

A blurred photograph of a school hallway with students walking. The image is used as a background for the text.

*Not so fast*

**WHEN AND HOW  
TO HOLD A  
MANIFESTATION  
DETERMINATION**

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# OBJECTIVES

- Learn when a school is required to hold a Manifestation Determination meeting.
- Learn when a school will and will not be deemed to have a “basis of knowledge,” if the child is not already identified as SpEd.
- Understand how the IEP team determines whether the student’s misconduct is caused by or has a “direct and substantial relationship” to a disability.
- Learn how to analyze whether the student’s behavior is the direct result of the school’s failure to implement an IEP.
- Learn steps to take upon determination that the behavior was a manifestation of a disability.

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## WHEN MUST A MANIFESTATION DETERMINATION MEETING BE HELD?

- If a student is expelled or suspended for 10+ days for violating code of conduct; **and**
- is a special education student; **or**
- the school “has a basis of knowledge” that the student has a disability.

20 U.S.C. §1415(k); 34 C.F.R. §300.530.

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## WHEN DOES THE SCHOOL HAVE TO HOLD A MANIFESTATION DETERMINATION?

Meeting must be held **within 10 days** of the school’s decision to expel/suspend for 10+ days

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## WHAT IS A MANIFESTATION DETERMINATION?

A meeting of the IEP team to determine whether a student with a disability (or possible disability) may be expelled or have his placement changed for more than 10 school days due to misconduct.

- Note: A “placement change” can be in or out of school suspension.
- Removal from the classroom for an extended period of time not allocated in the IEP (e.g. supervised breaks) is considered an in-house suspension, and goes towards the 10-day total.

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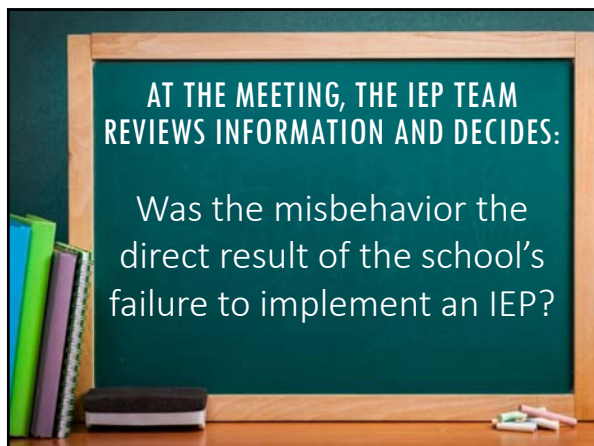
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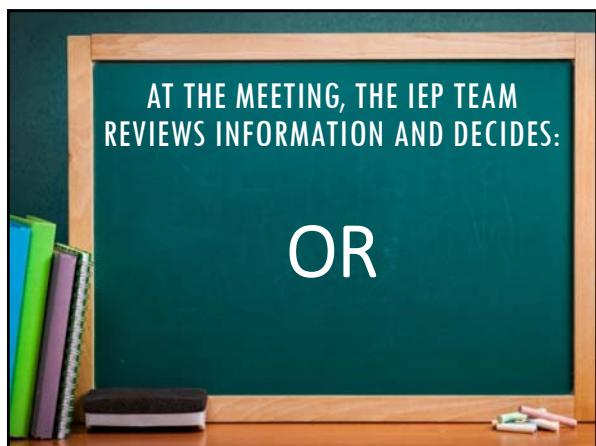
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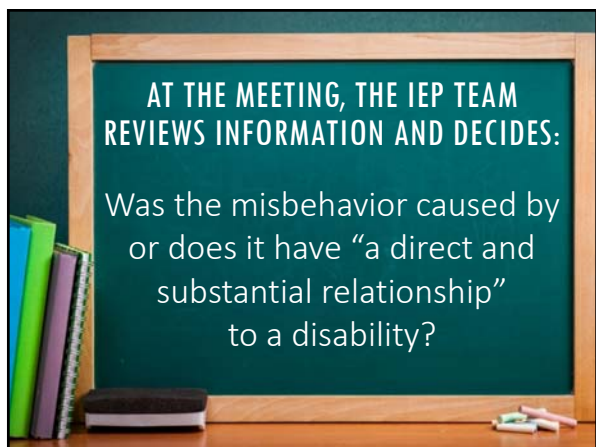
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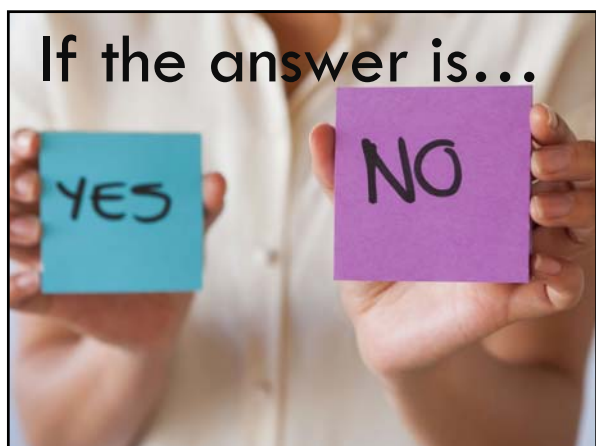
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That's easy. Proceed.

If the team answers "NO" to both questions, the student can be referred for expulsion/suspension.



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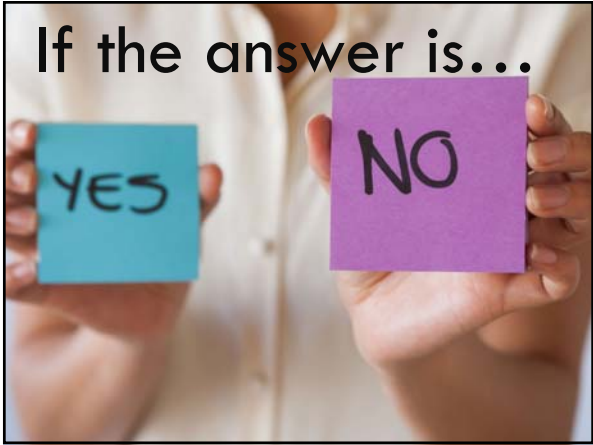
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If the answer is...



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- The student **cannot** be expelled and any placement change requires either the consent of the parent or an OAH order.
- If the IEP team determines the behavior is a manifestation of the student's disability, then, unless the **behavior is one of the serious offenses (weapon, drugs, serious bodily injury)**, the student must go back to his original placement -- unless the parent and school agree otherwise.
- The school must also do a behavioral assessment for the student or modify the student's existing behavior plan (or create one) to address the behavior. [34 C.F.R. Sec. 300.530(f).]

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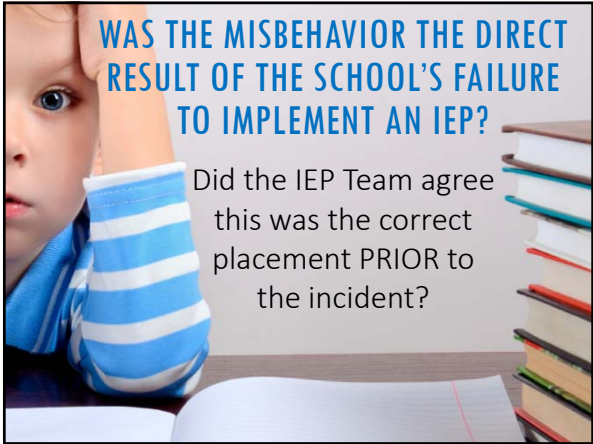
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**WAS THE MISBEHAVIOR THE DIRECT RESULT OF THE SCHOOL'S FAILURE TO IMPLEMENT AN IEP?**

Did the IEP Team agree this was the correct placement PRIOR to the incident?

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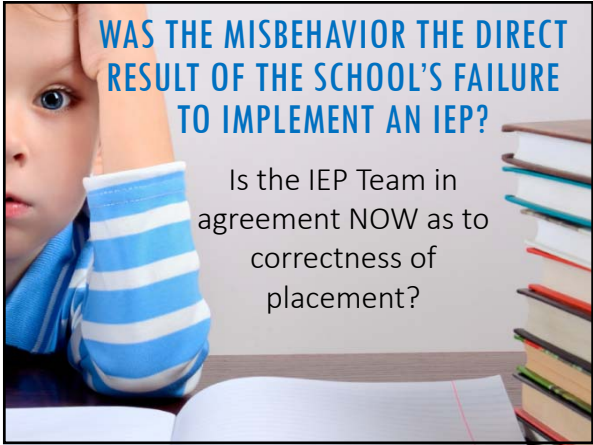
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**WAS THE MISBEHAVIOR THE DIRECT RESULT OF THE SCHOOL'S FAILURE TO IMPLEMENT AN IEP?**

Is the IEP Team in agreement NOW as to correctness of placement?

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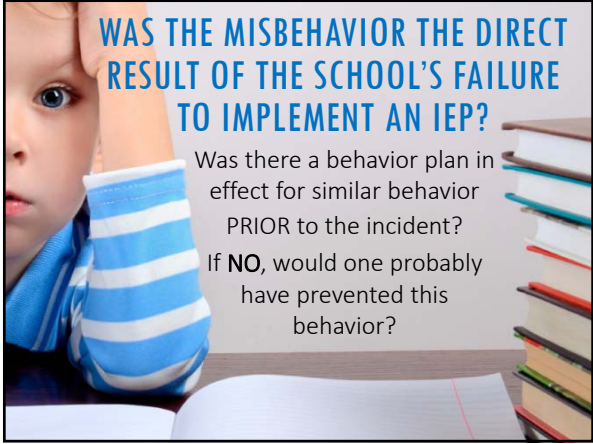
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**WAS THE MISBEHAVIOR THE DIRECT RESULT OF THE SCHOOL'S FAILURE TO IMPLEMENT AN IEP?**

Was there a behavior plan in effect for similar behavior PRIOR to the incident?  
If **NO**, would one probably have prevented this behavior?

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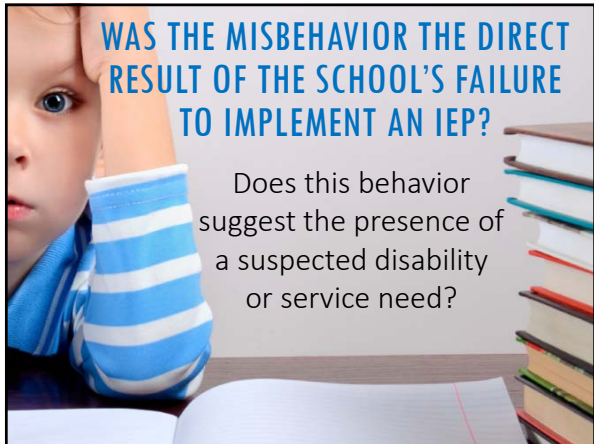
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**WAS THE MISBEHAVIOR THE DIRECT RESULT OF THE SCHOOL'S FAILURE TO IMPLEMENT AN IEP?**

Does this behavior suggest the presence of a suspected disability or service need?

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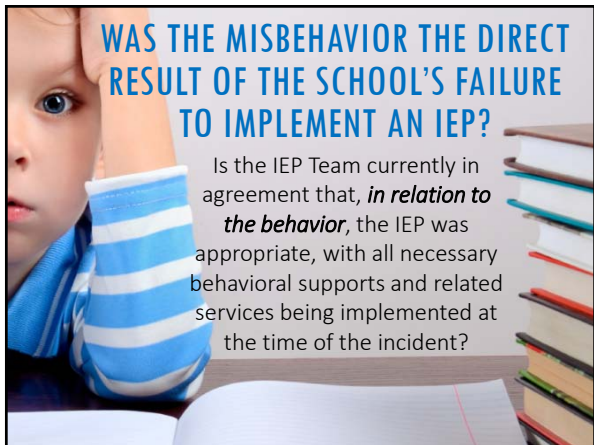
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**WAS THE MISBEHAVIOR THE DIRECT RESULT OF THE SCHOOL'S FAILURE TO IMPLEMENT AN IEP?**

Is the IEP Team currently in agreement that, *in relation to the behavior*, the IEP was appropriate, with all necessary behavioral supports and related services being implemented at the time of the incident?

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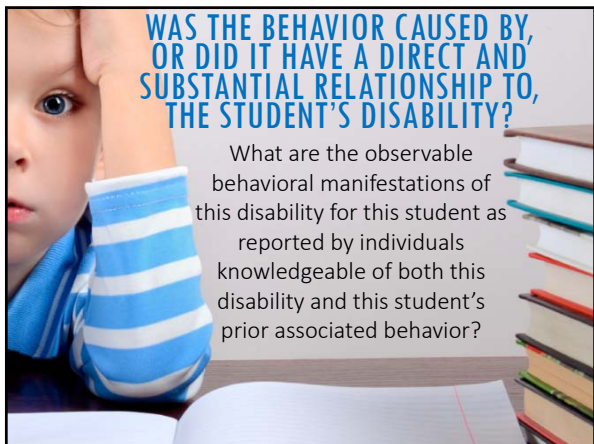
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**WAS THE BEHAVIOR CAUSED BY, OR DID IT HAVE A DIRECT AND SUBSTANTIAL RELATIONSHIP TO, THE STUDENT'S DISABILITY?**

What are the observable behavioral manifestations of this disability for this student as reported by individuals knowledgeable of both this disability and this student's prior associated behavior?

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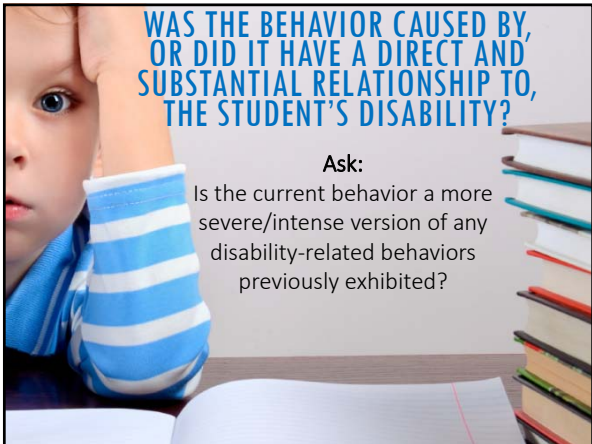
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**WAS THE BEHAVIOR CAUSED BY, OR DID IT HAVE A DIRECT AND SUBSTANTIAL RELATIONSHIP TO, THE STUDENT'S DISABILITY?**

**Ask:**  
Is the current behavior a more severe/intense version of any disability-related behaviors previously exhibited?




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**NOTE: IF UNCLEAR AS TO THE CAUSATIVE, DIRECT RELATIONSHIP OF THIS DISABILITY AND THIS BEHAVIOR, DISCUSS THE FOLLOWING FOR CLARIFICATION ABOUT THE RELATIONSHIP:**

- Did the student's disability impair understanding the potential impact and outcome of this behavior?
- Did the disability impair the student's ability to control the behavior?
- Was the behavior willfully chosen by student or a spontaneous reaction due to a feature of the student's disability?

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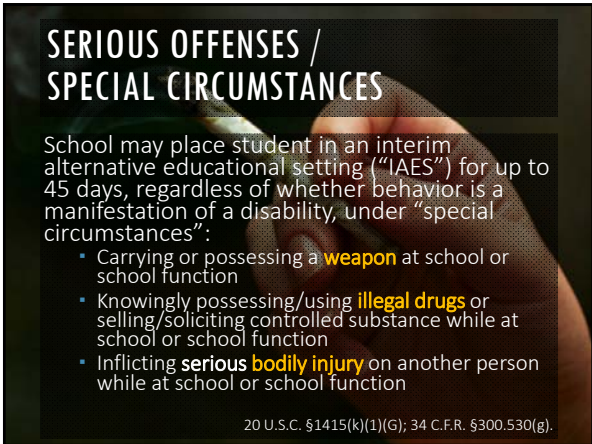
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**SERIOUS OFFENSES / SPECIAL CIRCUMSTANCES**

School may place student in an interim alternative educational setting ("IAES") for up to 45 days, regardless of whether behavior is a manifestation of a disability, under "special circumstances":

- Carrying or possessing a **weapon** at school or school function
- Knowingly possessing/using **illegal drugs** or selling/soliciting controlled substance while at school or school function
- Inflicting **serious bodily injury** on another person while at school or school function

20 U.S.C. §1415(k)(1)(G); 34 C.F.R. §300.530(g).




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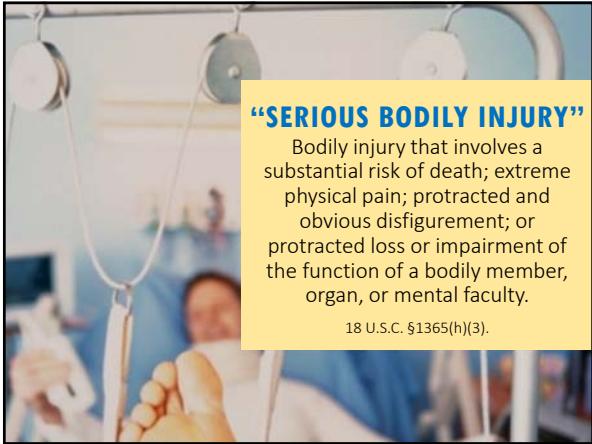
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**“SERIOUS BODILY INJURY”**  
Bodily injury that involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.  
18 U.S.C. §1365(h)(3).

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**IS THERE A “BASIS OF KNOWLEDGE” OF A DISABILITY?**  
IF SO, THE STUDENT IS PROTECTED AS IF SPED.

 **THREE SITUATIONS**

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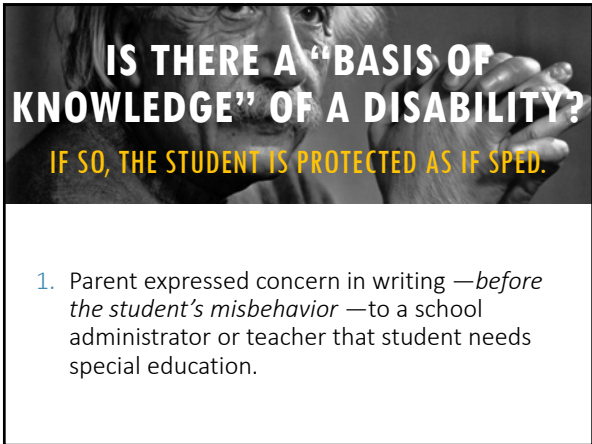
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**IS THERE A “BASIS OF KNOWLEDGE” OF A DISABILITY?**  
IF SO, THE STUDENT IS PROTECTED AS IF SPED.

1. Parent expressed concern in writing —*before the student’s misbehavior*—to a school administrator or teacher that student needs special education.

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2. Parent requested —*before the misbehavior* — that student be evaluated for special education and the assessment is in progress or school did not assess.

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3. Teacher or other school personnel — *before the misbehavior* — expressed specific concerns about a pattern of behavior to the special education director or other supervisory personnel.

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**3 EXCEPTIONS —  
NO BASIS OF KNOWLEDGE**  
**NO PROTECTION UNDER SPED RULES.**



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The school has already assessed student and determined s/he is not eligible for special education.

[34 C.F.R. Sec. 300.534(c).]



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The parent has not allowed an evaluation.



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The parent allowed assessment but has refused special education services.



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## SO LETS SAY THE STUDENT IS NOT ALREADY IDENTIFIED...

- The team will have to address this question at the meeting.
- While it is a “team” determination, if parents insist that the student is **not** disabled (eligible for special education)...
- If the behavior is **not** the result of a disability (because the child is not disabled), then the charter can expel/suspend the child immediately.

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## WHAT WOULD YOU DO?

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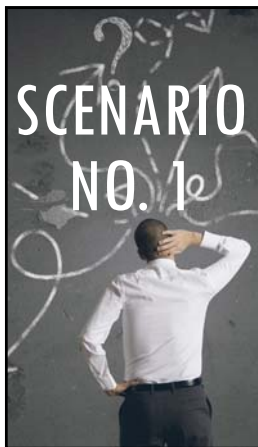
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## SCENARIO NO. 1

- 14-year old boy
- Eligible for special education under category of autism
- Delays in verbal expression and communication, self-regulation
- SDC placement
- While receiving speech services, had multiple outbursts, screaming
- Student grabbed SLP by her hair, slammed her head into table, shook her head back and forth for about 15 seconds; caused concussion, scratches
- Student bit instructional aide who tried to intervene

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### WHAT WILLIAM S. HART UNION HIGH DID...

OAH CASE NO. 2016030901

- Called emergency IEP meeting to discuss
- DID NOT HOLD MANIFESTATION DETERMINATION MEETING (oops)
- Offered placement in NPS, which parents rejected
- Offered 45-day placement in interim alternative educational setting ("IAES"), consisting solely of home study
- Parents filed due process complaint

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### OAH HELD:

- School correctly determined behavior caused "serious bodily injury," so was permitted to remove to IAES for up to 45 days
- **School failed to hold Manifestation Determination meeting prior to removal**
  - Parents could not address behaviors giving rise to change in placement, bring providers to meeting, propose changes to BIP.
  - Parents were denied right to meaningfully participate in the IEP = denial of FAPE.

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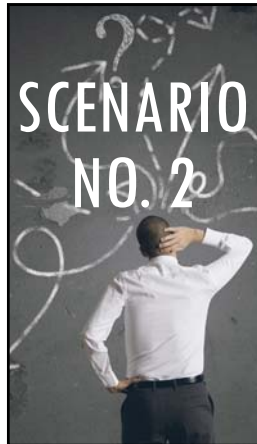
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- 18-year-old male student; SLD in the areas of basic reading, mathematics calculation, and mathematics reasoning, as well as, a psychological processing disorder in the area of sensory motor skills.
- Student threatened to shoot a fellow student with a gun while on campus.
- Decision to suspend and expel; Manifestation Determination meeting held.
- A month earlier, the IEP team held a 30-day review of Student's placement; team, including parent, concluded that Student's IEP appeared appropriate

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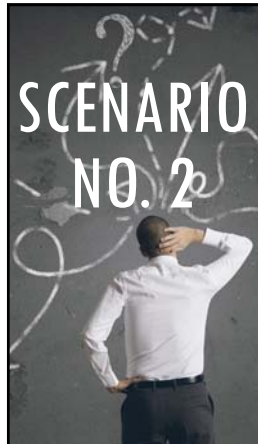
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At due process, Parent contended that the IEP in place did not fully identify all of Student's needs, and therefore, it was inappropriate. Specifically, Student's needs stemming from his ADHD, irritable bowel syndrome with accompanying diarrhea, adolescent Bount's Disease, and diabetes.

***Was Student's threat to shoot a fellow student with a gun the direct result of the failure to implement Student's Individualized Education Plan (IEP)?***

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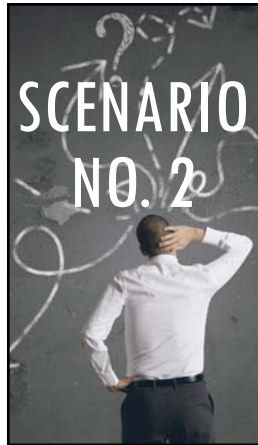
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***Was Student's threat to shoot a fellow student caused by, or directly related to, his disabilities?***

- SLD
- ADHD
- Irritable Bowel Syndrome
- Bount's Disease
- Diabetes

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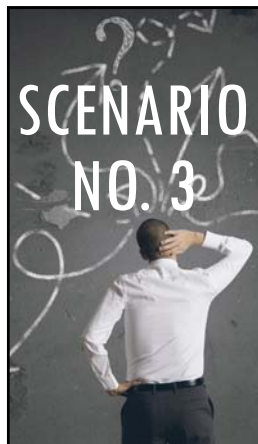
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- 17-year-old girl eligible for special education under the category of traumatic brain injury (TBI) due to an acquired brain injury (ABI).
- Also suffers from seizure disorder and PTSD/depression due to sexual assault; difficulties with inhibition; previous discipline for sexually inappropriate behavior.
- Student kicked a boy in the groin. The boy had been sexually harassing Student, teasing her about a cold sore on her face, and teasing her about her facial paralysis (one half of Student's face is paralyzed) immediately prior to the incident.
- However, prior to kicking the boy, Student warned him that she was having a bad day and that he should leave her alone.
- The boy was not seriously injured.
- School wants to expel.

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### CAUSED BY, OR DIRECT AND SUBSTANTIAL RELATIONSHIP TO STUDENT'S DISABILITY?

Student's therapist testified that:

- One of the core symptoms of PTSD is anger outbursts, especially when confronted with something that is symbolic of the traumatic event that caused the PTSD.
- Student's behavior was very likely related to her PTSD because the boy who Student kicked was sexually harassing her before she kicked him and her PTSD was caused by a sexual assault.
- Hyper-vigilance and emotional regulation problems are symptomatic of PTSD.
- Irritability is symptom of depression.

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### CAUSED BY, OR DIRECT AND SUBSTANTIAL RELATIONSHIP TO STUDENT'S DISABILITY?

School's expert opined that Student's conduct did not have a direct and substantial relationship to any of her disabilities, primarily because she had never attacked another student before the incident in question.

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### ALTERNATIVES TO SUSPENSION

- Behavior Monitoring
- Positive Contingency Contract
- Detention
- Loss of privileges
- Mentoring/Counseling
- Reflective Activities
- Restorative Practices
- School-wide Tiered Consequences
- Best Alternative = **PREVENTION**

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**MANIFESTATION DETERMINATION FINDINGS**

Student: \_\_\_\_\_, \_\_\_\_\_ Birthdate: \_\_\_/\_\_\_/\_\_\_ Date: \_\_\_/\_\_\_/\_\_\_  
(Last) (First)

District of Residence: \_\_\_\_\_ School: \_\_\_\_\_

Teacher: \_\_\_\_\_ Grade: \_\_\_\_\_ Gender:  M  F

Parent/Guardian: \_\_\_\_\_ Phone: (H) \_\_\_\_\_ (W) \_\_\_\_\_ (C) \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_

Is the student an English Learner:  Yes  No Primary Language: \_\_\_\_\_

Date of Current IEP: \_\_\_\_\_ Date of last assessment: \_\_\_\_\_

Disability: \_\_\_\_\_ Current educational placement(s): \_\_\_\_\_

Date of Alleged Behavior(s): \_\_\_\_\_

Description of behavior/actions of student resulting in this analysis: \_\_\_\_\_

If functional behavior analysis of this behavior has occurred, findings: \_\_\_\_\_

Disciplinary action taken/proposed: \_\_\_\_\_ Date of decision of disciplinary action: \_\_\_/\_\_\_/\_\_\_

**DATA REVIEW:**

In determining whether the student's behavior was a manifestation of his/her disability, the manifestation determination team considered the following **in relation to the behavior subject to discipline** (check applicable items):

Any behaviors associated with this disability student has shown in the past \_\_\_\_\_

Student's discipline history \_\_\_\_\_

Teacher observations of the student. Comments: \_\_\_\_\_

**IEP CONTENT AND PLACEMENT APPROPRIATENESS:**

The IEP Team agreed this was the correct placement PRIOR to the incident?  Yes  No  No Team Consensus

Comments: \_\_\_\_\_

Is the IEP Team in agreement NOW as to correctness of placement?  Yes  No  No Team Consensus

Was there a behavior plan in effect for similar behavior PRIOR to the incident?  Yes  No

If NO, would one probably have prevented this behavior?  Yes  No

Does this behavior suggest the presence of a suspected disability or service need?  Yes  No

Other relevant information supplied by the parents of the student: \_\_\_\_\_

## MANIFESTATION DETERMINATION FINDINGS

### ANALYSIS

The Manifestation Determination team determined that, in relation to the behavior subject to disciplinary action:

Yes  No

**CONCLUSION 1: Was the behavior caused by, or did it have a direct and substantial relationship to, the student's disability?**

Discussion: What are the observable behavioral manifestations of this disability for this student as reported by individuals knowledgeable of both this disability and this student's prior associated behavior? Is the current behavior a more severe/intense version of any disability-related behaviors previously exhibited?

Note: If unclear as to the causative, direct relationship of this disability and this behavior, discuss the following for clarification about the relationship:

- Did the student's disability impair understanding the potential impact and outcome of this behavior?  Yes  No
- Did the disability impair the student's ability to control the behavior?  Yes  No
- Behavior was willfully chosen by student?  Yes  No Or a spontaneous reaction due to a feature of the student's disability?  Yes  No

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

or ....

Yes  No

**CONCLUSION 2: Was the behavior a DIRECT result of failure to implement the IEP?**

Discussion: Is the IEP Team currently in agreement that in relation to the behavior, the IEP was appropriate, with all necessary behavioral supports and related services being implemented at the time of the incident?

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### FINAL RECOMMENDATIONS

The Manifestation Determination team decided that the student's behavior:

- Was a manifestation of his/her disability.** (Requires a "yes" on any 1 of the above 2 items)  
*Discipline proceedings may not occur at this time.*
- Functional behavior assessment to be conducted (unless already conducted) and behavior plan to be implemented; or**
- If a behavioral intervention plan has been developed, plan will be reviewed and modified as necessary**
- IEP Date Scheduled for: \_\_\_\_\_ to add other services or supports or discuss a change in placement**

Comments: \_\_\_\_\_

\_\_\_\_\_

- Was not a manifestation of his/her disability.** (Requires a "no" on both of the above 2 items)

Proceed with disciplinary proceedings, all conditions have been met. (Behavior not a manifestation of student's disability, student understood impact and consequences of behavior, student could control behavior, and services and supports were correct at time of incident).

**MANIFESTATION DETERMINATION FINDINGS**

Comments: \_\_\_\_\_  
\_\_\_\_\_

Parent  agrees  disagrees with the determination of the Manifestation Determination team.

Comments: \_\_\_\_\_

Parent received copy of Procedural Safeguards (Parent Rights):  Yes  No Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signatures:

_____		Date: ____/____/____
Parent		
_____		Date: ____/____/____
Parent		
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## MANIFESTATION DETERMINATION FINDINGS

CFR 300.530.....

### **(e) Manifestation determination.**

(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP. (2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met. (3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

**(f) Determination that behavior was a manifestation.** If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must--

(1) Either-- (i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.