



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

AUG - 1 2003

Mr. Geoffrey A. Yudien
Legal Counsel
Vermont Department of Education
120 State Street
Montpelier, Vermont 05620-2501

Dear Mr. Yudien:

This is in response to your letter to the Office of Special Education Programs (OSEP) in which you seek answers to the following questions: (1) Should a manifestation determination be centered solely on the disability that served as the basis for the eligibility determination, or could the team consider whether the conduct was a manifestation of a newly suspected disability? (2) If a reevaluation subsequently determines that the child in fact did have an additional disability, would it be possible to reopen the manifestation determination?

There is nothing in the statute or the regulations implementing Part B of IDEA that limits a manifestation determination review only to the disability that served as the basis for the eligibility determination. The Part B regulations at 34 CFR §300.523(a) require that 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, the parents must be notified of the procedural safeguards available to them and, no 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. As you properly note in your inquiry, the analysis of the final Part B regulations states that a manifestation review can include consideration of a previously unidentified disability of the child:

Given that the review process includes consideration of all relevant information, including evaluation and diagnostic results, information supplied by the parents, observations of the child and the child's current IEP and placement, the [manifestation determination] review could include consideration of a previously unidentified disability of the child and of the antecedent to the behavior that is subject to discipline.

64 Federal Register 12625 (March 12, 1999).

The statute and regulations do not provide for the "reopening" of a manifestation determination review where a subsequent evaluation determines, after the manifestation determination has been made, that the child has an additional disability that is related to

the behavior. However, as stated above, §300.523(c) requires that the manifestation review process include consideration of *all relevant information*, including evaluation and diagnostic results. You properly note that in a Letter to Terry Brune (March 17, 2003) OSEP recommends that the IEP team not be reconvened to *re-conduct* a manifestation determination when the time has expired and new information is uncovered. However, in OSEP's view, the ten-day timeline at 34 CFR §300.523(a)(2) also is not intended to preclude the IEP team from making an appropriate determination that additional evaluations must be completed in order to make a manifestation determination. For example, where a student is being reevaluated to determine the existence of an additional disability, such as emotional disturbance, and engages in misbehavior prior to the completion of the evaluations, it may be appropriate for the IEP team to convene the review within the ten-day timeline, but decide to continue the review at a later time in order to consider the results of the completed evaluations.

If you have further questions, please contact Dale King at (202) 260-1156.

Sincerely,



Stephanie S. Lee
Director
Office of Special Education Programs

cc: Mr. Dennis Kane
Director of Student Support Services
Vermont Department of Education