

Tourette Association of America

MANIFESTATION DETERMINATION

The Tourette Association has received an increase in questions regarding manifestation determinations. A manifestation determination occurs when a child who has an Individual Educational Plan (IEP) under the Individuals with Disabilities Education Act (IDEA) or a 504 Plan is facing possible long-term suspension as a result of a violation or multiple violations of the school's written code of conduct.

The purpose of the manifestation determination is to determine whether the behavior for which the student has been suspended is the direct result of the student's disability; whether it was the direct result of the school's failure to implement the student's IEP or it was unrelated to the student's disability.

IDEA specifies that the manifestation determination is to be conducted by the IEP team and that it should review all relevant information including the student's IEP, teacher observations, information from the parent and from the student, when age appropriate. The manifestation determination is especially important for students with the complex neurobiological condition, Tourette Syndrome, as their symptoms are often misunderstood. When conducted properly, manifestation determination should be helpful to a student with TS.

It is important for school administrators to be aware that, during the reauthorization of Individuals with Disabilities Education Act in 2004, the Tourette Association (TAA) provided the US Department of Education with testimony and information that resulted in Tourette Syndrome being listed as Other Health Impaired. The following quote is important when determining manifestation and is taken from the Comments section of the Federal Regulations published Monday, August 14, 2006:

"...we do believe that Tourette syndrome is commonly misunderstood to be a behavioral or emotional condition, rather than a neurological condition. Therefore, including Tourette syndrome in the definition of other health impairment may help correct the misperception of Tourette syndrome as a behavioral or conduct disorder and prevent the misdiagnosis of their needs. §300.8(c)(9)(i)."

All too often, the 'misdiagnosis of their needs' can result in punishment, suspensions and change of placement for students with TS. IDEA encourages that children who have symptoms, which interfere with their or other students' education, be provided a Functional Behavior Assessment (FBA) with positive and proactive supports and interventions in order that the behavior is less likely to re-occur. An FBA is the next step that a school must take if a student's behavior is found to be a manifestation of the disability

Due to the nature of TS, every individual is unique, symptoms and 'behaviors' wax and wane as well as change due to fluctuating neurological chemical imbalance. Additionally, many youngsters with TS struggle with related symptoms such as obsessive compulsive disorder, attention deficit hyperactivity disorder, and sensory issues, all of which also manifest in unique manners depending on the individual. (See "Understanding Behavioral Symptoms in Tourette Syndrome - TS is More than Tics")

Determining if a behavior is a manifestation of this extremely complex disorder can be a daunting task. Understanding disinhibition, anxiety and the neurological imbalances that may result in actions which the student knows is wrong and would typically not engage in is a critical component during the manifestation determination process. To assist in this process, it is recommended that school personnel consult and review the wealth of material available from the Tourette Association website (Tourette.org) or contact the Education Specialist for input. **It is important to note that the team of people determining manifestation be aware of the following as stated in the Individuals with Disabilities Education Act (IDEA),**

*"School personnel may consider any unique circumstances on a case-by-case basis in determining whether a change of placement is appropriate for a child with a disability".
§300.530(a)*

Many students with TS are bullied, or made fun of by imitating tics. This becomes a *unique circumstance* as the majority of students without TS are not bullied on a regular basis or have tics that they find embarrassing and wish not to do. By examining the unique circumstances which resulted in a behavior for which the student may be suspended, it will be more likely that children with TS will receive appropriate supports and interventions rather than ineffective removal from the education setting.

Members of the TSA Education Advisory Board, Ellen Meyers, M.Ed., Kathy Giordano, BA

No IEP or 504 Plan and Manifestation

A student without an IEP or a 504 Plan may be eligible for the protection that Manifestation Determination provides. However, this is ONLY “if the public agency (school) had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.” This doesn’t mean if you have provided your child’s school with documentation of a diagnosis that your child is protected. It has very specific guidelines.

The Federal law states that the school is recognized as having “knowledge” if:

- The parent of the child expressed concern in writing to supervisory or administrative personnel at the school that the *child is in need of special education and related services*.
- The parent of the child requested, in writing, an evaluation of the child
- The teacher of the child, or other personnel of the school, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

It is not uncommon for a student with TS who has never been accused of having behavior issues in school to be in a situation in which a suspension is a possibility. Because of this, all parents of students with TS may want to write a brief letter to a school administrator at the beginning of every year that you are concerned your child is in need of special education and/or related services. It doesn’t matter if they refuse to hold either an IEP or 504. Keeping a copy of the letter and proof of the date that the school received it, will be enough to request a manifestation meeting if your child is threatened with a suspension during the year. If you insist on holding a meeting and they determine that your child is not eligible for either an IEP or a 504 Plan, then this protection is not available.

This is not intended to discourage true attempts at receiving an IEP or a 504 Plan. However, you would want to prepare yourself for this meeting by carefully reading the resources on the TAA website regarding both IEP’s and 504 Plan eligibility.

Sec. 300.534 Protections for children not determined eligible for special education and related services

<http://idea.ed.gov/explore/view/p/%2Croot%2Cregs%2C300%2CE%2C300%252E534%2C>

DISABILITY RIGHTS ENFORCEMENT HIGHLIGHTS OFFICE FOR CIVIL RIGHTS

U.S. Department of Education

<file:///C:/Users/KathyG.TSA-USA/Documents/1%20HANDOUTS/1%20typical%20handouts/504%20Manifestation%20rights%20-%20new.pdf>

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Discipline Students with disabilities are disproportionately disciplined in comparison to their peers without disabilities. For example, OCR's Civil Rights Data Collection shows that students served by IDEA are twice as likely to be suspended out

of school as their peers without disabilities. In Fiscal Years 2009–11, OCR received over 750 complaints alleging disability discrimination concerning discipline.

OCR works to protect students with disabilities from violation of their rights in the discipline process. Under Section 504 and Title II, students with disabilities may not be punished or disciplined for behavior that is caused by or is a manifestation of their disabilities. To protect against this, schools must hold a hearing before suspending a student with a disability for more than 10 cumulative days during a school year.

Additionally, students with disabilities must not be subjected to discriminatorily different treatment in discipline, and must not be disciplined more harshly or frequently than similarly situated students without disabilities for the same infractions.