

Manifestation Determination

Change of placement when there is a suspension or expulsion

What is Manifestation Determination?

Manifestation determination is an important part of Special Education and Section 504 laws. It is intended to prevent discrimination of a student when behavior is part of their disability. It is the right of a student with a disability who experiences a disciplinary removal (suspension or expulsion) for more than 10 days to have a manifestation determination meeting.

The purpose of the manifestation determination meeting (sometimes called a hearing, evaluation or review) is “to determine whether a student’s behavior was caused by, or had a direct and substantial relationship to the student’s disability” (34 C.F.R. § 104.35(a)).

Can my student with an IEP or 504 plan be suspended or expelled?

A student with an Individualized Education Program (IEP) or 504 plan can be suspended or expelled the same as other students. However, these students have extra procedural protections that schools are required to follow to make sure that the student with a disability receives a Free and Appropriate Public Education (FAPE).

What is Free and Appropriate Public Education (FAPE)?

FAPE is one of the rights that a student with a disability has in public school. FAPE means that students with an IEP or 504 must receive educational services as effective as those of their nondisabled peers.

What is a “disciplinary change of placement”?

Suspending or removing a student with a disability from their typical educational environment can be considered a “disciplinary change in placement”. A suspension or expulsion is considered a disciplinary change of placement if:

- the disciplinary removal is for more than 10 days in a row; or

- the student has experienced a series of removals that total more than 10 school days in a school year *and* the behavior that resulted in the removals is substantially similar, indicating a pattern.

If a student is suspended multiple times that add up to more than 10 days in a school year, and the behaviors are substantially similar, then a manifestation determination is required. This is considered a pattern of behavior and would be a disciplinary change of placement. Whether a pattern of removals constitutes a “disciplinary change of placement” is determined on a case-by-case basis by the school district.

The decision may also be based on “factors such as the length of each removal, the total amount of time the child is removed, and the proximity (in time) of the removals to one another.”

What about in-school suspensions?

Moving a student with a disability to a different location in the building (or in-school suspension) would not be considered a “disciplinary change in placement” if the student can get the same instruction, services, supports, interventions, and modifications alongside students without disabilities to the same extent.

What is required before a “disciplinary change of placement” is made by the school?

Certain procedural steps must be followed by the school:

- 1) Prior Written Notice (PWN) must be given to the parents (see related resource on PWN), and
- 2) There must be a manifestation determination meeting held to decide if the behavior that the student is being suspended for was a manifestation of the child’s disability.

What is the purpose of the manifestation determination meeting?

Two factors must be considered when parents meet with the school district and other relevant members of the team:

- 1) Was the child's behavior caused by, or did it have a "direct and substantial relationship to" the child's disability?

Example: A student who has physical tics related to his disability may accidentally hit the student next to him as a result of his Tourette's. While it is against school policy for students to hit one another, this incident is directly related to the child's disability and may be determined to be a manifestation of his disability.

- 2) Was the behavior the direct result of a failure on the part of the school, district, or AEA to implement the student's IEP or 504 plan?

Example: A student with Oppositional Defiance Disorder (ODD) has an accommodation that states she will go to the library to take a break when she feels agitated. The student disagrees with her teacher about an assignment and feels herself getting angry. She asks to go to take a break, but the request is refused. The student kicks a desk, violating the student code of conduct. As a result of the plan not being followed, the student displayed a behavior the accommodation was written to prevent. In this instance, the team may determine that the behavior was a manifestation of the student's disability.

Parent participation is very important in the manifestation determination process and the school is required to invite parents and other relevant members of the team to attend. It is your responsibility as a parent to be prepared and ready to share any information you feel is important to determine if the incident was related to your child's disability. You may want to bring documents such as psychological reports, medical records, and other disability-related information to share with the team.

What if the behavior is a manifestation of the disability?

If the team decides that the behavior is a manifestation

of the child's disability, the school district must return the child to their original placement, unless the parent agrees otherwise. The team must then:

- complete a Functional Behavior Assessment and implement a Behavior Intervention Plan if the student doesn't already have one, or
- consider if updates and changes to the existing plan are necessary.

What if the behavior is not a manifestation of the disability?

If the team decides that the behavior is not a manifestation of the child's disability, the school can apply the same disciplinary measures that they use for any other student.

However, when a student with an IEP has been suspended or expelled, they are still entitled to FAPE and the student should still have access to educational services that allow the student to make progress in the general education curriculum and IEP goals. This may look a bit different than what they would typically receive. The IEP team should determine what those services will look like after making the manifestation decision.

When the behavior is not a manifestation of the disability and a student has a 504 plan, some districts may provide educational services to students who are suspended or expelled, but it is not required.

Are there any special circumstances?

In situations involving illegal drugs, weapons, or a student causing "serious bodily injury", school staff may remove a student to an alternative setting for up to 45 days regardless of whether the behavior is considered a manifestation of the child's disability.

What if we don't agree?

If parents disagree with the school on whether the suspension (or pattern of suspensions) is a "disciplinary change of placement" requiring a manifestation determination, or the outcome of the manifestation determination, they can refer to the options for dispute resolution in the Procedural Safeguards Manual.

Are there any protections for students with disabilities who do not yet have an IEP or a 504 plan?

There are situations when a student without an IEP or 504 plan can be protected by the law. If a child is being suspended or expelled and:

- their parent has let the school know in writing that they think their child needs special education and related services, or
- is in the process of being evaluated for special education, or
- if the child's teacher or other school staff have expressed concerns about a child's pattern of behavior to their supervisor.

What are some proactive steps parents can take to help students with disabilities who struggle with behavior?

- **Communicate regularly.** Keep focused on your child's needs and how you can continue to work with the school district to best meet those needs. You have an opportunity to identify the issues that are leading to the disciplinary actions and work with the other members of the team to address them as soon as you recognize that they exist.
- **Request a meeting.** Address behavioral issues as soon as you recognize them. You don't have to wait until the eleventh day of suspension to request a meeting or a new evaluation.
- **Review the plan.** If your child has been suspended several times, request that the IEP or 504 team meet to consider if the educational program and behavioral supports remain appropriate. When a student is struggling, it is a good idea to review the IEP, including the Behavior Intervention Plan (BIP) if the student has one, or the 504 plan to discuss what is working and what is not. This allows an opportunity to make any necessary changes.
- **Request a new evaluation.** If your child is being repeatedly suspended from school, this may be a time to request a new evaluation. The evaluation should consider if there are any unidentified academic and behavioral needs, whether the child's behavior is related to their disability, and whether or not the current IEP or 504 plan includes the appropriate supports to meet the student's needs.

Related Resources

Look for the following resources on <https://www.askresource.org/>

- Free and Appropriate Public Education (FAPE)
- Prior Written Notice
- Removal of Students with Disabilities from School
- Discriminatory Use of Student Discipline Guidance

ASK Essential Questions

- Does my child have a Behavior Intervention Plan (BIP)?
- Does my child's BIP address the behaviors resulting in suspension?
- Was my child's BIP followed as written?
- What evidence or documentation can I provide the team that would show how my child's disability is linked to the behavior incident?
- Does the current IEP and BIP address my child's needs? If not, should a re-evaluation be considered?