MANIFEST THIS!
A GUIDE TO
MANIFESTATION DETERMINATIONS

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OVERVIEW

- Review of federal law
- Review of lessons from the cases
  - When to Meet
  - Meeting Participants
  - What Must be Reviewed
  - Placement After Determination
  - Hearing Officer Authority

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20 U.S.C. § 1415(k)

- Disciplinary Removal: 10 days or fewer
  - May remove to "interim alternative educational setting, another setting, or suspension"
  - In the same manner as applied to non-disabled students

20 U.S.C. § 1415(k)

- Disciplinary Removal: In excess of 10 days
  - Must provide services beginning on the 11th day
  - Must hold a manifestation determination review

20 U.S.C. § 1415(k)

- Manifestation Determination:
  - Convene <u>within</u> 10 school days
  - MDR must include
    - LEA
    - Parent
    - "Relevant members of the IEP team"

20 U.S.C. § 1415(k)

- Manifestation Determination
  - MDR team must review "all relevant information"
    - IEP
    - Any teacher observations
    - Any "relevant information" from parents

20 U.S.C. § 1415(k)

- Manifestation Determination
  - Based on the information reviewed, MDR must determine
    - If conduct was caused by, or had a direct and substantial relationship to, the student's disability; OR
    - If the conduct was the direct result of the LEA's failure to implement the IEP
  - If yes to EITHER, conduct is a manifestation!

20 U.S.C. § 1415(k)

- Manifestation Determination
  - MDR team determines conduct was NOT a manifestation
    - Apply same disciplinary procedures used for non-disabled students
    - Provide services in IAES

20 U.S.C. § 1415(k)

- Manifestation Determination
  - MDR team determines conduct IS a manifestation
    - Conduct FBA and develop BIP, OR review and modify the existing BIP; and
    - Return the student to his regular placement
      - Unless parent and LEA agree to a change in placement

20 U.S.C. § 1415(k)

- Special Circumstances
  - Exist if the student
    - Carries/possesses a weapon
    - Possesses/uses/sells/solicits the sale of drugs
    - Causes serious bodily injury
  - May remove to IAES for 45 school days regardless of outcome of MDR

When to Meet?

- What if the student is not eligible under IDEA?
- What if the student is receiving services under RTI?

When to Meet?

- IDEA protections apply if the LEA should have known the child was eligible
- A "basis of knowledge" exists if
  - Parent expressed concerns in writing
  - Parent has requested an evaluation for services
  - Staff has expressed "specific concerns about a pattern of behavior"

When to Meet?

- When are concerns specific enough if a child is receiving RTI or other general education interventions?

When to Meet?

- Jackson v. Northwest Local Sch. Dist., 55 IDELR 104 (S.D. Ohio 2010)
  - Student with ADD received general education interventions for two years
  - Interventions included counseling and referral to outside agency
  - But no referral for special education

When to Meet?

- Jackson v. Northwest Local Sch. Dist., 55 IDELR 104 (S.D. Ohio 2010)
  - Student later expelled for threatening behavior
  - No MDR was conducted prior to expulsion
  - Parent claimed district had a basis of knowledge

When to Meet?

- Jackson v. Northwest Local Sch. Dist., 55 IDELR 104 (S.D. Ohio 2010)
  - Outcome: Student was denied a FAPE
  - Interventions were working until 3rd grade
  - Intervention team noted behavior was worse, prompting a referral to an outside agency
  - Should have prompted special ed. referral

When to Meet?

- Jackson v. Northwest Local Sch. Dist., 55 IDELR 104, 2010 WL 3452333 (S.D. Ohio 2010)
  - Intervention team had specific concerns
  - Court found sufficient to create a basis of knowledge
  - District should have held MDR prior to expulsion

When to Meet?

- Is an MDR required for all students receiving RTI?
  - Not necessarily
  - Look for red flags
    - RTI provided over time
    - Escalating behavior despite interventions
    - Referral to an outside agency

When to Meet?

- What if student is subject to a series of suspensions?
- Is an MDR required if total days of suspension exceed 10?

When to Meet?

- East Metro Integration District #6067, 110 LRP 34370 (SEA MN 2010)
  - Student suspended for theft for four days
  - Again suspended for theft for three days
  - Suspended third time for weapon possession
  - Was district required to convene MDR?

When to Meet?

- East Metro Integration District #6067, 110 LRP 34370 (SEA MN 2010)
  - SEA said no
  - IDEA requires MDR if behavior follows a pattern
  - Student's last suspension broke the pattern

Whom to Invite?

- IDEA requires presence of "relevant members" of the IEP team
  - Who is "relevant"?
  - Who is responsible for deciding whom to invite?
  - Do parent and LEA have to agree?

Whom to Invite?

- Fitzgerald v. Fairfax County School Board, 50 IDELR 165 (E.D.Va. 2008)
  - ED student had behavior plan for rude/sarcastic behavior
  - Student led a weekend paintball attack on school, including breaks to replenish supplies
  - District convened MDR

Whom to Invite?

- Fitzgerald v. Fairfax County School Board, 50 IDELR 165 (E.D.Va. 2008)
  - Parents challenged composition of MDR team on two grounds
  - First Challenge: Parents claimed IDEA requires parent consent to MDR composition

Whom to Invite?

- Fitzgerald v. Fairfax County School Board, 50 IDELR 165 (E.D.Va. 2008)
  - Outcome: Parents do not have veto power!
  - LEA determines which school/LEA personnel will participate
  - Parents determine any additional members to invite

Whom to Invite?

- Fitzgerald v. Fairfax County School Board, 50 IDELR 165 (E.D.Va. 2008)
  - Second Challenge: Parents claimed a member is only "relevant" if he/she
    - Knows the student personally, and
    - Has previously served on the student's IEP team

Whom to Invite?

- Fitzgerald v. Fairfax County School Board, 50 IDELR 165 (E.D.Va. 2008)
  - Outcome: IDEA isn't so strict!
  - Each member must serve a purpose relevant to the MDR

Whom to Invite?

- Fitzgerald v. Fairfax County School Board, 50 IDELR 165 (E.D.Va. 2008)
  - Here
    - Parents, teachers knew student personally
    - Psych. familiar with E.D.
    - Sped. administrator familiar with programs
    - Assistant Principal investigated incident

What to Review?

- IDEA requires review of
  - IEP
  - Any teacher observations
  - Information provide by parent AND
  - Any other relevant information

What to Review?

- What information is relevant?
  - The Student's entire file?
    - This could be an entire filing cabinet . . . or more!
- Must every team member review the file?
- When must the review take place?

What to Review?

- Fitzgerald v. Fairfax County School Board, 50 IDELR 165 (E.D.Va. 2008)
  - District psych reviewed student's file before the MDR
  - At the meeting psych presented summary
  - MDR team reviewed discipline history
  - Teachers presented class observations
  - Team discussed paintball incident

What to Review?

- Fitzgerald v. Fairfax County School Board, 50 IDELR 165(E.D.Va. 2008)
  - Parents claimed violation of IDEA
    - Not all MDR members reviewed the file
    - Review was not done prior to the MDR

What to Review?

- Fitzgerald v. Fairfax County School Board, 50 IDELR 165 (E.D.Va. 2008)
  - The Court found the district's review satisfied IDEA
    - No requirement that every member review all information
    - No requirement that the review be completed before the MDR

What to Review?

- Township High School District 214, 54 IDELR 107 (SEA IL 2010)
  - Student with ADHD and bipolar disorder
  - Was in 45-day IAES based on prior conduct violation
  - Sent death threat to another student on Facebook
  - District convened MDR

What to Review?

- Township High School District 214, 54 IDELR 107 (SEA IL 2010)
  - District staff
    - Reported student had difficulty with planning, emotional regulation
    - Found conduct required planning
    - No manifestation

What to Review?

- Township High School District 214, 54 IDELR 107 (SEA IL 2010)
  - Student's private psychologist
    - Reported student had inability to plan
    - Unpredictable triggers for emotional outbursts
    - Conduct was a manifestation

What to Review?

- Township High School District 214, 54 IDELR 107 (SEA IL 2010)
  - Hearing officer
    - District failed to consider private psych's input
    - Psych had the most insight into student
    - All agreed student had trouble planning—so he couldn't have planned threat

What to Review?

- Los Angeles Unified School District, 111 LRP 60703 (SEA CA 2011)
  - 15-year-old student with ADHD
  - Identified as SLD due to auditory processing and attention deficits
  - Attention deficits historically manifested in off-task behavior, lack of concentration

What to Review?

- Los Angeles Unified School District, 111 LRP 60703 (SEA CA 2011)
  - During 2010-2011 school year, conduct included fighting, class disruptions, bullying, and vulgar insults
  - In March 2011, another student asked to buy Adderall

What to Review?

- Los Angeles Unified School District, 111 LRP 60703 (SEA CA 2011)
  - A third student sought marijuana from the second student
  - The next day, money, Adderall, and marijuana was exchanged among the three students
  - Student recommended for expulsion

What to Review?

- Los Angeles Unified School District, 111 LRP 60703 (SEA CA 2011)
  - Team reviewed
    - IEP (revised during meeting)
    - Teacher observations
    - Grades
    - Information from parents
    - Facts and events regarding drug transaction

What to Review?

- Los Angeles Unified School District, 111 LRP 60703 (SEA CA 2011)
  - District team members concluded conduct was planned and not impulsive
  - Auditory processing and attention issues did not play a role
  - Misconduct was not a manifestation

What to Review?

- Los Angeles Unified School District, 111 LRP 60703 (SEA CA 2011)
  - Judge agreed
    - "Student's conduct demonstrated poor judgment, but the evidence did not demonstrate that Student's poor judgment was a manifestation of his disability as opposed to a manifestation of Student's youth, or need for money, or of any other non-disability-related rationale . . . ."

Placement After Determination

- If conduct is found NOT to be a manifestation
  - IDEA requires IEP team to determine placement
  - But, is parent consent required before removal?

Placement After Determination

- Fitzgerald v. Fairfax County School Board, 50 IDELR 165 (E.D.Va. 2008)
  - Parents claimed they were denied "equal right" to determine if conduct was a manifestation
  - Court held that consensus is not required
  - LEA makes final determination
  - Parents only recourse is a due process appeal

Placement After Determination

- Hollingsworth v. Hackler, 53 IDELR 298 (Tex. Ct. App. 2009)
  - Student with ADD
  - Made threats to other students
  - District convened MDR
  - Parents initially agreed no manifestation

Placement After Determination

- Hollingsworth v. Hackler, 53 IDELR 298 (Tex. Ct. App. 2009)
  - Student was placed in an alternative setting for 45 days by decision of the school principal and assistant principal
  - No IEP was held
  - Parents rescinded their agreement to the MD

Placement After Determination

- Hollingsworth v. Hackler, 53 IDELR 298 (Tex. Ct. App. 2009)
  - Parents filed suit against the principal and assistant principal under § 1983
  - Parents claimed placement decision should have been made by IEP team

Placement After Determination

- Hollingsworth v. Hackler, 53 IDELR 298 (Tex. Ct. App. 2009)
  - Court found defendant had qualified immunity
  - When behavior is not a manifestation determination, regular disciplinary procedures may be applied

Placement After Determination

- Doe v. Todd County Sch. Dist., 55 IDELR 185 (8th Cir. 2010)
  - Student had reading disability
  - Fought with another student on campus
  - Brought pocket knife to school
  - Acted violently and made threats when brought to principal's office
  - District suspended student

Placement After Determination

- Doe v. Todd County Sch. Dist., 55 IDELR 185 (8th Cir. 2010)
  - MDR/IEP held five days after suspension
  - Team concluded not a manifestation
  - IEP team recommended change of placement
    - At alternative high school for limited duration
    - Two hours of general/special ed. tutoring per day
    - Parent consented

Placement After Determination

- Doe v. Todd County Sch. Dist., 55 IDELR 185 (8th Cir. 2010)
  - Parent changed her mind
  - Requested discipline hearing before school board -- District said no
    - Suspension ended on date of MDR/IEP
    - Parent consented to change of placement

Placement After Determination

- Doe v. Todd County Sch. Dist., 55 IDELR 185 (8th Cir. 2010)
  - Student returned to regular setting 38 days after suspension
  - Parent/Student filed suit
  - Alleged denial of right to due process
  - Claimed placement at alternative school was "constructive suspension"

Placement After Determination

- Doe v. Todd County Sch. Dist., 55 IDELR 185 (8th Cir. 2010)
  - Court found two possible paths when no manifestation
  - Option One
    - Apply normal discipline
    - Provide services after 10th day
    - Here—possibility of special circumstances for 45-day removal to IAES

Placement After Determination

- Doe v. Todd County Sch. Dist., 55 IDELR 185 (8th Cir. 2010)
  - Option Two
    - Convene IEP team meeting
    - IEP team can change placement
    - Requires parent consent

Placement After Determination

- Doe v. Todd County Sch. Dist., 55 IDELR 185 (8th Cir. 2010)
  - District chose option two
  - School board had no authority—no obligation to hold discipline hearing
  - No denial of due process
  - Parent chose the wrong remedy!

Hearing Officer Authority

- District of Columbia v. Doe, 54 IDELR 275 (D.C. Cir. 2010)
  - Student with ADHD acted out in class
  - DC regs. required penalty enhancement because of previous conduct violations
  - Principal removed student to IAES for 54 days
  - MDR found no manifestation

Hearing Officer Authority

- District of Columbia v. Doe, 54 IDELR 275 (D.C. Cir. 2010)
  - Hearing officer found MDR was right, BUT
  - Length of removal was excessive
  - Reduced removal to 11 days
  - Court held HO acted within his authority

The Grass is Always Greener . . .

- Pelose v. Bishop Grimes Jr./Sr. High School, 53 IDELR 162 (N.Y. App. Div. 2009)
  - Student expelled
  - No MDR held
  - Parents file suit

The Grass is Always Greener . . .

- Pelose v. Bishop Grimes Jr./Sr. High School, 53 IDELR 162 (N.Y. App. Div. 2009)
  - Result: Case Dismissed!
  - IDEA does not apply to private schools

Wrapping Up

- What lessons have we learned?
  - When to meet
    - Don't rule out MDR for general education students receiving interventions
    - Consider whether multiple removals make up a pattern of behavior

Wrapping Up

- What lessons have we learned?
  - Who to invite
    - Parents don't have a veto
    - Not everyone has to know the student
    - Opinions of members who do know the student may carry greater weight in a dispute

Wrapping Up

- What lessons have we learned?
  - What to review
    - Review need not be exhaustive
    - Each member does not need to individually review student's file
    - Don't overlook relevant outside information

Wrapping Up

- What lessons have we learned?
  - Placement
    - If no manifestation—follow general discipline rules
    - Provide services after 10th day
    - OR . . . obtain parent consent to a change in placement

Wrapping Up

- What lessons have we learned?
  - Hearing Officer Authority
    - Hearing Officers may modify disciplinary placement, or
    - Return student to regular setting

Thank you for your time today!

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