



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

June 2024

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 action¹.

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:

- x 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
- x 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
- x 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:
 - $\frac{3}{4}$ the removal is for more than 10 consecutive school days; or
 - $\frac{3}{4}$ 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.

¹ 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:

x

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:

- x 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
- x 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.
- x 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 (nt)2.1 (f)-7.9 (r)7 (om)-3 (w)(IP)]TJ te a

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.⁴

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 in (re W Td [(c)4 (ho)-10 (ol)6 (s)-6 ())10 (n)10 8h2 0.0r)7(s)4 (e

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