



LEGAL SERVICES
MEMORANDUM

TO: SCUSD Administrators and Staff

FROM: Raoul Bozio, In House Counsel

SUBJECT: 504 Students and Manifest Determinations

DATE: March 22, 2018

Issue: Does the Manifestation Determination Process Apply to Section 504 Students?

Analysis: Yes, Manifestation Determinations apply to students with 504 Plans. The following guidelines apply:

The District must conduct a reevaluation before making any “significant change in placement of a student with a 504 Plan. Under Section 504, as with the IDEA, the suspension or expulsion of a student with a disability for more than 10 consecutive school days constitutes a “significant change in placement.” (34 CFR 104.35(a).) In addition, in some instances, a pattern of short-term suspensions totaling more than ten days may be a significant change in placement. “Among the factors considered in determining whether a series of suspensions has resulted in a significant change in placement are the length of each suspension, the proximity of the suspensions to one another, and the total amount of time the student is excluded from school.” (Broward County Sch. Dist., 36 IDELR 159 (OCR 2001).)

As such, upon reaching the 10 days of total suspension in a school year, the District must conduct a **Manifestation Determination** to determine whether the student’s misconduct was related to his or her disability. If a student’s misconduct is not related to his or her disability, the District may discipline the student as it does the general education population. If the behavior that resulted in the change of placement is determined to be a manifestation of a student’s disability, the student must be returned to the placement from which the student was removed, unless the District and the parents otherwise agree to a change of placement.

A Manifestation Determination is an evaluation that answers two questions:

1. Is the misconduct in question related to the student’s disability?

This determination must be based upon an evaluation of data related to behavior, and must be recent enough to afford an understanding of the student’s current behavior. Misconduct is a manifestation of a disability if it “arises from the disability,” “is caused by the disability,” “has a direct and substantial relationship to the disability,” or if the disability significantly impairs the student’s behavioral controls. Misconduct is not a manifestation of a disability if it bears only a weak relationship to the student’s disability. A determination that a student knows the difference between right and wrong does not constitute a determination that the student’s misconduct was or was not a manifestation of the disability. In addition, a district cannot make a categorical determination that misconduct is or is not a manifestation of a disability based on a student’s IDEA eligibility label.

2. Is the misconduct in question due to an inappropriate placement?

This determination must be based upon information from a variety of sources including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior. District staff does not need to use all of the sources of information listed above in every instance. The point of the requirement is to ensure that more than one source of information is used in making such a

placement decision. In addition, the district should examine the kinds of educational placements that previously have been tried with the student and determine whether a placement more restrictive than the current placement would control the student's behavior. As a general rule, a district should not long-term suspend or expel a student without first attempting to control the student's behavior by placing the student in a more restrictive educational placement unless it has a legitimate reason for rejecting a more restrictive placement as a viable placement option.

The 504 Team Process for Conducting the Manifestation Determination:

- The 504 Team must include a “group of knowledgeable persons,” which may include:
 - Parents/guardians
 - Student
 - Student's Teacher/s
 - Counselors
 - School staff and administrators, including SST Members
 - Related service providers
 - Individuals who can interpret assessment results (nurses, psychologists, district staff, etc.)

- 504 Team convenes and completes the SCUSD 504 Student Manifestation Determination form:
 - Reason for referral of suspension
 - Was the misconduct caused by, or had a direct and substantial relationship to the pupil's identified disability?
 - Was the alleged misconduct the direct result of district failure to implement the Section 504 Plan?
 - Summarize basis for determination

- Ultimately, as stated above, if the team determines that the student's behavior that resulted in the change of placement is determined to be a manifestation of a student's disability, the student must be returned to the placement from which the student was removed, unless the District and the parents otherwise agree to a change of placement.