Introduction

This presentation provides an objective synthesis of the IDEA legislation, regulations, OSEP policy interpretations, and case law specific to manifestation determinations (M-Ds). The “lens” is legal, with due differentiation from and deference for professional best practice.

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Procedural Requirements

1. M-D Team (i.e., Who):
   • the school district representative
   • the parent
   • other relevant IEP team members “as determined by the parent and the [district]”
     - if no consensus, district decision subject to IHO or CP mechanism (Q/A Discipline Procedures, 2009)

Procedural Requirements

2. M-D Sources (i.e., What):
   “All relevant information in the student’s file, including”:
   • the IEP
   • any teacher observations
   • “any relevant information provided by the parents”

Procedural Requirements

3. M-D Timing (i.e., When):
   Within 10 school days of the decision for the “disciplinary change in placement”
   - 11 consecutive or equivalent pattern of cumulative days: 4 factors (IDEA regs - § 300.536(a))
   - including bus suspensions (OSEP Letter to Sarzynski, 2012)
   - including regularly sending child home early (Dear Colleague Letter, 2016)
**Procedural Requirements**

4. M-D Notices:
Notice to the parents no later than date of the decision for the disciplinary placement of “all procedural safeguards”:
- prior written notice (PWN)
- procedural safeguards notice

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**Substantive Requirements**

Criterion #1:
The conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability
- across settings and across times
- careful and thorough including rare circ.
- not attenuated association, such as self-esteem (leg. history)
- less difficult for “No” (regs. commentary)

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**Substantive Requirements**

Criterion #2:
The conduct in question was the direct result of the district’s failure to implement the IEP

[If so, the district must take immediate steps to remedy those deficiencies.]
Resulting Requirements

M-D = Yes:

- FBA-BIP
- return the child to the original placement unless:
  - any of 3+1 special circumstances for 45-day IAES
  - mutually agreed placement change (via BIP)
    - consent/PWN requirement for FBA (Letter to Anonymous, 2012)

M-D = No:

- FBA-BIP “as appropriate”
- same manner and duration of disciplinary procedures as nondisabled children (“may”) except:
  - FAPE in other setting (including IAES)
    - required for IAES (Q/A Discipline Procedures, 2009)

Other Resulting Requirement

Expedit ed hearing
- within 7 days (resolution session) + 10 school days (hearing) + 10 more school days (decision)
  - no extensions (OSEP Letters to Snyder, 2015 and Zirkel, 2016)
  - may extend, in IHO’s discretion, to whether student violated code of conduct (Letter to Ramirez, 2012)
  - including summer school days (Letter to Cox, 2012)
Case Law under IDEA 2004

Scope:
IDELR-published hearing/review officer (SEA) and court decisions from early 2006 to mid 2018
- not 1) whether disciplinary change in placement; 2) whether "deemed to know"; 3) technical dispositions (e.g., exhaustion); 4) § 504; 5) IAES or FBA-BIP; 6) OCR or CP decisions
- within jurisdiction of CP (Letter to McWilliams, 2015)

Overall Results:
133 SEA and 8 court decisions
- av’g. of 11 decisions per yr.
- av’g. of 1.5 issue category rulings (ICRs) per case
- ICRs: 56% substantive and 44% procedural

Frequency Results:
most frequent procedural ICRs (n=96 regardless of outcome)
- info sources (n=31)
- team members (n=19)
- notice (n=17)
- parental participation (n=16)
Case Law under IDEA 2004

Frequency Results (cont.):
117 substantive ICRs
- most frequent disability categories – OHI (n=47), SLD (n=31), and ED (n=21)
- most frequent violative conduct – actual or threatened violence
- ex. Z.H. – ED/OHI (ADHD) - “shooting list”

Outcome Results:
Outcomes of cases (across ICRs)
- Procedural: parent - 54% (n=34); district - 46% (n=29), especially additional diagnoses and sufficient notice
- Substantive: parent - 38% (n=42); district - 62% (n=69) – factors of impulsivity, expertise, and B/P

Other Results:
Supplemental observations
- varying procedural rigor and limited remedial orders
- relaxed view of causality std.
- extension from general clas’n to individual profile
**Overall Take-Aways**

- Be thorough re relevant info sources within and beyond student’s file.
- Provide and document full opportunity for parental participation.
- “Err” on the broader side of membership requirement.
- Don’t engage in stereotype-based analysis.
- Don’t rely on voting process.
- Provide “due weight” to outside diagnoses and experts.

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**References (re Disciplinary Changes in Placement)**


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**OSEP/OSERS Guidance for M-Ds**

Dear Colleague Letter, 68 IDELR ¶ 76 (OSEP/OSERS 2016).
Letter to Cox, 59 IDELR ¶ 140 (OSEP 2012).
Letter to McWilliams, 66 IDELR ¶ 111 (OSEP 2015).
Letter to Ramirez, 60 IDELR ¶ 230 (OSEP 2012).
Letter to Sarzynski, 59 IDELR ¶ 141(OSEP 2012).
Letter to Snyder, 67 IDELR ¶ 96 (OSEP 2015).
Letter to Zirkel, 68 IDELR ¶ 142 (OSEP 2016).
Questions and Answers on Discipline Procedures, 52 IDELR ¶ 231 (OSERS 2009).
References (Specific to M-Ds)


MANIFESTATION DETERMINATION CHECKLIST*

Child’s Name: ____________________________________________________________________________

Date: __________________________

Disciplinary Behavior (i.e., “conduct in question”): ________________________________________________________________________________________________

PARTICIPANTS:

Relevant members of the IEP team including:

___ the parent
___ the local educational agency representative
___ others mutually determined by the parent and the local educational agency

SOURCES OF DATA:

All relevant information in the student’s file including:

___ relevant information from the parents
___ teacher observations of the child
___ the child’s IEP
___ other: ______________________________________________________________________________________

CRITERIA:

1. Is the disciplinary behavior caused by, or had a direct and substantial relationship to, the child’s disability?
   ______ YES ______ NO

   Explanation: ____________________________________________________________________________

   If the answer to either of these two questions is YES, then the determination is that the disciplinary behavior is a manifestation of the child’s disability. On the other hand, if the answer to both is NO then it is not a manifestation of the child’s disability.

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