**Manifestation Determination**

**& Interim Alternative Educational Setting**

When a student with a disability has been suspended for 10 consecutive days, or 10 cumulative days in a school year—constituting a change in placement, then the IEP team must conduct a Manifestation Determination Review (MDR). The LEA may not suspend that student until the MDR has concluded. Therefore, the student shall remain in the current placement until an MDR is completed (stay-put).

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.

A Manifestation Determination Review must be conducted within 10 school days, and the IEP team is required to provide the parent with 10 calendar days’ notice for the MDR. Complete the *“Parent/Guardian Waiver of*

*10 Day Notice of Meeting”* if the meeting is held before 10 calendar days.

The MDR process involves describing the behavior which violated the school code of conduct and resulted in disciplinary action, reviewing any information contained in the child’s records, and reviewing the child’s IEP to determine whether or not the conduct was a manifestation of a child’s disability.

Instructions for completing MDR form:

Incidents that Resulted in Disciplinary Action: This section should include a description of the student’s behavior that resulted in the need for a manifestation determination. Provide a detailed account of the incident, including the location, time, and individuals present. This section should not include information from previous incidents of misconduct.

Student’s IEP and Placement: Documentation should include a review of all relevant information in the student’s file, including the student’s IEP. If the IEP was not implemented, the team should document why it was not implemented and whether the failure to implement impacted the student’s behavior.

Observations of the Student: Documentation should include a review of staff observations regarding the student’s behavior. This should include an analysis of the student’s behavior across settings and times by multiple staff members throughout the school day.

Information Provided by the Parents: Documentation should include a review of any relevant information provided by the parents.

Determination of Manifestation: This determination should be based upon two inquiries:

1. Was the conduct caused by, or did it have a direct and substantial relationship to the student’s disability? or
2. Was the conduct the direct result of the LEA’s failure to implement the IEP?

What happens if the Conduct is found NOT to be a Manifestation of the Student’s Disability?

If the team determines that the student’s behavior WAS NOT a manifestation of the disability, the relevant disciplinary procedures may be applied to the student in the same manner in which they are applied to students without disabilities. However, the student still retains the right to a free, appropriate public education. Therefore, after a student with a disability has been removed from his or her placement, school personnel—in consultation with at least one of the child’s teachers—must determine the extent to which services are needed to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student’s IEP. These services must be determined on an individual basis.

What happens if the Conduct is found to be a Manifestation of the Student’s Disability?

If the team determines that the student’s behavior WAS a manifestation of his/her disability, the team must take immediate steps to ensure that all services in the student’s IEP are provided. In addition, the following actions must be implemented:

* The IEP Team must conduct a functional behavioral assessment, unless the LEA has already completed one, and implement a behavior intervention plan;
* If a behavioral intervention plan was already developed, review it and modify it, as necessary, to address the behavior;
* Return the student to the placement from which the student was removed, unless the LEA and parent agree to a change in a placement.

If the IEP was not implemented, the team should document why it was not implemented and whether the failure to implement impacted the student’s behavior.

If the IEP was implemented properly, then the team must determine if the behavior was a manifestation of the child’s disability.

**Interim Alternative Educational Setting**

*Under what Circumstances can the District Move a Student into an Interim Alternative Educational Setting?*

School personnel may remove a student to an 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 the child—

1. Carries a weapon to or possesses a weapon at school, on school premises, or to a school function under the jurisdiction of an SEA or LEA;
2. 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 an SEA or an LEA; or
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

*What is a Serious Bodily Injury?*

The term “serious bodily injury” means bodily injury which involves – (A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss of impairment of the function of a bodily member, organ, or mental faculty.

*What is a Weapon?*

A weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length.

*Who Determines the Interim Alternative Educational Location and Services?*

The student’s IEP Team determines the interim alternative educational location and the appropriate services to enable the student to participate in the general education curriculum and progress toward meeting IEP goals. Changes in placement and services must be documented on the IEP. Additionally, the IEP team must develop, or review and revise the FBA and BIP to address the behavior violation so it does not recur.

**Knowledge**

*What Protections Extend to Students not yet Identified Eligible for Special Education and Related Services?*

A student who has been determined to be eligible for special education and related services under IDEA and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided to students with a disability under IDEA if the LEA has knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

A district is deemed to have knowledge that a student is a student with a disability if, before the behavior, one of these three circumstances existed:

1. The child’s parent expressed concern in writing to supervisory or administrative personnel or a teacher of the child, that the child is in need of special education and related services;
2. The child’s parent requested an evaluation of the child to determine special education eligibility; or
3. The child’s teacher or other school personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the special education director or to other supervisory personnel of the district.

A school district is not deemed to have knowledge that a student had an IDEA qualifying disability if:

1. The parent has not allowed an evaluation of the child;
2. The parent has refused or revoked consent for IDEA services; or
3. The child has been evaluated and determined not to be a child with a disability.

*What happens if the District is Deemed to have Knowledge?*

The student may assert all protections afforded under the IDEA, such as the right to “stay-put” in his or her current educational placement until eligibility is properly determined and, if eligible, an MDR is conducted.

*What happens if the Parent Requests an Evaluation after the Misconduct?*

If a parent requests an evaluation after the conduct requiring disciplinary action has occurred, the district is not deemed to have knowledge. The IEP Team must conduct an “expedited” evaluation after the suspension.