



FACT SHEET

PREPARING FOR A MANIFESTATION DETERMINATION REVIEW: PROTECTING THE RIGHTS OF PARENTS AND STUDENTS WITH DISABILITIES WHEN FACING DISCIPLINARY EXCLUSION

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Students with disabilities cannot be excluded from school, either by expulsion or by a pattern of suspensions, for behaviors caused by their disabilities. When a school moves to suspend or expel a student with an IEP or 504 plan, it must hold a manifestation determination meeting.¹ This factsheet and tool outline a student's rights when facing disciplinary exclusion, how to prepare for a manifestation determination review, and a parent's rights during this process.

DISABILITY DISCRIMINATION IN DISCIPLINE

Schools disproportionately suspend students with disabilities — one in 11 students with a disability receives an out-of-school suspension, **more than double** the rate of their non-disabled peers.² In many cases, schools punish students for behaviors that are direct manifestations of their disabilities, rather than fulfilling their legal obligation to provide appropriate supports through individualized education programs (IEPs) and special education services.³ Instead of responding with accommodations, schools often choose to exclude these students from the classroom, illegally pushing them out of the learning environment.

This exclusion leads to significant disruption and learning loss, and even *one* out-of-school suspension drastically increases a student's chances of being pushed out of school entirely before graduation. These punitive practices cause long-term harm, undermining students' career prospects and economic stability.⁴ Research shows that such suspensions do not deter challenging behaviors and fail to improve classroom safety — instead, they compound inequality and justice.⁵

RACIAL DISCRIMINATION IN DISCIPLINARY EXCLUSION

Schools disproportionately exclude Black and Brown students from the classroom due to racially discriminatory rules and disparities in the enforcement of rules, regardless of whether they have disabilities, even though research indicates that these students do not engage in behaviors that violate school rules any more frequently than their white peers.⁶ Adult decision-makers' internal biases contribute to the disproportionate — and in some cases, illegal — exclusion of Black and Brown students and students with disabilities, and these disparities persist even after controlling for other variables, such as poverty, revealing the central role of racial bias in disciplinary decisions.⁷ Schools also are more likely to find that white students' behavior is a manifestation of

their disabilities, while denying that same consideration to Black and Brown students with disabilities, thereby denying them legally required supports.⁸ In addition, schools' decisions not to adopt culturally responsive school rules and curricula, and reliance on punitive and disciplinary practices reinforce and compound these inequities, resulting in disproportionate harm to students at the intersection of these identities.⁹

[Racial bias contributes to racial disparities in school discipline](#) in two interconnected ways: teachers and administrators often interpret the same behaviors more harshly when exhibited by Black and Brown students, perceiving and judging them as more disruptive or intentional; and school districts serving a majority of students of color are more likely to adopt punitive, control-oriented discipline policies than predominately white districts.¹⁰ These institutional choices inflict disproportionate harm on Black and Brown students, particularly those with disabilities, denying them access to education and pushing them out of school altogether.

WHEN IS A STUDENT ENTITLED TO A “MANIFESTATION DETERMINATION REVIEW”?

When a school wants to make a “change of placement” for a student after a behavior incident, the school must first look at whether the behavior is caused by the child’s disability or a school’s failure to follow a child’s IEP. This assessment takes place during a **manifestation determination review**, which must be held **within 10 days of the decision to change the child’s placement**.¹¹ This important process is required by federal law and is a critical protection for keeping students with disabilities in school, where they can receive the support they need. Most important, a student with a disability cannot be disciplined in the form of a “change of placement” until a manifestation determination meeting is held.

A “change of placement”¹² happens when:

- A student is suspended for more than 10 days in a row¹³ (also called an expulsion);
- A student is suspended for 15 total days in a school year;¹⁴
- A student is suspended for 10 total days for a “pattern of behavior;”¹⁵ or
- Any out-of-school suspension for a student with an intellectual disability.¹⁶

These protections apply to students with disabilities who have an Individualized Education Program (“IEP”) or a “504 Plan.”¹⁷ In addition, a school must also hold a manifestation determination for a student who has not yet been provided an IEP, if (1) the parent has previously expressed concern in writing to school officials that the child needs special education; (2) the parent has requested a special education evaluation; or (3) the teacher or other school staff has expressed concern about the behavior of the child to special education officials.¹⁸

WHAT IS A “PATTERN” OF BEHAVIOR?

A manifestation determination must be held whenever a school or district plans to discipline a child and there has been a pattern of suspending the child from school for shorter lengths of time that add up to 10 days. A series of suspensions becomes a pattern if:

- The child's behavior is very similar to the child's behavior in previous incidents that resulted in the series of removals; AND
- There are any other relevant factors, including the length of each removal, the total time the child has been removed, and whether the removals happened within a short time of each other.¹⁹

HOW DO SCHOOLS DETERMINE WHETHER A STUDENT'S CONDUCT IS A MANIFESTATION OF A DISABILITY?

A manifestation determination review (MDR) examines a child's behavior to determine whether it was caused by *or is related to*²⁰ their disability. Specifically, under federal law, conduct must be found to be a manifestation of a child's disability if:

1. The conduct in question was caused by or had a direct and substantial relationship to the child's disability;²¹ or
2. The conduct was the direct result of the district's failure to implement the child's IEP.²²

If the answer to either of the above questions is yes, then the behavior is a manifestation of the child's disability.

If the answer to both questions is no, the student may be disciplined in the same manner as a student without a disability who has violated the same or similar code of conduct. An important note: If a child with a disability is subject to school discipline, the child must continue to receive all necessary services to continue to participate in the general education curriculum and make progress toward their IEP goals.

ARE SCHOOLS ALWAYS REQUIRED TO HOLD A MANIFESTATION DETERMINATION MEETING?

Not always. There is a special narrow exception to these rules that permits school officials to transfer a student to an alternative educational setting for up to 45 days, even without a parent's consent and without considering whether the behavior is a manifestation of the student's disability. The factors that trigger this exception are if the student (1) carries or possesses a weapon, (2) knowingly possesses, uses, or sells illegal drugs or a controlled substance, or (3) inflicts serious bodily injury, which is narrowly defined.²³

Federal law also provides that school officials may transfer a child to an alternative setting for up to 10 days if the child has violated a code of student conduct, but only to the extent that such alternatives are applied to children without disabilities.²⁴

WHAT MUST OCCUR DURING A MANIFESTATION DETERMINATION MEETING?

Team members who must be present²⁵ include:

- A representative of the school district.
- The parent.
- Someone who can interpret evaluation results, such as a school psychologist.
- Relevant members of the IEP team (as determined by the parent and district together).

Parents may invite more participants, but they cannot block the district's choice of team members.

Information that must be reviewed:

- “All relevant information” in the child’s file, including the IEP, any teacher observations, and any relevant information provided by the parent.²⁶
- Other relevant information, if necessary. *This can include reports completed by the school or by a medical professional, such as a therapist or counselor.*

WHAT HAPPENS IF THE TEAM DETERMINES THE BEHAVIOR IS A MANIFESTATION?

The team must either:

1. Conduct a Functional Behavior Assessment (FBA) and implement a Positive Behavior Support Plan (PBSP).²⁷ The team does not have to conduct an FBA if one was completed before the behavior in question occurred.
2. OR if a PBSP is already in place, then it must be reviewed and modified, if necessary, to address the behavior.²⁸ The student should then be returned to the original placement unless the parent and LEA agree to a change of placement as part of the modification of the behavior support plan.²⁹

WHAT HAPPENS IF THE TEAM DETERMINES THE BEHAVIOR IS NOT A MANIFESTATION?

If the team determines the behavior is not a manifestation, the child can be disciplined in the same way as any of their non-disabled peers. The punishment cannot be more harsh or different than it would be if the student did not have a disability. Even if the student is suspended or expelled (for any length of time), the school district or charter school must still arrange for the student to receive a free, appropriate public education (“FAPE”) in accordance with the child’s IEP during the entire time the student is out of school.³⁰

WHAT CAN YOU DO IF YOU DISAGREE WITH A MANIFESTATION DETERMINATION?

A parent or educational decision-maker has the right to disagree with the team’s determination and request a due process hearing.³¹ If the parent requests a due process hearing to challenge the manifestation determination, the hearing request will be “expedited” and must be concluded within 20 school days, and the hearing officer must reach a decision in 10 more school days. If the hearing officer agrees with the school that the child’s behavior was not a manifestation of the child’s disability, then the disciplinary change of placement stays in effect. If the hearing officer agrees with the parent that the child’s behavior was a manifestation of the disability, the hearing officer must order the school to return the child to the placement they were in before the misbehavior. However, in the meantime, the school district can move the child to an alternative educational setting.

Below are some examples of manifestation-determination circumstances that may violate the law:

- The required team members are not present at the meeting.³²
- The team does not have enough information about the child's disability.³³
- The team incorrectly identifies the child's misconduct.
 - Example: A manifestation determination review team identifies a student's misconduct as attempting to sell drugs, but the student's *actual* behavior was passing a note that said, "I have pillz," with no further intent found.³⁴
- The team does not review all relevant information.³⁵
- The team believes the behaviors caused by the disability are under control.³⁶
- The team does not consider a parent's or IEP team's input about the student's past behaviors.³⁷
- The team does not properly consider how the child's disability directly affects their conduct.³⁸
- The team does not give evidence for its determination that a behavior is not a manifestation.³⁹

These are not the only reasons manifestation determinations have been overturned, but this can help spot any red flags at the meeting or in the paperwork provided!

SELF-ADVOCACY TOOL: PREPARING FOR A MANIFESTATION DETERMINATION

When a [manifestation determination review](#) is scheduled for your child, it is important that you gather all the necessary information to ensure that an informed, accurate decision is made by the IEP team as to whether your child's behavior was caused by or is related to their disability or the failure to implement their IEP. It is most important that the information considered by the school team reflects the true nature of your child's disability and experiences.

Below are some steps you should take before the manifestation determination meeting takes place:

- ☐ Gather documents from outside professionals.
 - This can include doctors and therapists.
- ☐ Talk to your child's therapist or other professionals.
 - They can help you choose the best language to discuss your child's disability, as well as inform you about how the disability might impact your child's behavior.
- ☐ Talk to your child.
 - Make sure you understand the incident from their perspective. Specific information about how they were feeling in the moment when the incident happened can help you connect the behavior in question to previous behaviors known to be caused by or related to their disability.
 - Ask them about other things going on in school that might have contributed to the behavior in question.
 - Ask them to describe the supports they received in the time leading up to the incident. If they were not receiving the supports or services required in their IEP, even during the days before the incident, that could be relevant to the team's decision.
- ☐ Review your child's current IEP and reevaluation.
 - Schools are required to hold an IEP meeting at least once a year for children who have one, and to conduct a reevaluation at least every three years (unless the parent and IEP team agree that a re-evaluation is not necessary). Make sure you have the most recent copy of each document, and if you don't, request one from the school.
- ☐ Complete the tool below.
 - The manifestation determination review team is required to consider any relevant information provided by the parent, and a parent may invite any relevant personnel to the meetings to provide additional context.
 - By completing the tool below and bringing it to your child's review, you will be equipped with information that can influence the outcome of the meeting and ensure your child receives necessary support and understanding to address their behavior in a positive manner.

MANIFESTATION DETERMINATION REVIEW PREPARATION TOOL

Use this tool to organize and present the information you have at the manifestation determination meeting.

WHAT IS THE BEHAVIOR THAT OCCURRED?

**If you do not know the behavior that resulted in the MDR, contact the school before the meeting to get clarification on what specific behavior will be considered and to get a report of the incident.*

Date/Time of Incident _____

Location of Incident _____

Students/School personnel involved:

Witnesses:

Student Code of Conduct provision that was allegedly violated:

Discipline Consequence Received:

** If you do not know the Code of Conduct provision that was allegedly violated or school discipline sought (e.g. expulsion), ask the school before the meeting to get clarification.*

Incident description:

How does my child describe the incident? What were they feeling in that moment? Can they think of any supports that could have helped them avoid the behavior? Is anything missing from the school's incident report that my child mentioned?

How does my child's disability usually impact their behavior? Are any of their past behaviors similar to the one at issue here?

**The IEP team is required to review and consider any relevant information presented by the parent in the manifestation determination review. The team is also required to consider the effect on a child's behavior of all disabilities or health conditions, including those that are not documented in the child's evaluations or IEP. Include examples below that might not already be in your child's IEP or disciplinary record.*

For example: A child with ADHD has difficulty with emotional regulation and impulse control. The child is suspended for yelling at the teacher and leaving the classroom without permission when he was given a math test. Below, the parent could write about how a few months ago, the child became very angry and ran out of the house after being asked to clean up his room. That helps show that when the child is prompted to engage in a low-interest activity, he tends to struggle more to control his emotions and impulses, which sometimes leads to escalated behavior and elopement. A former teacher might also recall a time when the student had a similar reaction in the classroom that you could include below.

- Examples from home of this behavior

- Examples from school (current or former) of this behavior

**These might be incidents that did not result in a formal report but did result in a call or note home, or events that your child or the teacher told you about independently.*

- Examples from teachers of this behavior

**Is there a teacher or other school staff who is especially close with your child that frequently observes their regular behavior and is familiar with their disability? Consider inviting this teacher.*

- Examples from medical professionals' reports of this behavior

**Is there a therapist or other professional from an outside agency working with the child? You should invite this professional to add input on the student's disabilities and needs. They may also be invited to attend the meeting.*

Did the school follow the student's IEP before the behavior occurred?

- Does the IEP contain a positive behavior support plan with specific steps that the school is supposed to take to manage the student's behaviors? If so, write steps here that the IEP states should be taken.

**For example: A student who has difficulty focusing during class time might have a plan that instructs staff to redirect the student's behavior and offer an alternative space to calm down. Behavior support measures may be written in a separate positive behavior support plan, but they also might be included as part of the student's other services or accommodations.*

- If the school did not follow the above plan, write the steps they took instead here:

- Did the school fail to provide any required services and supports from the IEP? (check all that apply)

- ☐ Aide/1:1
- ☐ Speech/Language
- ☐ Occupational Therapist
- ☐ Psychologist
- ☐ Medical services
- ☐ Interpreting services
- ☐ Other:

- If any of the required services from the child's IEP were not provided, would the behavior have been prevented if they were provided? Describe how below.

**For example: A student's IEP was revised to include a 1:1 aide when the student walked between classes during class transition due to concerns about peer conflicts. The aide was never provided due to staffing shortages. The student was involved in a fight between class periods. If the 1:1 aide had been provided, it is likely that the fight would not have occurred.*

Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice – visit www.elc-pa.org/contact or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) – or contact another attorney of your choice.

¹ 34 C.F.R. § 300.530(e).

² PA. ADVISORY COMM'N TO THE U.S. COMM'N ON CIVIL RIGHTS, *The Civil Rights Impacts of Disparate Exclusionary and Punitive Discipline on Students of Color, Students with Disabilities and LGBTQ Students in Pennsylvania Public Schools 7* (2021), <https://www.usccr.gov/files/2021/04-09-Pennsylvania-Public-Schools.pdf>.

³ *Id.* at 19.

⁴ Harold Jordan, ACLU, *Beyond Zero Tolerance: Discipline and Policing in Pennsylvania Public Schools* (2015), https://www.aclupa.org/sites/default/files/field_documents/10497b_56b2ce93961c47eda1db0bfb6b3b3b58.pdf.

⁵ PA. ADVISORY COMM'N TO THE U.S. COMM'N ON CIVIL RIGHTS, *The Civil Rights Impacts of Disparate Exclusionary and Punitive Discipline on Students of Color, Students With Disabilities and LGTBQ Students in Pennsylvania Public Schools 10*, 25 (2021), <https://www.usccr.gov/files/2021/04-09-Pennsylvania-Public-Schools.pdf>.

⁶ Russell J. Skiba, Robert S. Michael, Abra Carroll Nardo & Reece L. Peterson, *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, 34 URBAN REVIEW, 317-324 (2002).

⁷ PA. ADVISORY COMM'N TO THE U.S. COMM'N ON CIVIL RIGHTS, *The Civil Rights Impacts of Disparate Exclusionary and Punitive Discipline on Students of Color, Students with Disabilities and LGBTQ Students in Pennsylvania Public Schools 7* (2021) (hereinafter "Advisory Commission"), <https://www.usccr.gov/files/2021/04-09-Pennsylvania-Public-Schools.pdf>.

⁸ Alex Zimmerman, *NYC Schools Fail to Protect Students with Disabilities from Lengthy Suspensions*, CHALKBEAT NEW YORK (May 21, 2025), <https://www.chalkbeat.org/newyork/2025/05/21/nyc-public-schools-suspend-students-with-disabilities-in-unlawful-manner/>

⁹ *Id.* at 18-19

¹⁰ Jayanti Owen, *Double Jeopardy: Teacher Biases, Racialized Organizations, and the Production of Racial/Ethnic Disparities in School Discipline*, 87 AM. SOCIOLOGICAL REV. 1007 (Nov. 22, 2022), <https://journals.sagepub.com/eprint/XK6UME6UVGBVFK6AWC2P/full>.

¹¹ *Id.*

¹² *Id.*; 34 C.F.R. § 300.536.

¹³ 34 C.F.R. § 300.536(a)(1).

¹⁴ 22 Pa. Code § 14.143(a).

¹⁵ 34 C.F.R. § 300.536(a)(2).

¹⁶ 22 Pa. Code § 14.143(b).

¹⁷ See Individuals with Disabilities Education Act, (IDEA), 20 U.S.C. § 1400 *et seq.*, 34 C.F.R. Part 300; Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, 34 C.F.R. Part 104. State regulations, 22 Pa. Code Chs. 14 and 15 provide some additional rights and protections.

¹⁸ 20 U.S.C. § 1415(k)(5); 34 C.F.R. § 300.534(b).

¹⁹ *Id.* § 300.536(a)(2)(i-iii).

²⁰ *D.G. v. Bethlehem Area School District*, ODR File No. 6816/06-07 LS (SEA PA Oct. 13, 2006). See *N.R. v. MaST Community Charter School*, ODR File No. 7061-06-07 LS (SEA PA Nov. 9, 2006) (student's disabilities can affect their perception of safety and thereby be substantially related to possession of a weapon at school).

²¹ 20 U.S.C. § 1415(k)(1)(E)(i)(I);

²² 34 C.F.R. § 300.530(e)(1)(i), (ii).

²³ *Id.* §§ 300.530(f)(2), (g).

²⁴ *Id.* § 300.530(b)(1).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* § 300.530(f)(1)(i).

²⁸ *Id.* § 300.530(f)(1)(ii).

²⁹ *Id.* § 300.530(f)(2).

³⁰ 20 U.S.C. § 1412(a)(1).

³¹ 34 C.F.R. § 300.532.

³² *Cherry Creek Sch. Dist. #5*, 56 IDELR 149 (SEA CO Jan. 24, 2011) (finding that an assistant principal's failure to inform a parent of her right to invite IEP team members to a manifestation determination meeting impeded her meaningful participation and led to a denial of FAPE).

³³ *O.R. v. Sch. Dist. of Philadelphia*, ODR No. 27887-22-23 (SEA PA 2023) (holding that a manifestation determination was insufficient because the District failed to adequately consider the student's mental health diagnoses and treatment information in determining whether the student's behavior had a direct relationship to the student's disability and whether the incident directly resulted in the failure to implement the IEP); *Richland Sch. Dist.*, 32 IDELR 55 (SEA WI Mar. 3, 2000) (team was correct in determining that a student's behavior in a vandalism incident was not a manifestation of his disability, but decision was still reversed because team was not aware of his diagnosis with ADD and depression, which likely had an effect on his behavior).

³⁴ *South Lyon Cmty. Schs.*, 50 IDELR 237 (SEA MI 2008).

³⁵ The team did not consider the student's special education records, behavior plan, or history of similar outbursts when it assessed whether his disability played a role in his instigation of a fight. *Zimmerman*, *supra* note 15.

³⁶ *North Allegheny Sch. Dist.*, 125 LRP 15168 (SEA PA 04/10/25) (IHO determined MDR was insufficient because team thought emotional disturbance (ED) was only a "secondary disability." Despite long history of physical altercation and bullying, the team believed student behaviors had been sufficiently addressed and that because he was receiving interventions for problematic behaviors, the most recent behavior was not related to his disability)

³⁷ *Waynesboro Area Sch. Dist.*, 34 IDELR 167 (SEA PA Feb. 02, 2001) (The district violated the IDEA when it failed to include input from a suspended student's parents or her IEP team before determining the student's behavior was not a manifestation of her cognitive disability.).

³⁸ *Columbia Borough Sch. Dist.*, 115 LRP 10010, ODR File No. 15762-14-15 (SEA PA Feb. 21, 2015) (reversing an inappropriate manifestation determination because student's possession of a "pointed object" at school had a direct and substantial relationship to their emotional disturbance, and ordering school district to complete an IEE); *East Allegheny Sch. Dist.*, 119 LRP 31890, ODR File No. 22149-18-19 (SEA PA, June 5, 2019) (ordering return to former placement as a result of improper manifestation determination); *R.T. v. Penn Hills School District*, ODR File No. 20320-17-18 (SEA PA Apr. 5, 2018).

³⁹ *In re: Student with a Disability*, 110 LRP 30674 (SEA NY 2010) (manifestation determination review team had to reconvene to reconsider its decision that student's behavior was not a manifestation of his disability because it based its decision on the possibility of retribution against the student if he returned to school, rather than the connection between his disability and the behavior).