

Common Errors with Manifestation Determinations

#1

-  **Common Error:** The Team is unable to reach a consensus re: whether the behavior is a manifestation of the student's disability so they decide to vote.
-  **Correct Procedure:** The LEA makes the decision as to whether the behavior is a manifestation of the student's disability if the team cannot reach a consensus.

#2

-  **Common Error:** The Team is not asking parents if the student is on medication, has any diagnosis that might impact educational performance, or is receiving outside counseling.
-  **Correct Procedure:** Teams need to ask parents more questions re: outside services, medications and diagnoses before making a final determination whether the behavior was a manifestation of the student's disability.

#3

-  **Common Error:** Teams are not completing a Functional Behavior Assessment (FuBA) and implementing a Behavior Intervention Plan (BIP) if the behavior is determined to be a manifestation of the student's disability. Also, if the student has an existing FuBA and BIP, the team is not reviewing and revising the BIP based on the behavior leading to suspension.
-  **Correct Procedure:** Teams need to complete a FuBA and a BIP if the behavior is a manifestation of the student's disability. If a BIP is already in place, it needs to be reviewed and modified, as necessary, in order to address the behavior leading to suspension.

#4

-  **Common Error:** The team responded that the behavior in question was not a direct result of a failure to implement the IEP, when only some or no services listed on the IEP had been provided (see Finding section under Part I).
-  **Correct Procedure:** All services listed on the IEP must be provided as specified in the IEP in order to say that the behavior in question was not a direct result of a failure to implement the IEP. Transfer students on an IEP must be served pending the arrival of the file.

#5

-  **Common Error:** Part II of the Manifestation Determination directs the team to respond to a series of questions about the behavior related to anecdotal records, whether the behavior in question has been noted in ERS or IEP, whether the behavior has been exhibited across settings and times,

and whether the conduct is a recognized diagnostic feature of the student's disability. The team answered yes to most or all of these questions and then found that the behavior in question was not directly/substantially related to or caused by the student's disability.

-  **Correct Procedure:** The IEP Team determines whether the behavior in question was or was not directly/substantially related to or caused by the student's disability. When the team has answered yes to most or all of the questions in Part II, they should determine that the behavior in question was directly/substantially related to or caused by the student's disability.

#6

-  **Common Error:** Teams using an outdated manifestation determination form.

-  **Correct Procedure:** This is a problem because the questions asked on the old manifestation determination forms require a much lower degree of relationship for a finding of manifestation. All teams should be using Manifestation Determination forms dated June 2011.

#7

-  **Common Error:** Manifestation Determination Teams do not include a parent.

-  **Correct Procedure:** Team members for a manifestation determination must include the LEA, parent/ legal guardian, and relevant members of the student's IEP team (as determined by the LEA & parent. (USOE Rules, p. 111)

#8

-  **Common Error:** Teams are not conducting manifestation determinations for students who have been referred for evaluation.

-  **Correct Procedure:** Teams are required to complete a manifestation determination in the following instances: "... the parent of the student expressed concern in writing to supervisory or administrative personnel of the appropriate LEA, or a teacher of the student that the student is in need of special education and related services; the parent of the student requested an evaluation of the student; or the teacher of the student, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of the LEA or to other supervisory personnel of the LEA." (USOE Special Education Rules, p.115).

#9

-  **Common Error:** A member of the Manifestation Determination Review (MDR) Team refuses to sign the form because he/she disagrees with the findings or uses white out to erase their signature after the meeting.

-  **Correct Procedure:** If a member of the MDR team feels uncomfortable signing the form, it should be explained that a signature is a record of participation, not a record of agreement.

#10

-  **Common Error:** Teams respond literally to the question of whether the behavior in question was noted when the student was referred for evaluation. For example, if aggressive behavior was noted on the initial referral and the student brought a knife to school or assaulted another student, teams are not viewing that behavior as aggression
-  **Correct Procedure:** The student's current behavior leading to suspension should be reviewed in relation to the initial referral, in terms of any behaviors that were noted at the time.

#11

-  **Common Error:** The parent does not schedule an appeal hearing after the student has been suspended.
-  **Correct Procedure:** The school should contact the parent and ensure that an appeal hearing is scheduled in a timely manner.

#12

-  **Common Error:** The school contacts the parent re: a behavioral incident(s) and asks if the parent would like to check the child out of school, or take him/her home for the rest of the day.
-  **Correct Procedure:** Even if the parent voluntarily checks the student out of school after being called about a behavior problem, this is counted as a day of suspension.

#13

-  **Common Error:** The school reports that there is nothing they can do about a student's behavior because their school psychologist is only there 2 days a week.
-  **Correct Procedure:** It is a team responsibility to implement the IEP, including the social behavioral goals, whether the school psychologist is available or not.

#14

-  **Common Error:** A student has a discipline log that documents 47 referrals to the administration and there do are no goals or interventions addressing the behaviors on the IEP.
-  **Correct Procedure:** When a student has a record of referrals to the administration for discipline issues, the IEP should be reviewed and behavior goals should be added if they are not on the IEP. In addition, if behavior goals exist on the IEP, the appropriateness of the goal(s) should be addressed and the goal(s) revised if necessary.