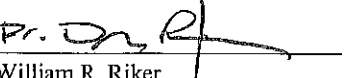


OFFICIAL USE ONLY:

113.1-AR-2 Discipline of Student with Disabilities -  
Manifestation Determination

 William R. Riker Superintendent	<u>4-23-18</u> Effective Date
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**East Stroudsburg Area School District  
Dept. of Pupil Services  
Manifestation Determination Protocol**

The LEA must conduct a manifestation determination within ten (10) school days of decision to remove the student from the current program because of a violation of; Code of Student Conduct. All students identified and eligible under; Chap(s) 14, 15 or 16 are eligible for manifestation determination protocol.

Before a school/district may affect a change in placement for disciplinary purposes all relevant members of the student's IEP *Team* (as determined by the parent and the LEA) must review all relevant student information in the student's case file, including the student's IEP, teacher observations, attendance, behavioral/discipline history, and any relevant information provided by the *Team* to determine:

1. If the student conduct in question was caused by, or had a direct and substantial relationship to; the student's disability; or
2. If the student conduct in question was a direct result of the LEA's failure to implement the student's IEP.
  - a. If the LEA, the parent and relevant members of the student's IEP *Team* determine that either of those conditions was met, the student conduct in questions is a manifestation of the student's disability.
  - b. If the LEA, the parent and relevant members of the student's IEP *Team* determine the conduct in question was caused by the student's disability or was the direct result of the LEA's failure to implement the IEP, the LEA must take immediate action to remedy all deficiencies.
3. If the LEA, parent, and relevant members of the student's IEP *Team* makes a determination the student's behavior is a manifestation of a disability, the IEP *Team* must:
  - a. Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the conduct occurred, and implemented a behavioral intervention plan; OR
  - b. If a behavioral intervention plan already exists, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; AND
  - c. Cannot place the student in an AEDY Program or change a placement unless at least one of the following circumstances apply;
    - i. The parent and LEA agree to place the student in an AEDY program; OR
    - ii. The conduct warrants an interim 45-day alternative educational placement

## Interim of Forty-Five (45) Day Placement of Students with IEPs

In specific circumstances regarding use/possession of drugs, weapons and serious bodily injury, *whether or not* the behavior was a manifestation of the student's disability, the LEA *may* remove a student to an interim alternative educational setting for up to forty-five (45) school days, if the student:

1. Carries or possesses a weapon at school, on school premises, or at school functions under the jurisdiction of the LEA; OR
2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school on school premises or at a school function under the jurisdiction of the LEA; OR
3. Has inflicted serious bodily injury upon another person while at school, on school premises or at a school function under the jurisdiction of the LEA.

Pursuant to 34 C.F.R. 300.530 (i) the following definitions apply to the terms used above;

1. **Controlled substance** means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substance Act (21 U.S.C. 812 (c)).
2. **Illegal drug** means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Act or under any other provisions of Federal Law.
3. **Serious bodily injury** has the meaning given the term "serious bodily injury" under 18 U.S.C. 1365 (h)(3), which involves:
  - a. A substantial risk of death;
  - b. Extreme physical pain;
  - c. Protracted and obvious disfigurement; OR
  - d. Protracted loss or impairment of the function of a bodily member, organ or mental faculty.
4. **Weapon** has the meaning given the term "dangerous weapon" under 18 U.S.C. 930(g)(2), which means: a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length.

### Special Education Case Manager and School Counselor Duties:

Manifestation Determination Meetings: If the student receives ten (10) or more days of OSS and prior to the student receiving 15 days, the Case Manager and School Counselor must work with; building administration, Supervisor of Special Education, and Director of Pupil Services to schedule a manifestation determination meeting. **Note;** if the student begins to show a pattern of documented behavior, the Case Manager may schedule a manifestation prior to the ten (10) days. The **Case Manager** must send an invitation for the meeting, checking "other" and writing "Manifestation Determination Meeting". The Case Manager is to be prepared with; copy of the Procedural Safeguards, Parent Invite, student's folder, an IEP Revision and NOREP (with the demographics completed on both of these) in case the **Team** needs to make revisions to the IEP at this meeting. If the student has a Chapter 15/504 Plan, the School Counselor will issue the invite and be prepared to draft any necessary changes to the 504 plan. If a student has an open Permission to Evaluate, the School Counselor must be in attendance.

A copy of the *Manifestation Determination Worksheet* is available on PaTTAN's website at [www.pattan.net](http://www.pattan.net) keyword; *Manifestation Determination*

## Manifestation Determination Duties and Process for School Psychologists:

Once a student who receives special education services, for whom a Permission to Evaluate has been recently issued, or has a 504 Agreement approaches 10 days of out of school suspension for the year, a Manifestation Determination meeting is needed. **Note: Any student identified as Intellectually Disabled considered for even one day of out of school suspension requires a Manifestation Determination.**

### Prior to the Manifestation Determination Meeting

1. Working collaboratively with; Building Level Administration, Director of Pupil Services, Supervisor of Special Education, and School Psychologist, determine a date and time for the Manifestation Determination. The Building Level Administration, LEA, notifies the parent of the date and time of the Manifestation Determination meeting and indicates the parent and student need to attend. Moreover, Building Level Administration will notify the Case Manager for students with IEPs, or School Counselor for students with Open Permission to Evaluates or with Chapter 15/504 Plans.
2. The Case Manager for students with IEPs, or School Counselor for students with Open Permission to Evaluates or with Chapter 15/504 Plans, will complete and send the Invitation to the Meeting, checking "Other" and Listing - Manifestation Determination on the line, as well as, a Consent to Excuse, if the general education teacher is not necessary to attend. Persons attending will include: Principal or Assistant Principal, Supervisor of Special Education or Director of Pupil Services who agreed to attend, School Psychologist, Case Manager for students with IEPs, or School Counselor for students with Open Permission to Evaluates or with Chapter 15/504 Plans. In the case with the student with medical needs, the Case Manager for students with IEPs, or School Counselor for students with Open Permission to Evaluates or with Chapter 15/504 Plans, will invite the School Nurse.
3. The School Psychologist will; start the official form for the Manifestation Determination **East Stroudsburg Area School District Manifestation Determination Worksheet (Moodle, section 17, #2).**
4. Check; reason, if applicable.
5. Date; Date of Manifestation Determination Meeting
6. Information for *Student Information Section* is obtained and reviewed from the student's current Evaluation Report/Reevaluation Report, current IEP/Ch.15/504, from current evaluations provided from parents/guardians, and/or input from team. Reference dates of documents reviewed at the meeting in the report.
7. Under; *Description of Proposed Disciplinary Action*-list the most current disciplinary action - usually (set number of days) out of school suspension pending this Manifestation Determination.
8. *Cumulative Record of Disciplinary Actions*; the present school year is filled out prior to the meeting and found on Sapphire. Start with the beginning of the year and work forward listing date, disciplinary consequence and reason listed (not all the details, just the infraction).
9. Have a copy of the current FBA and PBSP for review at the Manifestation Meeting.
10. *Description of Behavior Section and Determination Sections*; completed at the meeting as team input.
11. Complete the student's name at the top of the signature page.

\*\*\*\*The ONLY information completed prior to the Manifestation Determination Meeting; Student Name, Date, Student Information and Description of Proposed Disciplinary Action\*\*\*\*

### During the Manifestation Determination Meeting:

12. The School Psychologist will lead the *Team*/meeting by explaining the student has been identified as having a disability, the *Team* must determine if the behavior that led to the discipline is a manifestation of the student's disability. This applies to students *thought to be exceptional* (Permission to Evaluate issued) or those with a 504 Agreement.

13. Provide parent with a copy of the template of the Manifestation Determination Worksheet. Inform parent/caregiver to take notes on the worksheet during the meeting.
14. School Psychologist starts reading the *Student Information Section* required on the form along with the information found in the student's IEP/Ch. 15/504 regarding exceptionality, placement, how disability affects academic or social performance, strengths, and needs. Explain the information was taken directly from the student's current IEP/Ch. 15/504 (only document evidence).
15. *Description of Behavior Section*; completed at the Manifestation Determination Meeting. As student input into the report, question the student on the inappropriate behavior occurred. Question for clarification on; details, unclear areas, etc... After the student input is completed, the LEA offers what the building level investigation found regarding the incident. The School Psychologist will document in the student's description of the circumstances of the incident and the LEA/administrator's version if different. Refrain from identifying other students by full name. List witnesses to the incident, but do not name students - use; *other students in the cafeteria, other students on the bus, other students in the hall*. You may use cafeteria monitors in place of specific staff names.
16. School Psychologist will lead the *Team* to review;
17. Read the first question, *Was the incident caused by, or was it in direct and substantial relationship to, the child's disability?*
  - a. Explain; in order to answer the question, the *Team* should consider the guiding questions in the East Stroudsburg Area School District Manifestation Determination Worksheet.
  - b. *Team* will discuss the questions and determine whether or not the behavior is related to the disability. Official diagnoses from psychiatric evaluations, history of behavior in school, personal factors, and any other information provided by a *Team* member, including parent and student, should be discussed and included in the report. The School Psychologist has knowledge about the criteria for the disability category and the possible impact of any psychiatric diagnoses and needs to share this information during the discussion.
  - c. If the *Team* decides the behavior is or is not directly and substantially related to the child's disability, the School Psychologist will complete a short summary of the reasoning behind this decision on the form and checks the appropriate decision as recommended from the majority of the *Team*.
18. The *Team* moves to the second question; *Was the incident a direct result of the LEA's failure to implement the IEP?*
  - a. School Psychologist reads the second question and then the guiding questions to consider in determining the answer to the *second* question.
  - b. In the second question; overall progress, progress monitoring data, positive behavior support plan data, and the functional behavioral assessment are reviewed. In most cases the IEP/Ch. 15/504 is being implemented as designed. However, changes and additional supports may be needed to enhance supports for the student. The School Psychologist summarizes the decision of the *Team* and checks the appropriate decision. Recommendations for changes can be made in this section, along for the need for an additional evaluation(s), etc...
  - c. When applies, all FBAs and PBSPs need to be updated/reviewed at the meeting. Write the date and either "updated" or "reviewed" with *Team* names on the top of the documents and attach to the Manifestation Determination. If an FBA was never completed, the Case manager/School Psychologists/School Counselor will need to issue a *Permission to Reevaluate* to complete an FBA and any other necessary testing the *Team* recommends at the Manifestation Determination Meeting.
19. If the answer to either question is; *YES*, the behavior in question is considered a manifestation of the student's disability and disciplinary consequences are considered an aversive technique and changes to the IEP/Ch. 15/504, positive behavior plan, or additional evaluations must occur. Any additional suspension days immediately end.
20. Permissions for additional evaluation(s) will be issued when a manifestation is determined.

21. The IEP/Ch. 15/504 will be revised by the Case Manager for students with IEPs, or School Counselor for students with Open Permission to Evaluate or with Chapter 15/504 Plans in conjunction with; Special Education Supervisor, Building Level Administration, and Parent/Caregiver.
22. While the IEP is being revised with the *Team*, the School Psychologist finishes the report by checking off all the information reviewed and prints a copy of the report for members of the *Team* to sign. If needed, Permission(s) can be developed and issued to Parent and Caregiver prior to meeting conclusion.
23. Case Manager will assist the School Psychologist/School Counselor to secure ALL *Team* membership signatures at the conclusion of the meeting.

#### **TEAM CONCLUSIONS:**

24. Based on the evidence provided in discussing the two questions, the School Psychologist shares the results of whether or not the incident is a manifestation of the student's disability and the School Psychologist checks the appropriate line in *TEAM CONCLUSIONS*.

**\*\*\*\*Note, if disagreements occur in making determinations for each of the two questions, the LEA makes the conclusive determinations\*\*\*\***

#### **MANIFESTATION DETERMINATION SIGNATURES**

25. The parent is provided with **Procedural Safeguards** notice and the signature page is passed around for signatures. Case Manager for students with IEPs, or School Counselor for students with Open Permission to Evaluate or with Chapter 15/504 Plans is responsible for issuing the Procedural Safeguards and obtaining *Parent Signature of Receipt* of the Procedural Safeguards Notice on the signature page.
26. The Case Manager for students with IEPs, or School Counselor for students with Open Permission to Evaluate or with Chapter 15/504 Plans sends the signature page around to the *Team*. If a *Team* member disagrees with the results, they may indicate "Disagree" and request they write their disagreement on the signature page.
27. After the signature page is signed, the School Psychologist will make copies of the completed report for; Administrative File, Guidance File, Case Manager File, Parent/Caregiver, and School Psychologist. Parent/Caregiver is provided a copy at the conclusion of the meeting. If Parent/Caregiver is not in attendance, proceed with steps above and mail completed document to Parent/Caregiver. **The original signature page and a printed copy is forwarded to Pupil Services Dept./Central Office.**
28. If the incident in question is not a manifestation of the student's disability, the disciplinary consequences will continue as determined by the Building Level Administration with a follow up contact to the Student Services Office.