stubbornness, excessive and frequent insistence that requests be met, mood lability, demoralization, dysphonia, rejection by peers, and poor self-esteem. Teams need to understand how a disability presents itself to answer a question regarding causality.

11) *Can a manifestation determination be made without a meeting?*

No. The IDEA mandates that 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, "the local educational agency, the parent and relevant members of the IEP

team (as determined by the parent and the local educational agency)" must review relevant information to determine if the conduct in question was a manifestation of the student's disability. Implicit in this requirement is the necessity of a collective decision making and therefore some sort of meeting.

*12) Do the district, parents and relevant members of the IEP team have discretion to decide what information about a student to consider when they conduct a manifestation determination?*

According to 2006 regulations at 34 CFR 300.530 (e)(1), the district, parent, and relevant members of the IEP team need to consider, "all relevant information in the student's file, including" the following:

- The child's IEP.
- Any teacher observations
- Any relevant information provided by the parents.

*13) Can the parent require consideration of a particular piece of medical, psychological or psychiatric information?*

The key term here is "relevant information". The team, not just one individual such as a parent or administrator, looks at all information presented and decides what is relevant to the question of causality.

*14) May parents appeal the results of a manifestation determination?*

Yes. A parent who disagrees with any determination of a disciplinary placement or with the findings of the manifestation determination may appeal the decision by requesting a hearing. The IDEA also gives a district the right to a hearing if it believes that maintaining the child's current placement is substantially likely to result in injury to the child or others.