



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

MAR 17 2003

Mr. Terry Brune  
Education Consultant  
New Hampshire Department of Education  
101 Pleasant Street  
Concord, New Hampshire 03301

Dear Mr. Brune:

In your letter dated January 10, 2003, the following questions were raised in regard to a manifestation determination review that was held for a student receiving special education services in a New Hampshire School Administrative Unit. Each question is separately addressed below as it relates to the Individuals with Disabilities Education Act (IDEA), which the Office of Special Education Programs (OSEP) is responsible for administering.

1. ***May a LEA [local educational agency] conduct more than one manifestation determination review for the same incidence of behavior?***

The regulations under Part B of IDEA set forth specific requirements related to manifestation determination reviews. The Part B regulations at 34 CFR §300.523 state that:

- (a) If an action is contemplated regarding behavior described in §§300.520(a)(2) or 300.521, or involving a removal that constitutes a change of placement under §300.519 for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the LEA that applies to all children –
  - (1) Not later than the date on which the decision to take the action is made, the parents must be notified of that decision and provided the procedural safeguards notice described in §300.504; and
  - (2) Immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review must be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.
- (b) A review described in paragraph (a) of this section must be conducted by the IEP [individualized education program] team and other qualified personnel in a meeting.
- (c) In carrying out a review described in paragraph (a) of this section, the IEP team and other qualified personnel may determine that the behavior of the child was not a manifestation of the child's disability only if the IEP team and other qualified personnel –
  - (1) First consider, in terms of the behavior subject to disciplinary action, all relevant information, including –
    - (i) Evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the child;
    - (ii) Observations of the child; and
    - (iii) The child's IEP and placement; and
  - (2) Then determine that –
    - (i) In relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement were appropriate and the special education

- services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;
- (ii) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and
  - (iii) The child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.
- (d) If the IEP team and other qualified personnel determined that any of the standards in paragraph (c)(2) of this section were not met, the behavior must be considered a manifestation of the child's disability.
  - (e) The review described in paragraph (a) of this section may be conducted at the same IEP meeting that is convened under §300.520(b).
  - (f) If, in the review in paragraphs (b) and (c) of this section, a public agency identifies deficiencies in the child's IEP or placement or in their implementation, it must take immediate steps to remedy those deficiencies.

The statute and regulations do not speak specifically to IEP teams holding additional manifestation determination reviews on the same incidents of behavior, once the IEP team has completed an initial manifestation determination review for a child with a disability who has engaged in behavior described in 34 CFR §§300.520(a)(2) or 300.521; is involved in a removal that constitutes a change of placement under §300.519; or who has engaged in other behavior that violated any rule or code of conduct of the LEA that applies to all children.

**2. *May an LEA conduct more than one manifestation determination review for the same incidence of behavior if new information is uncovered after the initial manifestation review meeting has taken place?***

As noted above, the statute and regulations do not address this issue. However, where the time for conducting the manifestation determination has expired, it is not recommended that the IEP team reconvene to *re-conduct* the manifestation determination. Any new information could, however, be used as a basis for an IEP meeting to reexamine the student's program and placement.

If you have further questions, please contact Rex Shipp at (202) 401-4061 or Dr. JoLeta Reynolds at (202) 205-5507 (press 3).

Sincerely,



Stephanie S. Lee  
Director,  
Office of Special Education Programs

cc: Mary J. Ford  
Susan Izard  
Maureen Soraghan