

CONDUCTING A MANIFESTATION DETERMINATION REVIEW

PLACEMENT IN AN INTERIM ALTERNATIVE EDUCATIONAL SETTING

A. Authority of School Personnel

1. Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of IDEA discipline procedures, is appropriate for a child with a disability who violates a code of student conduct.
2. General. School personnel, consistent with IDEA discipline procedures, may remove a child with a disability who violates a code of student conduct from his or her current placement -
 - a. To an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent such alternatives are applied to children without disabilities); and
 - b. For additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under the IDEA, 34 CFR 300.536).
 - c. After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required by the IDEA, 34 CFR 300.530(d).

B. Special Circumstances. School personnel may remove a student -

1. To an appropriate interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if -
 - a. The child carries a weapon to school or possesses a weapon at school, on school premises, or to a school function under the jurisdiction of a State or local educational agency; or
 - b. The child knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or
 - c. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.
2. The appropriate interim alternative educational setting shall be determined by the child's IEP Team.

C. Manifestation determination review

1. 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 (LEA), the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) 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 -
 - a. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
 - b. If the conduct in question was the direct result of the LEA's failure to implement the IEP.
2. The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in paragraph 1a or 1b of this section was met.
3. If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph 1b of this section was met, the LEA must take immediate steps to remedy those deficiencies.

D. Determination that behavior was a manifestation

1. If the LEA, the parent, and relevant members of the child's IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must either -
 - a. Conduct a functional behavioral assessment (FBA), unless the LEA had conducted a FBA before the behavior that resulted in the change of placement occurred, and implemented a behavioral intervention plan (BIP) for the child; or
 - b. If a behavioral plan already has been developed, review the BIP, and modify it, as necessary, to address the behavior; and
2. Except as provided in paragraph B of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the BIP.

E. Notification

On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in 34 CFR 300.504.

F. Determination that behavior was not a manifestation

If the result of the Manifestation Determination Review is a determination that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same durations as they would be applied to children without disabilities, except that the provisions of a free appropriate public education must be met. (NO CESSATION OF EDUCATIONAL SERVICES)