



The University of the State of New York  
New York State Education Department  
Office of Special Education

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## Manifestation Determination Review

This is one in a series of policy briefs prepared by the New York State Education Department (NYSED) on topics pertaining to the implementation of the Individuals with Disabilities Education Act (IDEA) in New York State (NYS), NYS Education Law section 3214 and Part 201 of the Regulations of the Commissioner of Education relating to procedural safeguards for students with disabilities subject to discipline.

### ***What is a manifestation determination review?***

A *manifestation determination* is a review of the relationship between the student's disability and the behavior subject to disciplinary action<sup>1</sup>.

### ***When must a manifestation determination review be conducted?***

The manifestation determination review must be conducted immediately, if possible, but in no case later than 10 school days after:

- a decision is made by a superintendent of schools to change the placement of a student to an interim alternative educational setting (IAES) for behavior involving serious bodily injury, weapons, illegal drugs or controlled substances; or
- a decision is made by an impartial hearing officer (IHO) to change the placement of a student to an IAES in a dangerous situation (i.e., upon a determination that maintaining the current placement is substantially likely to result in injury to the student or others); or
- a decision is made by a board of education, district superintendent of schools, building principal or superintendent to impose a suspension that constitutes a disciplinary change in placement. Under Part 201, a disciplinary change in placement occurs if:
  - the removal is for more than 10 consecutive school days; or
  - if the school district determines, on a case-by-case basis, that a pattern of removals constitutes a change of placement because the series of removals total more than 10 school days in a school year; the student's behavior is substantially similar to the behavior that resulted in the previous removals; and because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

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<sup>1</sup> A preschool student with a disability may not be suspended, expelled or removed from an approved program or service because of the student's behavior prior to the transfer of the student to another approved program, except as under the authority of an IHO to order a change in placement to an IAES in a dangerous situation. [\[8 NYCRR 200.20\(b\)\(7\)\(ii\)\(b\)\]](#)

***What is the purpose of a manifestation determination review?***

The purpose of a manifestation determination review is to:

- ensure that the student is not being suspended or removed from school for behaviors that are a result of their disability;<sup>2</sup>
- determine whether the conduct in question was a direct result of the school district's failure to implement the student's individualized education program (IEP) and, if so, take immediate steps to remedy those deficiencies; and
- determine if a disciplinary action may be imposed to the same extent as for a nondisabled student.

***What individuals are responsible for carrying out the manifestation determination review?***

The manifestation determination review must be conducted by a manifestation team, which includes a representative of the school district knowledgeable about the student and the interpretation of information about child behavior, the parent, and relevant members of the committee on special education (CSE) as determined by the parent and school district.

***May the student's CSE function as the manifestation team?***

Yes. The school district and parent may determine that some or all members of the CSE are relevant members that must participate in the manifestation determination.

***What notification must a parent receive prior to a manifestation determination review?***

The parent must receive written notification (meeting notice) prior to any manifestation determination review to ensure that the parent has the opportunity to attend. Pursuant to Section [200.5\(c\)\(1\)](#), whenever the CSE proposes to conduct a meeting related to the development or review of a student's IEP, or the provision of a free appropriate public education, the parents must receive notification in writing at least five days prior to the meeting. However, meeting notice may be provided to the parent less than the required five days prior to the meeting, to meet the timelines in accordance with [Part 201](#), which would include manifestation determination reviews. The notification must inform the parent of the purpose of the meeting, the names of the individuals expected to attend, and inform the parent of his or her right to have relevant members of the CSE participate.

***What happens at the manifestation determination review meeting?***

The manifestation team must review all relevant information in the student's file including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct was or was not a manifestation of the student's disability to determine if:

- the conduct in question was caused by or had a direct and substantial relationship to the student's disability; or
- the conduct in question was the direct result of the school district's failure to implement the IEP.

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<sup>2</sup> Except for removals to an IAES for behavior involving serious bodily injury, weapons, illegal drugs or controlled substances or removals by an IHO for dangerousness. In these instances, if the conduct in question is related to the student's disability, the Committee on Special Education (CSE) must conduct a functional behavioral assessment (FBA) and implement a behavioral intervention plan (BIP), or review and modify an existing BIP as necessary, to address the behavior that resulted in the disciplinary action.

The manifestation team must find that the conduct was a manifestation of the student's disability where either of the above conditions are met.

***What actions must a CSE take if the conduct in question is determined to be a manifestation of the child's disability?***

If the manifestation team determines that the conduct was a manifestation of the student's disability, the student's CSE must:

- conduct a functional behavioral assessment (FBA), unless the school district had conducted an FBA before the behavior that resulted in the change of placement occurred and implement a behavioral intervention plan (BIP). If a BIP has already been developed, review the BIP and modify it as necessary to address the behavior; and
- except for a change in placement to an IAES for behavior involving serious bodily injury, weapons, illegal drugs or controlled substances, return the student to the placement from which the student was removed, unless the parent and the school district agree to a change of placement as part of the modification of the BIP.
- If the conduct in question was the direct result of the school district's failure to implement the IEP, the school district must take immediate steps to remedy those deficiencies.

***What actions must a CSE take if the conduct in question is NOT determined to be a manifestation of the child's disability?***

If the manifestation team determines that the conduct was NOT a manifestation of the student's disability:

- During the first 10 days of suspension in a school year, the student may be disciplined and receive services to the same extent as a student without a disability.
- Beginning on the 11<sup>th</sup> day of suspension in a school year (and any subsequent suspensions) the student with a disability must continue to receive a free appropriate public education (i.e., educational services necessary to enable the student to continue to participate in the general education curriculum, and to progress toward meeting their IEP goals.) although in another setting.
- The student must receive, as appropriate, an FBA and behavioral intervention services and modifications designed to address the behavior violation, so it does not recur.

***Does a school district need to conduct a manifestation determination review for students presumed to have a disability for discipline purposes?***

Yes, if a student engages in behavior that violates a code of student conduct prior to a determination of their eligibility for special education and the school district is deemed to have knowledge of the student's disability<sup>3</sup>, the parent of a student may assert the disciplinary protections under Part [201.5\(a\)](#), including the manifestation determination review provisions.

The manifestation team must review all relevant information in the student's file, including any teacher observations and any relevant information provided by the parents, to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability. If the school district cannot conduct an initial evaluation before the manifestation

<sup>3</sup> [8 NYCRR 201.2\(n\)](#) *Student presumed to have a disability for discipline purposes* means a student who the school district is deemed to have knowledge was a student with a disability before the behavior that precipitated disciplinary action under the criteria in section 201.5(b) of Part 201 of the Commissioner's Regulations.

determination review, the manifestation team would likely consider the information that served as the school district's basis of knowledge that the student is a student presumed to have a disability.

Based upon its review and consideration of the available information, the manifestation team would determine whether the conduct in question was caused by or had a direct and substantial relationship to the student's suspected disability.<sup>4</sup>

***Who is responsible for conducting a manifestation determination review for students enrolled in BOCES programs, nonpublic schools with approved special education programs (853 Schools), State-Supported Schools (4201 Schools), State-operated Schools, and Article 81 Schools?***

For students attending Boards of Cooperative Educational Services (BOCES) programs, the school district of residence is responsible for conducting the manifestation determination review.

For students placed in nonpublic schools with approved special education programs (853 Schools), the sending school district is responsible for conducting the manifestation determination review. The manifestation team may include staff from the 853 School determined by the parent and school district to be relevant members of the CSE.

For students placed by the Commissioner in State-Supported Schools (4201 Schools), the student's school district of residence is responsible for conducting the manifestation determination review. For students placed by the Commissioner in a State-Operated School, New York School for the Blind in Batavia or the New York School for the Deaf in Rome, the multidisciplinary team of the school is responsible for conducting the manifestation determination review.

For students placed pursuant to Article 81 of the NYS Education Law by a local department of social services, state agency, or court, the CSE of the approved special education program is responsible for conducting the manifestation determination review.

***What happens if there is no agreement that a student's behavior was a manifestation of their disability?***

If the parents of a student with a disability, the school district, and the relevant members of the student's CSE cannot reach consensus or agreement on whether the student's behavior was a manifestation of the disability, the school district must make the determination and provide the parent with prior written notice of this decision. The parent has the right to exercise his or her procedural safeguards by requesting mediation and/or a due process hearing to appeal the decision. A parent also has the right to file a State complaint alleging a violation of Part B of the IDEA and Part 201 related to the manifestation determination review.

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<sup>4</sup> See the U.S. Department of Education, Office of Special Education Programs' [Letter to Nathan](#) (January 29, 2019) and Questions I-7 and I-8 of the [Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions](#).

**Where can I find more information?**

The following technical assistance resources are available to help support the use of positive behavioral supports and interventions and the implementation of federal and NYS requirements relating to discipline procedures for students with disabilities:

- [Office of Special Education Programs \(OSEP\) 2023 Discipline-Behavior Guidance webpage](#) – Contains resources to support all stakeholders, including teachers, specialized instructional support personnel, administrators, local educational, State educational agencies, and families, released by the USDE’s Office of Special Education and Rehabilitative Services and Office of Civil Rights.
- NYSED’s Office of Special Education (OSE) [Behavioral Interventions and Supports & Discipline Protections for Students with Disabilities webpage](#) – Contains the latest policy and regulatory information provided by the OSE related to behavioral interventions and supports and procedural safeguards for students with disabilities subject to discipline.
- Consistent with the Board of Regents’ diversity, equity and inclusion policy, to ensure student health and safety, at their July 2023 meeting, the Board of Regents approved for [permanent adoption the amendment of sections 19.5 of the Rules of the Board of Regents and Sections 100.2, 200.1, 200.7, 200.15, and 200.22 of the Regulations of the Commissioner of Education](#).
- NYSED’s OSE Educational Partnership – The [OSE Educational Partnership](#) is a coordinated and cohesive network of support focused on enhancing services and supports for students with disabilities from early childhood and school-age education to engagement in post-school opportunities. Specialists within the OSE Educational Partnership offer assistance and training on a variety of topics including discipline procedures for students with disabilities, FBAs, BIPs and positive behavioral interventions and supports.

**Please note:** To receive email notification of new OSE publications, visit the [Register for the Listserv webpage](#).

**Legal References**

**8 NYCRR [201.4](#) and Education Law [§§3214, 4404](#)**

**NOTE:** Please reference the Official Compilation of Codes, Rules and Regulation of the State of New York (8 NYCCRR) for regulatory language. An [unofficial version of 8 NYCRR](#) is available through Thomas Reuters Westlaw. It is intended for information purposes only.