

Manifestation Determination Reviews: Two Simple Questions, So Many Implications

by

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The 2004 Reform of the Manifestation Determination Standard

In 2004, the Congress undertook several revisions and reforms to the rules of discipline of students with disabilities. Part of the reforms touched on the requirement for manifestation determinations or manifestation determination reviews (MDs) prior to long-term disciplinary removals of IDEA-eligible students. As seen below, the requirement itself remains, but Congress revised and simplifies the standard under which schools determine whether a behavior is related to disability. Although an apparently subtle change, the new formulation is in fact a significant departure from the prior manifestation determination inquiry.

The revised statutory language—Congress tightened the language and structure of the manifestation determination standard, in essence “raising the bar” of the standard required to show that a behavior is a manifestation of disability. If a school decides to change a student’s placement due to a disciplinary offense, “the local educational agency, the parent, and relevant members of the IEP team (as determined by the parent and the local educational agency), shall review all relevant information in the student’s file, including the child’s IEP, any teacher observations, and any relevant information provided by the parents to determine—

if the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability; or

if the conduct in question was the direct result of the local educational agency’s failure to implement the IEP.” 20 U.S.C. §615(k)(1)(E)(i).

Legislative Background—The Conference Committee to IDEA 2004 stated that its intention in reforming the provision was that schools determine whether “the conduct in question was caused by, or has a direct and substantial relationship to, the child’s disability, and is not an attenuated association, such as low self-esteem, to the child’s disability.” *Conference Committee Report*, at 225. The commentary to the regulations cites and quotes this significant guidance. See 71 Fed. Reg. 46,720.

The 2006 regulation—The final regulation at section 300.530(e) restates the statutory language without elaboration.

A desire to simplify MDRs—The USDOE also reads the reformed provision as an attempt to simplify the MDR process. The commentary to the regulation states “the revised manifestation determination provisions in section 615 of the Act provide a simplified, common-sense manifestation determination process that could be used by school personnel.” Fed. Reg. 46,720 (August 2006)

Guidance on making the determination under the new standard—The Conference Committee report on IDEA 2004 also provides additional guidance that Congress intended that the manifestation determination “analyze the child’s behavior as demonstrated across settings and across time when determining whether the conduct in question is the direct result of the disability.” *Committee Report*, at 224. The USDOE commentary to the regulations in fact quotes this very language. See Fed. Reg. 46, 720. This suggests that it is appropriate to examine patterns of behavior, the lack thereof, the setting where the behaviors take place or not, in making the determination. Ostensibly, if a behavior is caused by or directly related to disability, one should expect to see it across different settings and times.

Implementation of IEP vs. Appropriateness of IEP—Unlike the 1997 law, the new IDEA manifestation provision does not contain language about whether schools must examine the appropriateness of the child’s IEP while undertaking the manifestation determination. This raised questions about whether the omission was intentional and/or meaningful from a substantive standpoint. In response to comments on this point, the USDOE clarified that “the Act no longer requires that the appropriateness of the child’s IEP and placement be considered while making a manifestation determination.” Fed. Reg. 46,720. Rather, as part of the manifestation determination, schools must focus on whether there has been a failure of implementation of the IEP that directly resulted in the misbehavior. *Id.* And, if the manifestation determination decision-makers find that an implementation failure has directly resulted in the behavior, a new subsection requires that the school take “immediate steps” to remedy the deficiencies. 34 C.F.R. §300.530(e)(3); see also Fed. Reg. 46,721.

Burden of proof in challenges to manifestation determinations—Several commenters asked USDOE to issue a regulation imposing the legal burden of proof on schools of showing a finding of “no link” was proper when parents challenge the determination. Referring to the Supreme Court’s decision in *Schaffer v. Weast*, 126 S.Ct. 528 (2005), the USDOE disagreed, stating that “the Supreme Court determined in *Schaffer* that the burden of proof ultimately is allocated to the moving party.” Fed. Reg. 46,724. Thus, the position of the Department is that a parent who challenges a school’s findings in a manifestation determination (i.e., the party seeking relief, or the “moving” party) bears the burden of proof in administrative proceedings under the IDEA per the *Schaffer* decision. This guidance will hopefully end the caselaw inconsistencies among

hearing officers in assigning burden of proof in cases of challenges to manifestation determinations.

Prior burden of proof confusion—Prior to the 2006 regulations, with their accompanying clarifying commentary, there was some difference of opinion on the burden of proof formulation with respect to MDs. Some hearing officers and review panels felt that the Supreme Court’s opinion in *Schaffer v. Weast*, which placed the burden of proof on parties challenging the existing educational program, was limited to challenges to IEPs. These administrative officers thus felt the issue of burden of proof in MD challenges was an “open question.” See, e.g. *MaST Comm. Charter Sch.*, 47 IDELR 23 (SEA Pennsylvania 2006); *Philadelphia City Sch. Dist.*, 47 IDELR 56 at n. 32 (SEA Pennsylvania 2007). The majority opinion in *Schaffer*, however, expressly states that “[a]bsent some reason to believe that Congress intended otherwise, ...we will conclude that the burden of persuasion lies where it usually falls, upon the party seeking relief.” Moreover, the opinion questioned any burden of proof formulation that would presume an inappropriate IEP or violation of IDEA unless proven otherwise. Thus, other hearing officers interpreted *Schaffer* as clarifying the burden of proof issue in IDEA cases in general, since it placed the burden of persuasion on the party seeking relief or change in status quo. *Baltimore County Pub. Schs.*, 46 IDELR 179 (SEA Maryland 2006)(noting that the IDEA provision on MDs is silent on any unique treatment or shifting of burden of proof in MD challenges); *Scituate Pub. Schs.*, 47 IDELR 113 at n. 4 (SEA Massachusetts 2007)(“party seeking relief with respect to a particular claim has the burden of persuasion regarding that claim”).

Manifestation Determination Decision-Makers

Decision-making process flexibility—While IDEA '97 required the IEP team and other qualified personnel to conduct the manifestation determination, the new law states that it is to be conducted by the school, the parent, and “relevant members” of the IEP team. §615(k)(1)(E)(i). There is no mention of a meeting requirement to actually undertake the MD, although the law still requires the IEP team to convene to actually determine the interim alternative education setting and the services to be provided during the long term removal. §615(k)(2). Legislatively, the origin of this provision is likely related to other provisions of IDEA 2004 reflecting Congress’ concern over the high numbers of IEP team meetings that take qualified staff away from their respective instructional assignments. The final regulation implementing this provision restates the statutory language, and emphasizes that the school and parents mutually determine the relevant members of the IEP team that must make the MD. 34 C.F.R. §300.530(e).

Practical considerations—The flexibility offered by the Congress also means that there can be disputes over determining the “relevant” members of the IEP team. For example, in the case of *Philadelphia City Sch. Dist.*, 47 IDELR

56 (SEA Pennsylvania 2007), an appellate panel overturned a school's MD, in part due to the fact that "the District did not provide the parents with the opportunity to engage in a mutual determination of relevant members of the Student's IEP team." See also, *In re: Student with a Disability*, 107 LRP 63721 (SEA Virginia 2007)(dispute over selection of relevant members, degree of participation). Is it clear how much opportunity must be provided to parents to provide input on members? What if there are disagreements on membership? To what degree must each member participate? To avoid problems and confusion, therefore, schools can choose continue to conduct MDs in proper IEP team meetings. There are substantial questions about making MDs without an IEP team meeting that are likely to be the subject of interesting litigation. Given that these questions may have to be answered by hearing officers and courts, schools may take a "wait and see" approach to this new area of flexibility.

Return to Placement If Behavior Related to Disability

If the manifestation decision-makers determine that a child's behavior was related to their disability, the IEP team is to "return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan." §615(k)(1)(F)(iii). The new regulations restate this provision at section 300.530(f)(2). They also clarify that in situations of manifestation, IEP teams must conduct a functional behavioral assessment (FBA), if one has not been done already, and implement a behavior intervention plan (BIP). 34 C.F.R. §300.530(f)(1)(i). If a BIP is already a part of the child's IEP, then the IEP team must review the BIP and "modify it, as necessary, to address the behavior." 34 C.F.R. §300.530(f)(1)(ii).

Practice Point 1—When is the MDR Required?

As under prior law, manifestation determinations are required before schools undertake disciplinary changes in placement of IDEA-eligible students.

The point at which the manifestation determination requirement is triggered is unchanged—MDs are still required when a school decides to engage in a disciplinary change in placement of an IDEA student. The most common form of disciplinary change in placement is a removal of more than 10 consecutive school days (usually in the form of a removal to an interim disciplinary setting or expulsion).

The other form of disciplinary change in placement is a "pattern of exclusion" change in placement, where a school engages in a series of short-term removals, each of which is less than 10 consecutive school days in length, but when viewed globally, amount to a disciplinary change in placement. The problem with series of short-term removals is that it is not precisely clear when the next short-term removal, once the school has already removed a student

more than 10 days in the school year, renders the overall series of removals a “pattern of exclusion.” A complex federal regulation addresses this issue. 34 C.F.R. §300.536.

The new regulation—Under new section 300.536, a change of placement on the basis of accumulated short-term removals occurs if—

- (1) the removal is for more than 10 consecutive school days; or
- (2) the child has been subjected to a series of removals that constitute a pattern—(i) because the series of removals total more than 10 school days in a school year; (ii) because the child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and (iii) because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

Thus, in addition to the familiar factors in §300.536(a)(2)(iii), the new provision requires analysis of the similarity of the behaviors that have led to the series of removals. And, it appears that all the criteria in §300,536(a)(2) must be simultaneously present in order to support a finding that a series of removals amounts to a “pattern of exclusion” change in placement. In other words, a finding of a “pattern of exclusion” change in placement requires that (1) the series of removals total over 10 school days, (2) the behaviors in the series be substantially similar, and (3) the old factors (length of removals, total removal, and proximity of removals) are indicative of a pattern. The new regulation is also cleaner and clearer in language than its predecessor (or the cryptic proposed regulation). *See* Fed. Reg. 46,729.

Substantial similarity of behaviors in a series—The commentary emphasizes the importance of determining whether the behaviors underlying a series of removals are substantially similar in nature. “We believe requiring the public agency to carefully review the child’s previous behaviors to determine whether the behaviors, taken cumulatively, are substantially similar is an important step in determining whether a series of removals of a child constitutes a change in placement, and is necessary to ensure that public agencies appropriately apply the change in placement provisions.” Fed. Reg. 46,729. The Department concedes, however, that the provision requires a “subjective” determination. *Id.* The commentary includes no examples of an application of this provision to assist in ascertaining the level of specificity required in the analysis.

Additional guidance—The final regulation also clarifies that it is the school that must determine, on a case-by-case basis, whether a pattern of removals constitutes a change of placement. 34 C.F.R. §300.536(b)(1). It also confirms that the determination is subject to review through due process and judicial proceedings. 34 C.F.R. §300.536(b)(2); *see also* Fed. Reg. 46,729-30.

Practical Guidance—Based on the foregoing regulatory language and commentary, some schools may limit themselves to no more than 10 total school days of short-term removals per school year, if at all possible. Clearly, the regulations allow for more than 10 short-term removal days in a school year, but the determination of when removals past the 10-day mark reach the point of becoming a “pattern” depends on multiple and potentially complicated factors. The spirit of the regulations, moreover, would rather support continued review and revision of positive behavioral interventions and supports, other changes to IEP services, or consideration of educational placement options, rather than engaging in continued short-term removals.

Practice Point 2—How is the new MDR different?

The new manifestation determination questions require a closer logical relationship between behavior and disability to make a finding of manifestation than under the 1997 version of the law.

Under IDEA 1997, for a behavior to be found related to disability, all that was required was for the disability to have impaired the child’s ability to understand the impact and consequences of the behavior, or to have impaired the child’s ability to control the behavior, to *some* degree. The 2004 Congress decided that this was too low of a threshold. Under the new law, a behavior is deemed related to disability only if *caused by* the disability, or *directly and substantially* related to the disability.

Similarly, a behavior is deemed related to a school’s failure to implement the IEP only if the implementation failure *directly resulted* in the misbehavior. This new formulation does not require consideration of the appropriateness of the IEP, only whether it has been implemented, and if not, whether the failure to implement directly resulted in the misbehavior in question.

Thus, modern MDs require use of updated forms that reflect the new manifestation determination questions. Schools should not use old MD forms that contain the old MD questions, which require a much lower degree of relationship for a finding of manifestation.

Modern MD forms must ask:

1. Was the misbehavior caused by, or directly and substantially related to, the student’s disabilities?
2. If the school failed to implement the student’s IEP, was the misbehavior the direct result of the school’s failure to implement the IEP?

Ideas on MDR Forms—Given the guidance of the Conference Committee, it may also be wise for schools to examine past disciplinary incidents in making a manifestation determination, to determine if there is a pattern of similar behavior across settings and time. Thus, MDR forms might include information on whether a pattern of similar behavior exists in the student’s history. In addition, some schools are also including notes in MDR forms that clarify to parents that even if a drug, weapon, or serious bodily injury offense is determined to be a manifestation of disability, the student may be placed in an interim alternative educational setting for up to 45 school days. Also, the revised forms may warn parents of the new “stay-put” formulation in cases of challenges to disciplinary actions. *See attached Sample MDR Form.*

Ideas for parents and child advocates—Parents and child advocates participating in MDs can ensure that the members consider the student’s evaluation data and full range of disabilities in making the MD. They may want to point out patterns of behavior similar to that subject to the MD. If an expert is utilized, it is best that they have a long-term knowledge of the child based on assessment and their opinion is grounded on full and accurate information regarding the behavior in question.

Overall Practical Guidance on Manifestation Determinations

- Schools should prepare for MDs and work on developing a consensus among staff and administrators ahead of the meeting.
- Consult a psychologist and/or attorney if concerns arise.
- Sketch out the members’ thinking and rationale behind its decision—Don’t just answer the questions on the form.
- The team should be able to explain its thinking clearly and succinctly.
- Sometimes, the best position may be that although the disability may have some relation to the offense, it is not a substantial, direct, or causal relation.
- Make sure the campus comes with “clean hands” to the MD—Has it implemented the BIP? Done the counseling? Provided the basics of positive behavioral supports?
- Review all evidence available involving the offense—sometimes little details tell much about the manifestation issue.
- The increased difficulty of the new MD standard for parents may mean that legal challenges focus instead on the appropriateness of educational services provided in disciplinary settings. Ensure that IEP teams carefully plan the set of services to be provided during long-term disciplinary removals.

Modern Manifestation Determinations in Action

A Pennsylvania 11th grader with LDs and ADHD brought to school a hunting knife with a folding 3-inch blade, claiming that he needed it for “protection.” Students indicated that he had threatened others while exhibiting the knife, and that he had brought it to school on various occasions and while walking to and from school. *MaST Comm. Charter Sch.*, 47 IDELR 23 (SEA Pennsylvania 2006). Before the school conducted the MD, the parent obtained an evaluation from an outpatient psychiatric facility that also diagnosed the student with post-traumatic stress disorder (PTSD), oppositional defiant disorder (ODD), and impulse control disorder (ICD). Nevertheless, the team determined the behavior was not a manifestation, and placed the student in a 45-day alternative education placement for the weapons violation. After a hearing officer found the behavior was related to disability, the school appealed to an appellate panel. The panel overturned the hearing decision, finding that the fact that the student brought the knife to school deliberately and regularly indicated the behavior was not impulsive or ADHD-related. The recent new diagnoses were not given serious weight, as their supporting evidence was “scant,” and report was “cryptic” and brief, and the student’s school conduct did not support the diagnoses.

Comment—The panel states that even if the student met the “medical-model” standards for the new diagnoses, “the evidence was lacking that that he met the legal-model criteria for any IDEA impairment, such as other health impairment (OHI), which all include an adverse effect on educational performance to the extent of requiring special education.” In a footnote, the panel indicated that had the IEP team “accepted” these diagnoses, “we would have been faced with a different case.” Does a disability have to meet IDEA eligibility criteria, standing alone, to merit consideration for MD purposes? In situations of mixed-condition disabilities, is it feasible practically to tease out each condition for either eligibility or MD purposes?

On another point, could not the school have argued that the MD dispute was moot since whether the behavior was related or not it had the authority to remove the student up to 45 school days for either drugs, weapons, or serious bodily injury offenses? That was the position of a New Jersey federal court in the case of *A.P. v. Pemberton Township Bd. of Educ.*, 45 IDELR 244 (D.N.J. 2006). There, the court found that it was immaterial that the school conducted the MD late, since regardless of the result the school could remove the student up to 45 school days for the student’s drug offense, and the untimely MD was partly due to the parent’s refusal to attend the meeting earlier.

The Georgia case of *Fulton County Sch. Dist.*, 49 IDELR 30 (SEA Georgia 2007), on the other hand, underscores the need to consider the full range of a student’s disabilities in making the MD. After a student with ADHD and ODD

verbally threatened to kill a teacher, the MD team only considered whether the threat behavior was related to ADHD, and refused to allow the parents to provide information or input on the effect of his ODD, even though the school psychologist noted that all of the child's disabilities had to be considered as part of the MD.

Comment—Aside from the fact that the school acknowledged the student's ODD, there was evidence that the student had engaged in previous verbal threats, which were never carried out. In this case, moreover, the student was eligible under IDEA only as a child with other health impairment (OHI), and not ED. But, unlike in the Pennsylvania case above, this hearing officer did not feel that the school was free to limit the MD only to the ADHD diagnosis simply because the ODD did not rise to the level of IDEA eligibility separately.

A Maryland hearing officer did not rely on a letter written by a student's therapist in the case of a 16-year-old who showed up at school admittedly under the influence of marijuana. *Baltimore County Pub. Schs.*, 46 IDELR 179 (SEA Maryland 2006). Although the student had diagnoses of ADHD, ODD, Dysthymia, Mood Disorder, Bipolar Disorder, and Cannabis abuse, the hearing officer held that the parent failed to prove that behavior was directly related to his emotional disturbance. Although the therapist's letter indicated that the student had major psychiatric disabilities which significantly impact his functioning, "it was a far cry from an opinion that the Student's specific behavior on April 6, 2006 was 'caused by, or had a direct and substantial relationship'" to his disabilities.

Comment—The hearing officer writes that "the parent was focused on the various diagnoses that the Student had received. The IEP team, on the other hand, was evaluating the Student's behavior in terms of the educational disability of 'emotional disturbance,' as that disability is defined. The team's focus was appropriate under the law and regulations." But, can a team undertake the MD on a student with ED without considering the underlying psychological conditions?

On the other hand, a case can turn on lack of documentation to support a parent's claims with respect to MD. In *Dearborn Heights Sch. Dist. #7*, 107 LRP 597 (SEA Michigan 2006), a parent claimed that her son's excessive absences were due to medical issues, but failed to provide documentation supporting that contention. Prior to dropping the student from their rolls, an MD was conducted, which determined that the absences were not related to his SLD. The hearing officer agreed, noting the lack of documentation of medical conditions that might explain the absences.

A 6th grader with Asperger's who really wanted to go home when he was having a bad day at school pulled on his principal's necktie to escalate the incident. *Scituate Pub. Schs.*, 47 IDELR 113 (SEA Massachusetts 2007). The school decided that the use of the tie constituted a weapon, thus triggering the special offense provisions. First, the hearing officer decided that the tie did not constitute

a weapon, since an attacker could not readily cause serious bodily injury if he attacked a person with a tie. Second, the student did not “possess” the tie because he held it only momentarily and did not have control of it. Third, although there was some relation between the combination of disabilities and the offense, it did not rise to the level of a direct or substantial relationship. The student’s behavior was “calm, deliberate, voluntary, and calculated.”

Comment—The school’s argument that the pulling of the tie constituted use of a “weapon” was certainly a stretch, and one that did not withstand much legal scrutiny. The hearing officer also notes that there was no evidence that the student “did not understand the seriousness or consequences of his actions...” Is this not, however, a slip-back to the 1997 MD analysis, which required a review of whether the student’s disability impaired their ability to understand the consequences of the behavior?

In another Massachusetts case, a 17-year-old with ADHD and ODD became upset and tried to call his mother on his cell phone so she would pick him up and take him home. *Swansea Pub. Schs.*, 47 IDELR 278 (SEA Massachusetts 2007). Because he was speaking in a highly agitated manner to his mother, a staffperson asked that he go into an office. He escalated, however, throwing his phone down. When the staffperson picked up the phone, he became irate and physically threatening, blocking the staffperson’s ability to leave and lunging at her, to the point that he significantly frightened her. Relying significantly on the parent’s expert, who testified that the student was unable to self-regulate once escalated, the hearing officer held that “the student was provided no such opportunity to avoid an escalation of the original confrontation with Ms. Ragland, with the result that a spiraling of confrontational, out-of-control behavior occurred.”

Comment—School staff that worked with the student testified, however, that in other confrontation situations, the student had demonstrated an ability to de-escalate and avoid extreme behavior. They added that violence and aggressive behavior are not generally associated with ODD and ADHD. The hearing officer, however, discounted their testimony in favor of the parent’s expert, although the expert testified purely from a review of records and had not personally evaluated the child. It certainly appears, from the decision, moreover, that the hearing officer questioned the staffperson’s handling of the incident. To what degree does such post-hoc inquiry bear into the actual MD questions?

After a 14-year-old boy with LD and ADHD was caught selling pot and trading it for food at school, and it was determined he had done it on several other occasions, the school recommended a disciplinary change in placement. *Okemos Pub. Schs.*, 45 IDELR 115 (SEA Michigan 2006). The parents claimed that the behavior was impulsive, and thus directly related to his ADHD. They also claimed the distinction between use and distribution of drugs was merely semantic. The hearing officer found that the spans of time involved in arranging for the various drug transactions gave the student “time to reflect on his actions at each step... In short, rather than being ‘spur of the moment’ or impulsive, the

record evidences the student's conduct was more calculated." Moreover, the parents' expert was surprised on the witness stand to find out that the behavior involved not drug use, but sale and distribution. The hearing officer held that the distinction was not merely semantic, "either practically, behaviorally, or legally."

Comment—The hearing officer cites the case of *Farrin v. Maine Sch. Admin. Dist. No. 59*, 165 F.Supp.2d 37, 35 IDELR 189 (D.Me. 2001) as an example of the proposition that if a behavior involves sufficient time, motor planning, and opportunity for thought, it cannot be considered impulsive and thus related to ADHD. Therefore, when confronted with MDs on ADHD students' behavior, it is important for MD teams to analyze behavior in terms of time involved and degree of planning required.

A 10th grade student with LDs that was involved in a gang jumped on the back of a staffperson that was trying to break up a gang fight, even though he was not even attending class that day. *Muskegon Pub. Schs.*, 45 IDELR 261 (SEA Michigan 2006). The hearing officer admonished the parents, writing that "this matter should never have been the subject of a due process hearing." He found that the parents did not offer any evidence to demonstrate a connection between the assault and the LDs, while noting that "the road to hearing in this matter has been very difficult and expensive." "Learning disabled students and non-disabled students make bad decisions for many reasons. To excuse unacceptable conduct merely because a student has an unrelated disability does a disservice to the student."

SAMPLE MANIFESTATION DETERMINATION REVIEW FORM

THE MANIFESTATION DETERMINATION REVIEW MUST BE CONDUCTED WHEN THE SCHOOL IS CONSIDERING AN ADMINISTRATIVE RECOMMENDATION FOR A DISCIPLINARY CHANGE IN PLACEMENT (E.G., INTERIM DISCIPLINARY ALTERNATIVE EDUCATION PLACEMENT OR EXPULSION OF LONGER THAN 10 CONSECUTIVE SCHOOL DAYS). THE REVIEW MUST BE CONDUCTED IMMEDIATELY AFTER THE RECOMMENDATION, AND NO LATER THAN 10 SCHOOL DAYS AFTER A STUDENT IS ASSIGNED TO A DISCIPLINARY SETTING.

Student's Name _____ DOB _____ Grade _____

School _____ Date of MDR Meeting _____

Student's Disabilities _____
(MDR team members should review current evaluation data in making the determination)

Behavior(s) subject to potential disciplinary action:

The MDR team members, including the parent, have reviewed all relevant information, including evaluation data, information regarding the disciplinary offense, relevant observations, the current IEP and placement, patterns of student behavior across settings and across time, and other relevant information and input provided by staff and/or parents. Based on this review, the MDR team makes the following determinations:

Was the conduct in question caused by, or directly and substantially related to, the student's disabilities?

YES _____ **NO** _____

Summary of team's reasoning:

Parent's opinion, if different than team members'

Was the conduct in question the direct result of the school’s failure to implement the student’s IEP?

YES _____ **NO** _____

Summary of team’s reasoning:

Parent’s opinion, if different than team members’

NOTES: IF ANY OF THE TWO QUESTIONS ABOVE ARE ANSWERED “YES,” THEN THE BEHAVIOR MUST BE CONSIDERED A MANIFESTATION OF THE DISABILITIES. IN THAT EVENT, THE STUDENT CANNOT BE REMOVED TO AN INTERIM ALTERNATIVE EDUCATION SETTING OR EXPELLED LONGER THAN 10 CONSECUTIVE SCHOOL DAYS.

IN SITUATIONS OF OFFENSES INVOLVING DRUGS/CONTROLLED SUBSTANCES, WEAPONS, OR SERIOUS BODILY INJURY, A STUDENT MAY BE REMOVED FOR UP TO 45 SCHOOL DAYS TO AN INTERIM DISCIPLINARY ALTERNATIVE EDUCATION SETTING EVEN IF THE MDR TEAM DETERMINES THAT THE BEHAVIOR WAS A MANIFESTATION OF DISABILITY. IF THE BEHAVIOR IS FOUND TO NOT BE A MANIFESTATION OF DISABILITY, THEN THE SCHOOL MAY PROCEED WITH REGULAR DISCIPLINARY PROCEDURES AND SANCTIONS APPLICABLE TO NON-DISABLED STUDENTS.

IF A PARENT CHALLENGES A MANIFESTATION DETERMINATION OR DISCIPLINARY PLACEMENT IN AN IDEA DUE PROCESS HEARING, THE STUDENT MUST REMAIN IN THE DISCIPLINARY SETTING PENDING THE DECISION OF THE IDEA HEARING OFFICER OR THE EXPIRATION OF THE DISCIPLINARY PLACEMENT TERM, WHICHEVER COMES FIRST.