

A Note on Manifestation Determination

Within ten 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 PPT must conduct a manifestation determination. The PPT 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 to determine:

- if the behavior in question was caused by, or had a direct and substantial relationship to the child's disability; or
- if the behavior in question was the direct result of the district's failure to implement the IEP.

A change in placement occurs when the student is removed from school for more than ten consecutive school days or if the student's current removal, when added to the student's previous removals, is more than ten cumulative school days. In determining whether a student's series of removals that equal more than ten cumulative school days constitute a change in placement, the following criteria must be met:

- the student has been subjected to a series of removals that constitute a pattern because:
 - the series of removals total more than ten school days in a school year; and
 - the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
 - of such additional factors as the length, of each removal, total amount of time the child has been removed and the proximity of the removals to one another.

It is important to note that multiple, short-term, in-school suspensions do not constitute a change in placement if the in-school suspensions are not counted as out-of-school suspensions. Guidance from the federal government states that in-school suspension days do not count as out-of-school suspensions if the student is afforded the opportunity to continue to appropriately participate in the general curriculum; continues to receive the services specified on his or her IEP; and continues to participate with nondisabled children to the extent that he or she would have in his or her current placement. Generally speaking, the first two criteria may be met in the in-school suspension setting. With regard to the third criteria, each situation must be judged individually, however, if the district establishes an in-school suspension setting that is available to all children, the third criteria is met. This is true even if on any given day the student with a disability is the only student placed in the in-school suspension setting. If an in-school suspension does not meet the three criteria listed above, the in-school suspension would constitute an out-of-school suspension and, therefore, the day(s) of the in-school suspension would be counted in determining when the student's removals amount to more than ten cumulative school days. (Information in this paragraph is taken from the CSDE *Guidelines for In-School and Out-of-School Suspensions* (revised December 2010), p.34-36)

Determination that the Behavior was Not a Manifestation of the Disability

The team may find that the behavior was not a manifestation of the child's disability only if the team finds that:

- The student's conduct in question was not caused by, or did not have a direct and substantial relationship to, the child's disability.
- The student's conduct in question was not the direct result of the district's failure to implement the IEP.

If the team concludes that the behavior subject to the discipline is not a manifestation of the student's disability, the student may be disciplined to the same extent that students without disabilities would be disciplined for the same behavior. However, students with disabilities must continue to receive educational services to enable the student to continue to participate in the general education curriculum although in another setting and to progress towards meeting the goals set out in the student's IEP. The PPT determines the educational services to be received and the setting for those services. If disciplinary procedures are initiated, the special education and disciplinary records of the student are transmitted for consideration to the person or persons making the final determination regarding the disciplinary action.

Additionally, when the district considers an action for a removal of a student to an IAES or any other removal that constitutes a change in placement, the district must notify the parents no later than the date on which the decision to remove the student is made and provide the parents with a copy of the procedural safeguards notice.