

Functional Assessment of Behavior
EDS 240
Manifestation Determination

Stephen E. Brock, Ph.D., NCSP
 California State University, Sacramento



1

Manifestation Determination

✳ IDEA '97 and '04

- ◆ Mandates schools make a determination as to whether a school policy (or rule) violation by a special education student is a manifestation of their disability.

2

Section 615(k) of P.L. 108-446

✳ Requires procedures to be followed in the event any special education student violates a school discipline policy that ...

- ◆ Results in a suspension of over 10 days
- ◆ Results in a suspension, which when combined with other suspensions, totals more than 10 days
- ◆ Results in a proposed expulsion

✳ Such are viewed as a change of placement

3

Section 615(k)(e)(g) of P.L. 108-446

✧ These procedures are...

- ...the IEP team and other qualified personnel will conduct a *review*...
- Determine if the behavior was caused by, or had a *direct and substantial* relationship, to the child's disability; or the *direct result* of the LEA's failure to implement the IEP [emphasis added].
- The review shall be conducted within 10 days of the school policy violation.
- If the behavior was not a manifestation of the student's disability, then the student may be disciplined under the general conduct code of the school...
- Though whatever change in placement that is made must include the continuation of special education services.

Source: Meloy, L. L. (1999). Implementing IDEA '97: Manifestation determination. *Communiqué*, 28(4).

Review Requirements

✧ The team considers all relevant information

- Evaluation findings
- Teacher observations of the student
- The student's IEP and placement
- Relevant information provided by the parents

✧ The team makes four determinations

1. If the IEP/placement are *appropriate*
2. If the IEP is being *implemented*.
3. If the disability impaired the students ability to *understand* the impact/consequences of the behavior
4. If the disability impaired the students ability to *control* the behavior

5

In other words...

✧ Discipline of special educations students is not reflexive and reactive.

✧ IDEA 2004 mandates that an IEP team, not just an administrator in charge of discipline, carefully review the data on a particular special education student to decide if there is a *direct* relationship between a current instance of misconduct and the student's disability to make decisions about the consequence for the misconduct as well as the student's continuing educational and behavioral needs.

Source: Meloy, L. L. (1999). Implementing IDEA '97: Manifestation determination. *Communiqué*, 28(4).

6

In other words...

❖ The specific questions the IEP team **must** address:

1. Is the IEP **appropriate**?
 - Including whether or not a BIP is in place/effective.
2. Is the IEP being **implemented** as written, including appropriate behavior management procedures?
 - Including whether or not a BIP is being followed.
3. Did the disability prevent the student from **understanding** the impact and consequences of the behavior in question?
4. Did the disability prevent the student from **controlling** the behavior in question?"

Source: Meloy, L. L. (1999). Implementing IDEA '97: Manifestation determination. *Communiqué*, 28(4).

7

In other words...

❖ If the LEA, parents, and IEP team determine the student's conduct was a manifestation of the student's disability...

- If **not part of the IEP** conduct a FBA and implement a BIP.
- If a FBA and BIP **have been completed** review and modify the BIP as indicated.
- Return the student to the placement from which the child was removed.
- Exception added by IDEA 2004 [615 (k)(1) (G)]
 - Child carries a weapon to or possesses a weapon
 - Knowingly possesses or uses illegal drugs
 - Child has inflicted serious bodily injury (i.e., involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, protracted loss or impairment of the function of a bodily member) upon another person.

8

Recommendations

❖ Develop behavior management plans

- Have behavior intervention/management plans in place for all special education and 504 students who need them.
 - including specific behavior emergency procedures.
- In other words,
 - Special education students with behavior problems should have either a BIP and specific goals addressing behavioral needs.

Source: Meloy, L. L. (1999). Implementing IDEA '97: Manifestation determination. *Communiqué*, 28(4).

9

12 Best Practices (Melay, 1999)

1. Collection and examination of behavior records over the period of the IEP.
2. Examination of the components of the IEP's BIP for its impact in increasing/decreasing the behavior(s) of concern.
3. Collection of information on general school performance from school staff.
4. Collection of information on home behavior/concerns from parents.
5. Review of academic/behavioral historical data on the student.

13

12 Best Practices (Melay, 1999)

6. Interview with the student, emphasizing the student's current emotional health as well as his/her understanding of the school policy violation.
7. Interview with the teacher(s) involved with the student, emphasizing the extent of normalcy of the behavior in question for the student/peers.
8. Interview with administrators in regard to the particulars of the school policy violation.
9. Review of the current program for and placement of the student.

14

12 Best Practices (Melay, 1999)

10. Consideration of the characteristics of individuals with this student's disability to identify consistency/inconsistency of behavioral characteristics of this student to expectations for a group of similarly disabled students.
11. Consideration of the cognitive, emotional, and behavioral status of the student in regard to the school policy violation and self-control.
12. Review of options for available and appropriate programming.

Source: Melay, L. L. (1999). Implementing IDEA '97: Manifestation determination. *Communique*, 28(4).

15

Example 1: Hearing Impaired Student

- ❖ **Services:** Resource Room daily and Itinerant Hearing Impaired Services weekly
- ❖ **Incident:** Junior girl caught smoking for the third time in the high school restroom
- ❖ **School Discipline Policy:** 3-day in-school suspension--1st offense; 6-day in-school suspension--2nd offense; suspension from school for remainder of semester--3rd offense.
- ❖ **Background Information about Student:** No complaints from parents for offenses 1&2. Student has high average intelligence; reads at the sixth grade level, reads lips extremely well and has fairly good oral speech. Student has a history of frequent absences – just under the amount needed to be referred for truancy.

Source: Meloy, L. L. (1999). Implementing IDEA '97: Manifestation determination. *Communiqué*, 28(4).
16

Example 1: Hearing Impaired Student

- ❖ **The Dozen Do's:**
 1. No other discipline problems
 2. Nothing on current IEP in regard to the high absenteeism
 3. Student failing in some subjects and doesn't have the credits to graduate with her class without attending summer school
 4. Parents' concern now for possibly not meeting graduation requirements and current defiance of their home curfew rules
 5. Recently the student had a part-time job at Hardee's that she couldn't handle due to the ambient noise
 6. Student read the school policies and gave appropriate interpretations for each
 7. The hearing impairment would not interfere with misinterpretation of the school's no smoking rules

Source: Meloy, L. L. (1999). Implementing IDEA '97: Manifestation determination. *Communiqué*, 28(4).
17

Example 1: Hearing Impaired Student

8. Protocol followed
9. Resource support daily and itinerant hearing impaired services weekly
10. Other high average intelligence, hearing impaired students would be expected to understand and follow this school policy
11. Understands policy and appears to want to use her disability in order to not lose credits and be able to graduate with her class; self-control is not an issue
12. Discipline per school policy*, although student's IEP needs to better address current needs with an increase in the amount of time for special assistance, a home-school coordinated behavior management plan to increase school attendance when she returns second semester, and career counseling

- ❖ Suspension from school for the remaining three weeks of the semester, but with continuation of special education services, which in this case were delivered as homebound instruction

Source: Meloy, L. L. (1999). Implementing IDEA '97: Manifestation determination. *Communiqué*, 28(4).

Example 2: Mildly Mentally Disabled (Educably Mentally Handicapped) Student

- ❖ **Services:** Self-contained Program for MDE/EMH.
- ❖ **Incident:** Junior boy lays younger female student with mental disabilities (moderate) on floor during drafting class and proceeds to undress her for presumed sexual activity – with regular education class spectators.
- ❖ **School Discipline Policy:** 10-day suspension; mental health evaluation prior to school reentry.
- ❖ **Background Information about Student:** Intellectual functioning in the 60-64 range (at or above 1% of others of the same chronological age). Student is 18 years old, reads at the early second grade level and has been in a self-contained special education classroom since age three.

Source: Meloy, L. L. (1999). Implementing IDEA '97: Manifestation determination. *Communiqué*, 28(4).
19

Example 2: Mildly Mentally Disabled (Educably Mentally Handicapped) Student

- ❖ **The Dozen Do's:**
 1. No previous behavioral problems
 2. No Behavior Management Plan
 3. Functional academics and life skills programming
 4. Foster family's concerns of late for inappropriate touching of female siblings and cousins
 5. Appropriate progress for a mental disabilities student
 6. Student could report what he did, that he'd seen the same thing on TV, and that the girl "liked him"; student stated that the other boys in the class were clapping; he also stated that he "was in trouble;" he could separate pictures into two piles for "friend touching" and "intimate sexual touching."
 7. Hard-working and kind boy who wants to please and is responsible at his work placements

Source: Meloy, L. L. (1999). Implementing IDEA '97: Manifestation determination. *Communiqué*, 28(4).
20

Example 2: Mildly Mentally Disabled (Educably Mentally Handicapped) Student

8. Teacher not in room (reprimand issued to teacher); parents of female student very concerned about daughter's vulnerability and future safety, demanding "proof" from the administration that this thing would not occur again; male student sent home the remainder of the day of the incident, was ill the next day, and then there was a four-day school holiday
9. Self-contained Mental Disabilities Class with work study, but no sex education curriculum
10. Not uncommon for adolescent MD students to exhibit inappropriate sexual behavior in various settings
11. Limited if any understanding of inappropriateness of his behavior in the school setting, due to his limited mental capacity; usually well-controlled behavior compromised due to peer attention

Source: Meloy, L. L. (1999). Implementing IDEA '97: Manifestation determination. *Communiqué*, 28(4).
21

Example 2: Mildly Mentally Disabled (Educably Mentally Handicapped) Student

12. Suspension of school discipline procedures because it is determined that the student's intellectual capacity limits his understanding of appropriate sexual conduct, though the student's IEP needs to include a sex education curriculum, as do the IEPs of the other MD students in the program; 1 1/2 day suspension sufficient; behavior monitoring the rest of the school year for absence of inappropriate sexual contact with peers; individual time weekly with school psychologist for repetition of the sex education curriculum from classroom in a one-to-one setting.

Source: Meloy, L. L. (1999). Implementing IDEA '97: Manifestation determination. *Communique*, 28(4).
22

Last 2 Weeks

December 7	Legal and Ethical Issues Quiz	<ul style="list-style-type: none"> U.S. Dept. of Education (2006). §300.24, §300.170, §300.226, §300.304, §300.310-311, §300.324, §300.534-536 CA Education Code, §56520-56525 CA Code of Regulations, §3065(d)(e)
December 14	Finals Week	<ul style="list-style-type: none"> No Class Meeting Final Drafts of FBA and BIP due at 9:00am BIP evaluation data due at 9:00am

23
