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## MANIFESTATION DETERMINATION - DETAILED ANALYSIS REQUIRED

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Recently, the United States District Court for the Eastern District of Pennsylvania addressed the need for a thorough analysis when conducting a manifestation determination. See *Bristol Township School District v. Z.B.*, No. 15-4604 (E.D.Pa., Dalzell, J., Jan. 14, 2016). A manifestation determination, as the chief protection afforded to special education students in the disciplinary context, is the process school districts must conduct when considering the exclusion of an eligible student with a disability or a child thought to have a disability. A manifestation determination hearing must occur within ten (10) days of the date that the school district takes disciplinary action that constitutes a change of educational placement. All relevant members of the student's IEP team must be present.

In *Z.B.*, the student, diagnosed with ADHD, allegedly assaulted a teacher. The school district conducted an investigation, which included obtaining statements only from the teachers who witnessed the incident. The school district defined the student's actions as an assault and scheduled disciplinary proceedings and a manifestation determination.

Prior to the manifestation determination, the assigned supervisor of special education completed the manifestation determination review sheet. When describing the behavior of the student, the assigned supervisor of special education used the terms "assault" and "refused directive." Further, the supervisor partially completed the section on whether the school district failed to implement the student's IEP, by marking "No."

During the manifestation determination hearing, the IEP team reviewed the manifestation determination review sheet and made handwritten changes, including a note that the student's medication had been adjusted within the prior month. The IEP team ultimately determined that the student's actions were not a manifestation of his disability because "physical aggression is not a symptom of ADHD, no one had observed aggressive behavior prior to this incident, and aggressive assault was not typical of the student."

The parents challenged the outcome of the manifestation determination in a due process hearing. The hearing officer found in favor of the parents. The district court, upholding the hearing officer's findings, agreed that:

- (1) the school district failed to consider the particular facts preceding the disciplinary incident and/or why the behavior may have occurred;
- (2) the actions of the school official unduly influenced the team's decision; and
- (3) the school district did not consider the behavior of the particular student in relation to the features of his disability.

In light of *Z.B.*, school districts should consider the following when conducting manifestation determinations:

**Before the manifestation determination:**

- secure a copy of the most current IEP and evaluation report;
- collect any current IEP progress data, report cards, attendance report and disciplinary records;

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- collect and consider relevant information regarding the incident, including the actions of the student and other parties involved before, during, and after the alleged disciplinary infraction;
- interview all involved parties;
- interview witnesses, including students, teachers and other school district personnel; and
- gather evidence relevant to the incident, such as videotapes and police reports.

### During the manifestation determination:

- complete any checklists or worksheets that aid in the organization of the meeting;
- identify and address the student's disability and characteristics of the disability, specifically as it relates to him/her with the understanding that every disability manifests itself distinctively;
- discuss the facts surrounding the disciplinary incident in greater detail while considering the evidence collected;
- document the consideration of information gathered prior to the manifestation determination (i.e. videos, witness statements, etc.) as well as the relevant educational records of the student, such as an evaluation and/or observation results, their current IEP, progress reports, behavior plans and any data gathered by teachers/evaluators as it relates to the student's IEP and behavior plan; and
- document discussion of any outside potential triggers (i.e. medication changes) and the consideration of this information in the decision on whether the behavior was a manifestation of the student's disability.

Most importantly, the manifestation determination should be a team process, based on the individual student, the manifestation of that student's disability, and other unique aspects of the child's functioning in reference to the incident.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.

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