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# Manifestation Determinations

Mike Franklin
ODE Special Education Legal Specialist
503-947-5689
Mike.franklin@ode.state.or.us

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- The information provided during this presentation/slide show is for informational purposes only and is not to be considered legal advice.

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## What is a Manifestation Determination?

- A Manifestation Determination is a meeting between relevant members of the IEP Team to determine if a student's violation of the Student Code of Conduct was:
- CAUSED BY, or HAD A DIRECT AND SUBSTANTIAL RELATIONSHIP to the student's disability, or;
- was the DIRECT RESULT of the LEA's FAILURE TO IMPLEMENT THE IEP.

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## When is a Manifestation Determination Required?

- A Manifestation Determination is ONLY required when a change in a student's educational placement is being pursued due to a student's violation of the code of student conduct. This must occur within 10 school days of the decision to change the student's placement per OAR 581-015-2415.

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## When is a Manifestation Determination Required? (2/2)

- A Manifestation Determination is not required if a student receiving special education services has not been removed from school for more than ten days;
- Through day 10, special education students are treated exactly like regular education students;
- However, school districts must follow the same procedures to suspend special education students as they follow when suspending regular education students.

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## When is a Disciplinary Removal a Change in Educational Placement?

- Under OAR 581-015-2415, a disciplinary removal is considered a change in educational placement if:
  - The removal will be for more than 10 consecutive school days, OR;
  - The child will be removed for more than 10 cumulative school days from their current educational placement in a school year AND those removals constitute a pattern under OAR 581-015-2410.

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## When is Disciplinary Removal a Change in Educational Placement? (2/2)

- There is guidance out there that suggests that no manifestation determination is necessary if there has already been a manifestation determination for the same type of behavior. However, this seems like a moot point, since under such a scenario a pattern of removal would likely exist.

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## How Can We Tell If The Removals Constitute A Pattern?

- Under OAR 581-015-2410, school personnel must determine this on a case-by-case basis considering whether or not the child's behavior is SUBSTANTIALLY SIMILAR to behavior in previous incidents that resulted in the series of removals, and;
- Length of each removal, total amount of time student has been removed, and proximity of removals.

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## How Can We Tell If The Removals Constitute a Pattern? (2/2)

- If there is no pattern of removal, there is no change in placement and therefore no need for a manifestation determination;
- “School personnel” is not defined in the rule.

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## Manifestation Determination Team

- Who’s required to participate?
  - Under OAR 581-015-2420, the school district, the parent, and **relevant members of the IEP team (as determined by the parent and the district).**

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## Pattern or No Pattern?

- Axl is a 10th grader eligible for special education services under OHI (ADHD). He gets caught smoking weed behind the tennis courts during the first week of school, and receives a three-day out-of-school suspension. Shortly before Winter Break, Axl calls his social studies teacher, Mr. Hand, an obscene name after Mr. Hand confiscated his pizza and is subsequently suspended out-of-school for three days. After he returns from Winter Break, he skips his music class and receives a one-day in-school suspension.

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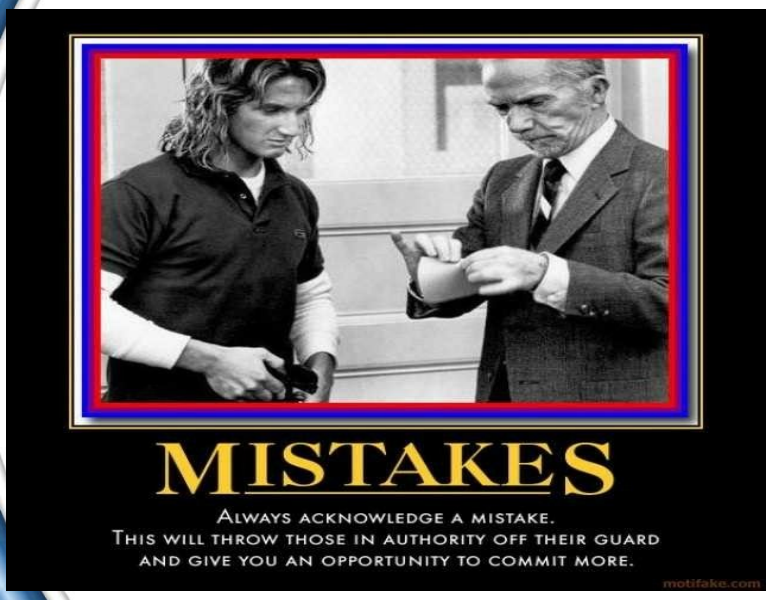


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## Pattern or No Pattern? (2/2)

- Upon his return to the regular classroom, he discovers which of his classmates told the assistant principal that Axl was smoking weed back in August (which is why he was suspended the first time) and decides to engage in his own "civil war" by sneaking up to the student from behind and hitting him over the head with Slash's guitar. School administrators determine that a five-day out-of-school suspension is appropriate.

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# Analysis

- Was a Manifestation Determination required prior to OSS #1?
- Was access to special education and the general curriculum required during this suspension?
- Same questions for OSS #2?
- Does Axl's ISS count as a disciplinary removal?
- Is a Manifestation Determination required for OSS #3? Who determines whether or not a Manifestation Determination is necessary? What factors must be considered? Who must participate? Can Axl be suspended before the Manifestation Determination takes place?

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## Analysis (2/3)

- Let's change the facts a bit – not only did Axl receive a three-day OSS for smoking weed in August, he also received two days of ISS in September for sneaking into the stadium one night and mowing a marijuana leaf pattern into the center of the football field. This was essentially a "self-contained" ISS, during which he was isolated from regular ed peers. While serving his ISS, Axl decided to liven things up by taking a bottle of Jack Daniels out of his backpack and sharing it with his fellow ISS students. Having determined that Axl was, in fact, no "Sweet Child O'Mine," the principal decides that Axl should be removed from "Paradise City" and moves to expel Axl.

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## Analysis (3/3)

- At what point is a Manifestation Determination required?
- If so, who's required to participate?
- Is there a pattern of removal under OAR 581-015-2410? Is this determination even necessary?
- Can Axl be removed to an Interim Alternative Educational Setting under OAR 581-015-2425? Under OAR 581-015-2430?
- Is Axl's Jack Daniels incident a manifestation of his disability?

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## After the Manifestation Determination is Made

- If it is determined that the violation of the code of student conduct was NOT a manifestation of the student's disability, the student is disciplined just like a regular ed student, except that services must be provided under OAR 581-015-2415(5)(b)(B) and an FBA and BIS must be provided as appropriate under OAR 581-015-2515(b)(C). The IEP Team must then determine an appropriate interim alternative placement for the student as required by OAR 581-015-2435.

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## After the Manifestation Determination is Made

- If the violation of the code of student conduct WAS a manifestation of the student's disability, the student must be returned to the placement from which the student was removed, absent an agreement between the parents and the school district as part of a modification of the student's BIP;
- NOTE: "returned to the placement" indicates that the student was removed from the placement – the student can be suspended from the time decision is made to change placement for up to ten days prior to the manifestation determination.

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## After the Manifestation Determination is Made

- There are exceptional circumstances that allow for extended removal of a student even if the behavior is a manifestation of the student's disability, but not for longer than 45 school days. These are addressed in OAR 581-015-2425 and OAR 581-015-2430. Please note that these exceptions tend to be read quite narrowly. Also note the different procedures for inflicting serious bodily injury as opposed to injurious behavior.

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## Potential Traps

- Can't say that violation of code of student conduct is/is not a manifestation without going through the process, even if underlying facts are similar to prior incident.

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## Expedited Due Process Hearings

- Can be requested by either party;
- Must occur within 20 school days of date that due process hearing request is received;
- Written decision due within 10 school days of hearing.

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## Protections for Students Not Yet Eligible for Special Education

- OAR 581-015-2440 provides that students not yet eligible for special education are protected if a school district "had knowledge" that the child was a child with a disability. The school has knowledge if:
- Parent has expressed concern in writing;
- Parent has requested evaluation of the child, or;
- The child's teacher or other school personnel expressed concern about pattern of behavior directly to SPED director or other district supervisory personnel.

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## Protections for Children Not Yet Eligible for Special Education (2/2)

- This does NOT apply if;
- parents have refused permission to evaluate;
- child evaluated and not determined eligible;
- services have been refused, or;
- consent has been revoked.

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## Additional Information

- There is absolutely nothing wrong with having a manifestation determination prior to reaching ten days of removal – in fact this would be considered to be best practice.
- However, this does not mean that it won't be necessary to have another manifestation determination once the student reaches ten days of either consecutive or pattern removals.

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## Additional Information (2/2)

- A pattern of behavior that results in multiple removals might indicate that the current IEP needs to be reviewed to ensure that the student's needs are actually being addressed;
- Please refer to recent OSEP disciplinary guidance at: http://www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps--08-01-2016.pdf.

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