

*November, 2006*



Guidance Document  
on  
Manifestation Determination  
  
New Requirements

*"...if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or...if the conduct in question was the direct result of the local educational agency's failure to implement the IEP."*

*IDEA '04 §1415 (k) (1) (E)*

## Overview

The Individuals with Disabilities Education Act (IDEA) was amended by Congress in 2004 to provide changes and enhancements in certain areas of the law.<sup>1</sup> Most notable is an amendment in the provision of new requirements for the area of discipline for manifestation determinations. These changes include a shift in emphasis with regard to language and terminology, standards and criteria for determinations, and the level and extent of parental participation. To facilitate an understanding of the changes in the law and the expectations for parents and local educational agencies (LEAs), relevant laws, regulations and commentaries about recent changes are provided in this document.

The provisions of the IDEA 2004 became effective on July 1, 2005. Subsequently, the federal special education regulations were issued on August 16, 2006 and implemented October 13, 2006. The new federal regulations do not impose additional requirements for manifestation determinations. (The discipline procedures may be found at §§ 300.530 – 300.537.) Virginia is providing a guidance document to serve as a supplement to current guidance documents on discipline and to explain the new law and related communications about the requirements for manifestation determinations.

A description of manifestation determination based on the federal law in 1997 is set forth in the Department of Education's December 2000 guidance document entitled: Discipline of Students with Disabilities, currently under revision. In the 2000 document, Appendix A sets forth in chart form a *Guide to Discipline Under IDEA 97 and Federal Regulation*. Because the IDEA 2004 necessitates an explanation of the changes that affect the requirements for a manifestation determination, the following information is provided. Questions about this document may be addressed to the Division of Special Education and Student Services, Office of Dispute Resolution/Administrative Services, at the Virginia Department of Education.<sup>2</sup>

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<sup>1</sup> Reauthorized as Individuals with Disabilities Education Improvement Act 2004 [IDEA 2004] with implementation date of July 1, 2005.

<sup>2</sup> ODRAS (804) 225-2013; [www@DOE.virginia.gov/dueproc](mailto:www@DOE.virginia.gov/dueproc) for contact list.

## What Has Changed?

The following analysis illustrates the changes in the manifestation determinations.

From 1997 to 2004: the IEP team had to determine that the child's behavior was not a manifestation of such child's disability

Beginning July 1, 2005: the IEP team has to determine that the behavior was a manifestation of the child's disability. The new requirement sets forth that the school division must meet the following:

- Time Requirement: within 10 school days of any decision to change the placement, the LEA must reach a manifestation determination
- Student Involved: a child with a disability for whom a decision is made to change the placement because of a violation of a code of student conduct
- Who Must Act: the local educational agency, the parent, and relevant members of the IEP team
- What Must Occur: 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 –
  1. if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
  2. if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.
- How to Determine: guidance on how to review the two-prong standard is found in this document on pages 4, 5 and 6.

IN SUMMARY, a Manifestation Determination must be held within 10 school days of any decision to change the student's placement because of misconduct. This decision is made by a Manifestation Determination Review team (MDR). The purpose of the meeting is to determine if the conduct was caused by or had a direct and substantial relationship to the child's disability, or if the student's conduct was the direct result of the LEA's failure to implement the student's IEP. If either is in the affirmative, the LEA must proceed in meeting the requirements of the law regarding a functional behavioral assessment and a behavioral intervention plan.

The 2004 amendments did not change the requirements for the conduct of a functional behavioral assessment or the implementation of a behavioral intervention plan. The amendments do provide new provisions that may necessitate a shift in the nature and extent of participation of both parents and school personnel in ensuring that the new standards for manifestation determination are met.

LEAs must ensure that if a student with a disability has exhibited conduct that is found not to be a manifestation of the student's disability, and the student is disciplined with long-term suspension or expulsion, the student must still be provided with educational services during the long-term removal.

## Level and Extent of Parent Participation

To meet the 2004 requirements there may be a need for an increased level of parental participation in the manifestation review process. This would entail a new level of informedness, greater preparation of parents, and new considerations on the part of LEAs in arranging for and ensuring the meaningful participation of parents in this process. Parents may encounter the need for a new level of familiarity and expertise with the process that they have not been required to exhibit before.

LEAs may need to identify and implement the use of resources to assist parents in becoming familiar with expectations of the new provisions of the law and how to meet these expectations. In so doing, LEAs need to present information in a language that is easily understood by a broad range of parents. Parents need to learn the process and the language of the deliberations so they can participate effectively in the manifestation determinations.

Contact with the local Parent Resource Center (PRC)<sup>3</sup> in the LEA and/or the Parent Educational Advocacy Training Center (PEATC)<sup>4</sup> will provide parents with some initial information and resources.

## What Must LEAs Do?

1. LEAs must ensure that procedural safeguards documents accurately reflect the changes set forth in IDEA 2004 and the 2006 federal regulations. Copies of the revised procedural safeguards must be properly communicated and distributed to parents, school staff, and the community.
2. LEA forms must be revised to incorporate the new provisions of the law.

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<sup>3</sup> Website for list of PRCs: <http://www.doe.virginia.gov/VDOE/sess/>

<sup>4</sup> Website for PEATC: <http://www.peatc.org/>

3. LEAs must consider the following three factors in conducting a manifestation determination:
  - Is the conduct in question caused by the child's disability?
  - Does the conduct have a direct and substantial relationship to the child's disability?
  - Is the conduct in question the direct result of the school division's failure to implement the IEP?
4. LEAs should develop a mechanism to ensure that parents, and each person participating in the manifestation process are knowledgeable of the requirements for manifestation determination.
5. LEAs should hold training sessions to update parents and staff on new requirements, including parent resource centers and local advisory committees.
6. LEAs should update their websites to include new provisions of IDEA 2004 and the 2006 federal regulations. Updates would include websites and commentaries on current and related resources.

## How To Determine Manifestation

### Practice Tips

Standard One            If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability

A comprehensive problem-solving review to identify why the misconduct occurred should guide IEP teams to successful manifestation determinations. Factors that should be considered include environmental factors, the child's school program, home factors and the child's mental, physical and developmental challenges. Other important factors IEP teams may consider include the following:

- The child's discipline history (total number of suspensions, the proximity of suspensions and the length of each suspension).
- The type of misconduct in relation to the child's discipline history (isolated instance vs. repeated; whether the child's behavior is substantially similar to behavior in previous and current incident).

- The factors contributing to the misconduct such as unique circumstances, information from observers of the incident, environmental factors, educational program, home factors and the child's mental, physical and developmental challenges.
- Was the student code of conduct provided to the family?
- Whether the behavior was dangerous, likely to result in injury or inflicted "serious bodily injury" on another person.<sup>5</sup>
- The effectiveness of current behavioral strategies to prevent similar misbehavior and reinforce desirable behavior in the child's school (school-wide discipline).
- The effectiveness of the child's Behavioral Intervention Plan (BIP) in relationship to the misconduct and whether the BIP is based on research-based practices.
- In the absence of a BIP, the administration of a Functional Behavioral Assessment (FBA).
- Whether more information is needed (FBA or other types of evaluation).

Standard Two: If the conduct in question was the direct result of the LEA's failure to implement the IEP

Considerations may include:

- How the area of the IEP not implemented relates to functional skills, social competency and behavior of the child and the misconduct observed.
- How the area of the IEP not implemented relates to service, goals, positive behavior supports or the BIP.

The IEP team must determine the impact of the failure to implement the student's IEP on the misconduct. It means first determining what was not implemented and then determining its impact on the student's behavior. Example: A 16 year-old with learning disabilities (LD) brings a gun to school. This student's IEP designates LD services in language arts two hours per week, and one hour of speech therapy once a month. The MDR team learns that the student has not received speech therapy services for two

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<sup>5</sup> "Serious Bodily Injury" means a bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. U.S.C. 1365 (g).

months. In this scenario, it is questionable whether the misconduct was the direct result of the LEA's interruption of the speech therapy services. However, take this same student and say that she is receiving counseling 4 hours per week for issues related to self-esteem and impulse control, and the IEP team learns that there has been an interruption of this related service for a month. In this scenario, there is a stronger nexus between the failure to implement the service and the student's behavior.

## Appendix A

### IDEA '04 Statutory Mandates Pertaining to Manifestation Determination

#### (k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING.—

##### (1) AUTHORITY OF SCHOOL PERSONNEL.—

(A) CASE-BY-CASE DETERMINATION.—School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

(B) AUTHORITY.—School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

(C) ADDITIONAL AUTHORITY.—If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in section 612(a)(1) although it may be provided in an interim alternative educational setting.

(D) SERVICES.—A child with a disability who is removed from the child's current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or subparagraph (C) shall—

- (i) continue to receive educational services, as provided in section 612(a)(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(ii) receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(E) MANIFESTATION DETERMINATION.—

(i) IN GENERAL.—Except as provided in subparagraph (B), 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, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall 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—

(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

(ii) MANIFESTATION.—If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

(F) DETERMINATION THAT BEHAVIOR WAS A MANIFESTATION.— If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall—

(i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);

(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

(3) APPEAL.—

(A) IN GENERAL.—The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

(B) AUTHORITY OF HEARING OFFICER.—

(i) IN GENERAL.—A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).

(ii) CHANGE OF PLACEMENT ORDER.—In making the determination under clause (i), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may—

(I) return a child with a disability to the placement from which the child was removed; or

(II) order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

(4) PLACEMENT DURING APPEALS.—When an appeal under paragraph (3) has been requested by either the parent or the local educational agency—

(A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(C), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

(B) the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

(7) DEFINITIONS.—In this subsection:

(A) CONTROLLED SUBSTANCE.—The term ‘controlled substance’ means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(B) ILLEGAL DRUG.—The term ‘illegal drug’ means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(C) WEAPON.—The term ‘weapon’ has the meaning given the term ‘dangerous weapon’ under section 930(g)(2) of title 18, United States Code.

(D) SERIOUS BODILY INJURY.—The term ‘serious bodily injury’ has the meaning given the term ‘serious bodily injury’ under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

## Appendix B

### Manifestation Determination Review (MDR) Minutes

**Modeled After Suffolk Public Schools Form - REVISED May, 2006**

Name of Student Student ID #

Date of Birth School Grade

1. Define the disabling condition:
2. Define the conduct in question:
3. The Manifestation Determination Review team considered the following:
4. After carefully reviewing this case, the MDR team finds as follows:
  - Was the student's conduct caused by the disability?  
     \_\_\_\_\_ Yes      \_\_\_\_\_ No
  - Did the student's conduct have a direct and substantial relationship to the disability?  
     \_\_\_\_\_ Yes      \_\_\_\_\_ No
  - Was the student's conduct the result of the LEA's failure to implement the student's IEP?  
     \_\_\_\_\_ Yes      \_\_\_\_\_ No
5. The Manifestation Determination Review team has determined that the student's conduct  WAS or  WAS NOT a manifestation of the student's disability for the following reasons:

Manifestation Determination Review Minutes - Continued  
Page 2 of form [to be front and back]

Name  
DOB

If the student's conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or if the conduct in question was the direct result of the local educational agency's failure to implement the IEP, then the student may not be expelled, nor may a long-term suspension be imposed.

If the student's conduct in question was not caused by, nor had a direct and substantial relationship to the child's disability; or if the conduct in question was not the direct result of the local educational agency's failure to implement the IEP, then the student may be disciplined in the same manner as a student without a disability. Additionally, a free appropriate public education must continue to be provided after an accumulation of ten days of suspension in a school year.

Additional Comments

**Signatures:**

**Date:**

Committee Chairperson  
Parent/Surrogate Parent/Legal Guardian  
School Psychologist  
Educational Diagnostician  
General Education Teacher  
Special Education Teacher  
Principal or Designee  
Guidance Counselor  
School Social Worker/Visiting Teacher  
Student  
Other