

# **MANIFESTATION DETERMINATIONS:** **THE SEARCH FOR MEANING**

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## **I. INTRODUCTION**

One of the most frequently misunderstood procedures in special education is the “manifestation determination.” I find that many principals and teachers do not clearly understand the purpose, the procedures, or the rules for making these determinations. As I sometimes joke, for many school officials the procedure is often a “manifestation desperation” rather than a “manifestation determination.” The purpose of this presentation is to dispel the myths surrounding the process, to clarify the purpose, and to propose a new way of looking at this misunderstood, misinterpreted, and typically frustrating procedure. Some may find my theory surprising, some may disagree, but everyone should take the time to thoughtfully reconsider why this process was created, whom it was intended to protect, what it was designed to accomplish, and how it is supposed to work. If I provoke you to rethink the manifestation

determination dilemma, and if you leave this presentation with a fresh perspective on an old problem, I will feel that I have done my job.

## **II. THE RULES FOR CONDUCTING A MANIFESTATION DETERMINATION**

The IDEA, as amended in 2004, substantially and importantly revised the rules for making manifestation determinations. For comparison sake, I am including below the “old” statutory requirements for manifestation determinations:

### **A. The “Old” Manifestation Determination Requirements (1997 Reauthorization):**

#### **§ 300.523 Manifestation determination review.**

(a) *General.* If an action is contemplated regarding behavior described in §§ 300.520(a)(2) or 300.521, or involving a removal that constitutes a change of placement under § 300.519 for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the LEA that applies to all children—

(1) Not later than the date on which the decision to take that action is made, the parents must be notified of that decision and provided the procedural safeguards notice described in § 300.504; and

(2) Immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review must be conducted of the relationship between the child’s disability and the behavior subject to the disciplinary action.

(b) *Individuals to carry out review.* A review described in paragraph (a) of this section must be conducted by the IEP team and other qualified personnel in a meeting.

(c) *Conduct of review.* In carrying out a review described in paragraph (a) of this section, the IEP team and other qualified personnel may determine that the behavior of the child was not a manifestation of the child's disability only if the IEP team and other qualified personnel—

(1) First consider, in terms of the behavior subject to disciplinary action, all relevant information, including —

(i) Evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the child;

(ii) Observations of the child; and

(iii) The child's IEP and placement; and

(2) Then determine that—

(i) In relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;

(ii) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and

(iii) The child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

(d) *Decision.* If the IEP team and other qualified personnel determine that any of the standards in paragraph (c)(2) of this section were not met, the behavior must be considered a manifestation of the child's disability.

(e) *Meeting.* The review described in paragraph (a) of this section may be conducted at the same IEP meeting that is convened under § 300.520(b).

(f) *Deficiencies in IEP or placement.* If, in the review in paragraphs (b) and (c) of this section, a public agency identifies deficiencies in the child's IEP or placement or in their implementation, it must take immediate steps to remedy those deficiencies. (Authority: 20 U.S.C. 1415(k)(4))

### **§ 300.524 Determination that behavior was not manifestation of disability.**

(a) *General.* If the result of the review described in § 300.523 is a determination, consistent with § 300.523(d), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in § 300.121(d).

(b) *Additional requirement.* If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

(c) *Child's status during due process proceedings.* Except as provided in § 300.526, § 300.514 applies if a parent requests a hearing to challenge a determination, made through the review described in § 300.523, that the behavior of the child was not a manifestation of the child's disability. (Authority: 20 U.S.C. 1415(k)(5))

**B. The "New" Manifestation Determination Requirements (2004 Reauthorization):**

**a. Manifestation Determination –**

Within ten (10) school days of any decision to change a child's educational placement for disciplinary reasons for more than ten (10) school days, the school district, the parent, and the relevant members of the IEP team shall:

1. Review all relevant information in the student's file, including the IEP and any teacher observations;
2. Review all relevant information provided by the parent; and,
3. Determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

4. Determine if the conduct in question was the direct result of the school district's failure to implement the IEP.

If either (3) or (4) is applicable, the conduct shall be determined to be a manifestation of the child's disability. 20 U.S.C. §1415(k)(1)(E).

**b. Determination that Behavior Was a Manifestation –**

If the child's conduct was a manifestation of the disability, the IEP shall

1. Conduct a functional behavior assessment, and implement a behavior intervention plan (if no FBA had been done prior to the conduct); or
2. If a BIP had been developed prior to the conduct, review and modify the existing BIP as necessary to address the problem; and
3. Return the child to his/her previous placement, unless the school district and parents agree to a change of placement as part of the modification of the behavior plan.

20 U.S.C. §1415(k)(1)(F).

### **III. GAINING A PSYCHOLOGICAL PERSPECTIVE ON CONDUCTING PROPER MANIFESTATION DETERMINATIONS**

#### **A. What is the Child's "Disability?"**

The only definition of "disability" in the IDEA is in the definition of a "child with a disability," defined as "a child evaluated in accordance with [the IDEA] as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance, an orthopedic impairment, autism, a traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities...." 34 C.F.R. §300.8. Therefore, the reference to "disability" in the manifestation determination provisions must refer to students who have been determined to meet eligibility criteria and who are in need of special education and related services. This tells us that a manifestation determination should begin with a team review of information and consideration of whether the student's misconduct is "caused by," or has a "direct and substantial relationship to" his/her eligibility classification, or the "disability" noted on the student's IEP. Other medical, behavioral, or psychological conditions or impairments which do not result in eligibility for an IEP should not be considered in making a manifestation determination.

#### **B. What is the Difference Between a "Disability" and a Medical Diagnosis?**

I find that many time IEP team participants become confused when confronted with multiple diagnoses made by physicians and/or psychologists. A careful reading of the new IDEA's manifestation determination provisions reveals that these conditions are not a part of this

process. The rules require IEP team members to consider whether a causal connection exists between a student's misconduct and his/her "disability" as defined in the IDEA. The rules do not require any consideration of whether unrelated medical/psychological diagnoses may "cause" the misconduct. For example, the fact that a student has been privately diagnosed with ADHD, Bipolar Disorder, or even Dyslexia is not relevant to a manifestation determination unless the student is classified as ED (Bipolar Disorder), OHI (ADHD), or LD (Dyslexia).

### **C. What is a "Direct and Substantial Relationship" to the Disability?**

There is a dearth of legal interpretation of this phrase adopted in the 2004 IDEA reauthorization. However, I believe that this merely confirms the preceding phrase referring to causality between the misconduct and the disability. In other words, if a student is classified as LD the proper inquiry would be whether the student's learning disability "caused" him to possess a weapon at school, for example. Questions as to whether the student's accompanying psychological diagnoses of "Parent-Child Relational Conflict," "Cannabis Abuse," or "Oppositional Defiant Disorder" are not relevant to the manifestation determination in the hypothetical I have posed. A recent due process review officer's decision "got it right" in recognizing that the new manifestation determination procedures substantially differ from the original 1999 regulatory requirements:

#### **Philadelphia City School District, 47 IDELR 56 (SEA PA 2007).**

A Pennsylvania district will not be able to transfer a ninth-grader with an ED to a remedial disciplinary setting without his parents' consent, despite the student's repeated break-ins at his alternative educational placement. Explaining that the district applied an outdated standard for determining whether the student's misconduct was a manifestation of his disability, an appellate panel reversed a decision in the district's favor. Appellate Panel Officer Perry A. Zirkel noted that IDEA 2004's criteria for MDs marks a return to the causality formula set forth in *Doe v. Maher*, 557 IDELR 353 (9th Cir. 1986). While the previous standard for MDs turned on the appropriateness of the student's IEP and the student's ability to understand and control his actions, Zirkel observed, the revised standard focuses on the causal connection between the disability and the student's conduct. The key question, Zirkel noted, is whether the teen's conduct was caused by or had a direct or substantial relationship to his disability. Although the IHO properly concluded that the student's misconduct did not involve poor impulse control, Zirkel pointed out that the student's disability was not limited to impulsivity. "Instead, his ED inferably refers to his inappropriate behaviors to a marked degree and for a long period of time," Zirkel wrote. The appellate panel concluded that the student's disability had a direct and substantial relationship to his misconduct.

**D. What Effect Do Self-Esteem, Poor Choices, and Other Factors Have on the Manifestation Determination?**

Other factors in a student's life may or may not influence him/her to act in certain ways. For example, a student may come from a poor home environment or have suffered years of bullying at school. These factors may have a profound influence on the student's behavior. But, the new manifestation determination procedures do not contemplate the consideration of these factors UNLESS they form the basis for IDEA eligibility.

**E. What is a "Direct Result" of Failure to Implement an IEP?**

In order for a student's behavior to be the "direct result" of the school district's failure, it must be shown to have been "caused" by an act or omission of a school employee. For example, a teacher who fails to implement a student's behavior plan may be the cause of that student's misbehavior. On the other hand, student behavior that is willful in the face of the teacher's attempts to implement a behavior plan cannot be said to be the "direct result" of any school district act or omission.

**IV. FREQUENTLY ASKED QUESTIONS ABOUT MANIFESTATION DETERMINATIONS**

**A. Do I have to do it every time I want to suspend a student?**

**B. Do I have to do it before any suspension? ISS?**

- C. Is there any way to find no manifestation for an ED or MR student?
- D. If parents disagree, can I still remove the student immediately?
- E. What effect does this have on the 45-day removal option?
- F. Do parents have to agree with our manifestation determination?
- G. Can I provide personally-identifiable information about problem students to parents volunteers, bus drivers, peer buddies, substitute teachers?
- H. What is the effect of medication?
- I. Are manifestation determinations required for 504 students?
- J. Which comes first – manifestation determination, or referral to a disciplinary hearing for zero tolerance determinations?
- K. At what point in the manifestation determination do we consider the appropriateness of the IEP services for the student?

V. **WHAT DO THE COURTS SAY ABOUT HOW SCHOOLS CONDUCT MANIFESTATION DETERMINATIONS?**

1. **District of Columbia v. Doe, 51 IDELR 8, 573 F.Supp. 2d 57 (D.D.C. 2008).**

An IHO may have believed that a 45-day suspension for classroom misbehavior was excessive, but that did not permit him to reduce a sixth-grader's suspension to 11 days. The IHO exceeded his authority by modifying the disciplinary sanction imposed by the district superintendent. The case hinged on the finding that the student's misconduct -- the failure to behave for a substitute teacher -- was not a manifestation of his ADHD. Under the IDEA, the District Court observed, the IHO had an obligation to determine: 1) whether the student's misconduct was a manifestation of his disability; and, if not, 2) whether the district denied the student FAPE. Although the IHO agreed with the results of the district's MD review, he also determined that a 45-day suspension was excessive. The District Court observed that the IDEA did not permit the IHO to alter the student's suspension. "Once [the manifestation determination] was reached, [the district] was entitled to discipline [the student] the same as any other student who was not diagnosed with disabilities, so long as the student was not denied a FAPE," U.S. District Judge Emmet G. Sullivan wrote. The court pointed out that the student had been disciplined several times for classroom misconduct. Because the disciplinary code allowed the district to treat those repeated incidents as a more serious offense, the superintendent was free to impose a 45-day suspension.

**2. L.K. v. North Carolina State Board of Education, 50 IDELR 161 (E.D.N.C. 2008).**

A North Carolina district could not avoid a high school student's IDEA lawsuit simply by showing that the student moved to New Jersey after receiving a 365-day suspension. Because the suspension could prevent the student from enrolling in certain schools or programs, the student had the right to challenge a manifestation determination. The district contended that the suspension became moot after the student moved to New Jersey and enrolled in a public high school. The court disagreed. Relying on *Garcia v. Board of Educ. of Albuquerque Pub. Schs.*, 49 IDELR 241 (10th Cir. 2008), the District Court held that a student can pursue an IDEA claim against his former district of residence if he is seeking retrospective relief. In this case, the student sought to overturn a state review officer's decision that his decision to carry a razor to school was unrelated to his disability. "It is entirely possible that the [SRO's] decision could be used as a basis for some future determination that [the student's] suspension-worthy conduct is not a manifestation of his disabilities and/or that he has already been rejected by other schools to which he applied or will face future academic rejection(s) based on that decision being in his record," U.S. District Judge W. Earl Britt wrote. The District Court denied the district's motion to dismiss the claims related to the manifestation determination.

**3. Fitzgerald v. Fairfax County School Board, 50 IDELR 165 (E.D. Va. 2007).**

The parents of an 11th-grader with anxiety issues may have objected to the manner in which an MD review was conducted, but that did not invalidate the district's decision to suspend the student for the remainder of the school year. The U.S. District Court, Eastern District of Virginia

held that the district conducted a proper MD review before determining the student's punishment. The court rejected the parents' argument that they had an "equal right" to determine the members of the student's MD team. While parents have the right to invite additional participants to an MD review, they do not have the right to veto a district's choice of team members. Nor did the parents have the right to veto the MD team's finding that the student's weekend paintball raid on the high school was unrelated to his emotional disability. "Consensus may be desirable as a goal, but cannot always be reached and is not statutorily required," U.S. District Judge T.S. Ellis III wrote. The court acknowledged that the student's special education teacher prepared a draft IEP in advance of the MD review that recommended a home placement. However, noting that the MD team thoroughly discussed the nature of the student's disability, the student's educational records, and the conduct at issue, the court found insufficient evidence of predetermination. The court also pointed out that the student orchestrated the incident, and was not swayed by his friends to engage in inappropriate behavior. Based on the nature of the incident and the student's disability, the court concluded that the extended suspension was appropriate.

**4. R.T. v. Southeastern York County School District, 47 IDELR 129 (M.D. Pa. 2007).**

The parent of an eighth-grader diagnosed with ADHD will have to wait a little longer to seek the temporary restraining order he believes is necessary to maintain his son's placement in a public school. U.S. District Judge Sylvia H. Rambo dismissed the parent's suit for lack of jurisdiction, noting that the Pennsylvania district accused of denying the child FAPE was appealing a due process decision in the parent's favor. Judge Rambo acknowledged that the parent requested a due process hearing following his son's expulsion for ingesting a classmate's prescription medication. The judge also recognized that an IHO ruled in the parent's favor, concluding that the student had a qualifying disability under the IDEA and that his conduct was a manifestation of his ADHD. However, Judge Rambo explained that because the district had appealed the IHO's ruling to the Pennsylvania ED's Office of Dispute Resolution, the parent had not yet exhausted his administrative remedies. "Once this appeal is concluded, administrative remedies will be exhausted," the judge wrote. The court also dismissed the parent's Section 504, Section 1983 and ADA claims, noting that those claims sought relief that was also available under the IDEA and thus fell within the exhaustion requirement.

**5. Ron J. v. McKinney Independent School District, 46 IDELR 222 (E.D. Texas 2006).**

A federal magistrate judge recommended that a District Court dismiss a suit against a Texas district that expelled a sixth-grader without first conducting a manifestation determination. Although the student's parents claimed that the district violated the student's rights under Section 504 and the IDEA, U.S. Magistrate Judge Don D. Bush concluded that the parents waived the student's statutory rights by voluntarily withdrawing the student from his school and refusing to consent to the evaluation the district needed to conduct a manifestation determination. Magistrate Bush acknowledged that the district may have failed to adhere to the IDEA's procedural

requirements, but explained that procedural errors do not automatically constitute a denial of FAPE. Instead, courts must consider whether the alleged procedural error resulted in a loss of educational opportunity or seriously infringed on the parents' right to participate in the IEP process. By removing their son from the school and refusing to consent to an evaluation, the magistrate explained, the parents waived their right to claim that the district violated the IDEA and Section 504 by failing to consider whether the student's attempt to start a fire in a school bathroom was a manifestation of his ADHD.

**6. A.P. v. Pemberton Township Board of Education, 45 IDELR 244 (D.N.J. 2006).**

A federal District Court overturned an administrative law judge's ruling that a district had wrongfully suspended a high school student with multiple disabilities for drug use. The court disagreed with the ALJ's decision that the district's failure to hold a manifestation determination review within 10 days of the student's suspension was sufficient error to justify ordering the district to return her to school. It decided that because IDEA 2004 permits districts to remove students for up to 45 days for drug use or possession, the district's failure to hold a manifestation determination review within 10 days of her 20-day suspension caused no harm. There was no evidence to suggest that its failure to timely conduct the review caused a deprivation of educational benefit to the student. In fact, the district could have suspended her for up to 25 days longer without regard to the outcome of the manifestation determination. Accordingly, the court rejected the parents' request for attorney's fees.

**VI. WHAT DO HEARING OFFICERS/ALJ's SAY ABOUT MANIFESTATION DETERMINATIONS?**

**1. In re: Student with a Disability, 51 IDELR 231 (SEA VA 2008).**

A surveillance video that showed a 13-year-old student discussing an attack on a schoolmate in advance helped to persuade an IHO that the attack was not a manifestation of the student's emotional disability. The video, along with staff and expert testimony, undermined the parents' claim that the student acted out of frustration. The student, who had intermittent explosive disorder, had a history of verbally and physically attacking others without an apparent reason. Although the parents asserted that the seventh-grader was upset about changes made to his IEP, and that other students were encouraging his behavior, neither explanation tied the attack was to his disability. A video tape taken on the school bus, which showed the student kicking the head of his classmate, revealed that he planned the attack. "The event was filmed and it clearly shows ... that [the student] communicated his intentions to other students on the bus and he delivered

the blow at a predetermined point in time," the IHO wrote. Multiple district staff members and expert witnesses testified that the student was aware of the consequences of his behavior, that his attack was a premeditated act of violence, and that it was not directly or substantially related to his disability. Furthermore, a teacher testified that she discussed the changes to the student's IEP with him just prior to the incident, and that he did not appear upset. Finding no evidence that the attack was a manifestation of the student's disability, the IHO upheld the results of the district's MD review.

**2. Manteca Unified School District, 50 IDELR 298 (SEA CA 2008).**

Concluding that a student's treating psychiatrist was far more knowledgeable about her PTSD than a school neuropsychologist, an ALJ overturned the results of a district's MD review. The ALJ found that the student's conduct -- kicking a male schoolmate in the groin -- was directly related to her disability. The neuropsychologist observed that the student had never attacked another student before the incident in question. She also opined, without explanation, that the student's conduct was unrelated to her PTSD. However, the ALJ pointed out that the neuropsychologist had not assessed, treated, or even met the student. The student's psychiatrist, in contrast, had worked with the student for more than year. As a child and adolescent psychiatrist, he was qualified to diagnose and treat PTSD. Most importantly, the ALJ noted, the psychiatrist offered a detailed and credible explanation of how the student's PTSD influenced her actions. "He explained that [the student's] behavior was very likely related to her PTSD because the boy who student kicked was sexually harassing her before she kicked him, and her PTSD was caused by a sexual assault," the ALJ wrote. According to the psychiatrist, the ALJ observed, individuals with PTSD are "hyper-vigilant" and have difficulty regulating their emotions. Finding that the psychiatrist was more credible than the school neuropsychologist, the ALJ ordered the district to immediately return the student to her pre-discipline placement.

**3. Centennial School District v. Phil L., 50 IDELR 154 (SEA PA 2008).**

An IHO may have determined that a student with ADHD was eligible for Section 504 services, but that did not resolve the parent's claim that the district failed to conduct a manifestation determination. The District Court dismissed the parents' Section 504 claim, concluding that they failed to exhaust their administrative remedies with regard to the MD review. As a preliminary matter, the court noted that Section 504 does not require districts to conduct MD reviews in connection with disciplinary removals. Rather, the Section 504 regulations require districts to develop a system of procedural safeguards. "Although students qualifying under the Rehabilitation Act are afforded some procedural protections -- namely, a Section 504 hearing -- they are not afforded the specific protection of a 'manifestation determination' under the IDEA," U.S. District Judge Eduardo C. Robreno wrote. Nonetheless, the court explained that the student

was entitled to the procedural protections offered under Section 504, including written notice and an impartial hearing. The court noted that the district conducted a pre-expulsion hearing, as well as a pre-expulsion evaluation. However, the IHO's decision did not reveal what those procedures entailed. Without a factual record of the procedural safeguards provided to the student, the court could not consider whether the district violated the student's due process rights.

**4. Philadelphia City School District, 47 IDELR 56 (SEA PA 2007).**

A Pennsylvania district will not be able to transfer a ninth-grader with an ED to a remedial disciplinary setting without his parents' consent, despite the student's repeated break-ins at his alternative educational placement. Explaining that the district applied an outdated standard for determining whether the student's misconduct was a manifestation of his disability, an appellate panel reversed a decision in the district's favor. Appellate Panel Officer Perry A. Zirkel noted that IDEA 2004's criteria for MDs marks a return to the causality formula set forth in *Doe v. Maher*, 557 IDELR 353 (9th Cir. 1986). While the previous standard for MDs turned on the appropriateness of the student's IEP and the student's ability to understand and control his actions, Zirkel observed, the revised standard focuses on the causal connection between the disability and the student's conduct. The key question, Zirkel noted, is whether the teen's conduct was caused by or had a direct or substantial relationship to his disability. Although the IHO properly concluded that the student's misconduct did not involve poor impulse control, Zirkel pointed out that the student's disability was not limited to impulsivity. "Instead, his ED inferably refers to his inappropriate behaviors to a marked degree and for a long period of time," Zirkel wrote. The appellate panel concluded that the student's disability had a direct and substantial relationship to his misconduct.

**5. Baltimore County Public Schools, 46 IDELR 179 (SEA Maryland 2006).**

A Maryland LEA did not violate the IDEA when it suspended a 16-year-old student with an emotional disturbance for smoking marijuana just before coming to school. Administrative Law Judge Una M. Perez noted that the student's parent, as the party challenging the LEA's manifestation determination, bore the burden of proving that the student's marijuana use was caused by or had a direct and substantial relationship to the student's disability. The parent submitted a letter from the student's therapist, stating that the student had a major psychiatric disability that significantly affected the student's psychological, social and academic development. As Judge Perez observed, however, the letter did not state that the student's marijuana use was a manifestation of his emotional disturbance. Furthermore, the judge pointed out that the IEP team considered several factors in making the manifestation determination, including the student's record, his progress, his referrals, the implementation of his IEP, his achievements and his behavioral assessments. Concluding that the IEP team conducted the manifestation meeting in accordance with the IEP, Judge Perez affirmed the manifestation determination.

**6. Muskegon Public Schools, 45 IDELR 261 (SEA Mich. 2006).**

A 10th-grader with a learning disability in written expression and reading had not been a discipline problem at school and did not attend school the day he jumped on the back of an administrative student specialist who was trying to break up a fight between gang members. Because there was no evidence that the student had become frustrated at school the day of the attack or his disability was related in any other way to his conduct, the IHO affirmed the team's decision that his behavior was not a manifestation of his disability. The student made a conscious decision to attend the fight and help one of his friends when he attacked the administrator, who had fallen on the ground after losing his balance in trying to separate the boys.

**7. Okemos Public Schools, 45 IDELR 115 (SEA Mich. 2006).**

A district correctly determined that a ninth-grader's trading of marijuana for food or cash with other students was not related to his ADHD. Although the student received special education services under the categories of OHI and SLD, his parents only argued that the impulsivity related to his ADHD caused his misconduct. The district showed that the student's record did not support this contention. The student's teachers characterized him as "a mature, thoughtful and reflective student who did not display impulsive behaviors or an inability to control his behaviors." Moreover, the records showed his teachers had never contacted administration with respect to any problematic impulsive behaviors. Although his parents had recently participated in IEP meetings and wrote letters regarding his program to the district, they did not mention any problems with the student's impulsivity. The IHO gave little weight to the testimony of an expert who agreed that ADHD could result in an individual's tendency to engage in risky, criminal behaviors. The expert had initially testified only with respect to drug use, was surprised by the addition of the drug dealing issue, and revised his testimony after being led by the parents' attorney's questions.

**8. Madison City Board of Education, 47 IDELR 59 (SEA AL 2006).**

An IHO determined that a 16-year-old student's decision to bring a gun to school just weeks after he was beaten by a gang of youths outside of an apartment complex was not a manifestation of his disability. Concluding that the district abided by the procedural and substantive requirements for an MD review, the IHO upheld the district's decision to place the student on homebound status. The student's progress toward his IEP goals played a large role in the IHO's decision. According to the student's teachers, the IHO observed, the student made progress in his classes and under his IEP until mid-to-late spring, when he appeared to lose interest in his studies. The student's math teacher learned that the student had been attacked by a group of youths outside of school, and had received injuries that required emergency medical attention. "All three teachers testified that until the incident in April where the child was injured outside of the school setting, the child had been somewhat active and appeared to be making healthy progress toward his

degree," the IHO wrote. Furthermore, the IHO pointed out, there was no evidence that the student's weapons violation bore any relationship to his SLD. The IHO determined that the district's MD was appropriate.

## **VII. WHAT DOES THE OFFICE FOR CIVIL RIGHTS (OCR) SAY ABOUT MANIFESTATION DETERMINATIONS?**

### **1. Corona-Norco (CA) Unified School District, 48 IDELR 138 (OCR 2006).**

The fact that a teenager received 17 disciplinary interventions for behavioral offenses during his first four months in a new high school was not enough to trigger a California district's obligation to evaluate the student's eligibility for special education services. Concluding there was insufficient evidence that the district had reason to suspect the student had a disability, OCR closed the parent's discrimination complaint. OCR noted that the district met with the student's parent one month into the school year to discuss his behavioral and academic difficulties. Neither the parent nor district representatives suggested at the meeting that the student might be eligible for special education and related services. Only after the student was expelled for carrying a weapon on school property did the parent notify the district that her son had ADHD and bipolar disorder. OCR explained that the district had no obligation to divert from its general disciplinary policies during the expulsion proceedings. "Because the student was not disabled or believed to be disabled at the time that he was disciplined, the district did not have a duty to determine whether his misbehavior was caused by a manifestation of his disability," OCR wrote. OCR concluded that the district's conduct complied with Section 504.

### **2. Portsmouth (VA) Public Schools, 48 IDELR 229 (OCR 2006).**

Recognizing that a Virginia district suspended a student for a total of 12 days over a five-month period, OCR nonetheless determined that the district did not need to hold an MD hearing before his third suspension. OCR concluded that the three suspensions were too brief and too far apart to constitute a pattern of removals under the IDEA. OCR explained that a district has no obligation to conduct a manifestation determination unless the student's disciplinary removals constituted a significant change in placement. Although the student could establish a significant change in placement by establishing a pattern of exclusion, OCR concluded that he could not show a pattern. OCR observed that each individual suspension lasted five days or less -- less than half of the time it would take for a single suspension to amount to a change in placement.

Moreover, the suspensions occurred in December 2005, April 2006 and May 2006. While all of the suspensions stemmed from fights with classmates, OCR explained that the similarity in misconduct did not in itself establish a pattern. "We find that there is insufficient evidence that the [district's] suspension of the student on May 23, 2006, either on its own or together with the previous suspensions, constituted a significant change in placement," OCR wrote. Finding there was no need for the district to hold an MD hearing, OCR closed the parent's discrimination complaint.