**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Student v. Blackstone Valley Regional Vocational Technical School**

**BSEA# 2205427**

**RULING ON BLACKSTONE VALLEY REGIONAL VOCATIONAL TECHNICAL SCHOOL’S MOTION FOR SUMMARY JUDGMENT**

This matter comes before the Hearing Officer on the *Motion for Summary Judgment* (Motion) filed by the Blackstone Valley Regional Vocational Technical School (Blackstone or the District) on January 18, 2022. In it, the District asserts that summary judgment is appropriate because there is no genuine issue of fact in regard to the Parent’s claim as to the “timing of the Manifestation Determination review meeting.” Specifically, the District argues that within 10 school days of the decision to change Student’s placement, it held a manifestation determination review.

Although Parent, *pro se*, did not file a written response to the District’s *Motion*, she offered oral argument during the Conference Call that took place January 20, 2022. Parent argued that the District did not hold a manifestation determination review prior to Student’s second removal for 10 school days, as it was required to do.

Hence, the Parties’ disagreement focuses on one issue: whether disputed issues of material fact exist or whether, as a matter of law, the District failed to hold a timely manifestation determination review with regard to Student’s second 10 day suspension, which was issued on January 7, 2022 and began on January 10, 2022.

Neither party has requested a hearing on the *Motion*. Because neither testimony nor oral argument would advance the Hearing Officer’s understanding of the issues involved, this Ruling is issued without a hearing, pursuant to *Bureau of Special Education Appeals Hearing Rule* VII(D).

For the reasons set forth below, the District’s Motion for Summary Judgment is hereby DENIED. Parent is correct that, as a matter of law, the District failed to hold a timely manifestation determination review with regard to the Student’s suspension.

1. **FACTUAL BACKGROUND:[[1]](#footnote-1)**

The following facts are not in dispute and are derived from the original Request for Hearing, the District’s Motion for Summary Judgment, Parent’s oral argument during the Conference Call on January 20, 2022, Parent’s and the District’s emails of same date, as well as all memoranda and exhibits accompanying these submissions.

* + - 1. Student is an eleventh-grade student attending Blackstone Valley Regional Vocational Technical High School in Upton, Massachusetts.[[2]](#footnote-2) (Request for Hearing; *Motion)*
			2. Student has been diagnosed with Post-Traumatic Stress Disorder (PTSD). She currently has a Section 504 Accommodation Plan (504 Plan). (Request for Hearing; *Motion*)
			3. During the 2021-2022 school year, Student began to struggle behaviorally. (Request for Hearing; *Motion*)
			4. In November 2021, Student served a ten-day suspension. (Request for Hearing; *Motion*) Specifically, Student was found to have “assaulted another student by pouring milk over his body.”[[3]](#footnote-3) (*Motion*)
			5. On December 10, 2021, Student engaged in behavior in violation of the code of conduct. (*Motion, Ex. 1*)Specifically, Student was found to have kicked another student’s crutches. [[4]](#footnote-4) (*Motion*)
			6. A disciplinary hearing was held on January 6, 2022. (*Motion, Ex. 1*) During the hearing, Parent inquired about a manifestation determination review. (Parent, Conference Call, January 20, 2022)
			7. Also on January 6, 2021, Student was referred for a special education evaluation. (Request for Hearing; *Motion, Ex. 2)*
			8. On January 7, 2021, the District issued a letter noticing Parent that the District intended to suspend Student for 10 days as follows: January 10 through January 14, January 18 through January 21, and January 24. The letter indicated, in part, that Student may “return to a full day of school on Tuesday, January 25, 2022.” It also noted Student’s right to appeal the Principal’s decision to the Superintendent. (*Motion, Ex. 1*)
			9. There was no school on January 7 due to a snow day. (*Motion*)
			10. Student began serving her suspension on January 10, 2022. (Request for Hearing)
			11. On January 13, 2022, the District invited Student and Parent to a Section 504 Meeting to be held on January 18, 2022. The purpose of the meeting was identified as “Manifestation/Determination/Resolution.” (*Motion, Ex. 3*)
			12. Members of the 504 Team convened on January 18, 2022 for a manifestation determination/resolution. Parent and Student were in attendance. Student’s behavior was found to be a manifestation of her disability, PTSD, but not a direct result of the District’s failure to implement her Section 504 Accommodation Plan.[[5]](#footnote-5) (*Motion, Ex. 3*)
			13. Following the determination of manifestation, Parent inquired whether Student “could go to class,” but the special education administrator who was at the meeting “ask[ed] for time to speak to the school administrator.” Parent “then offered to wait until the next day” to return to school. (*Motion*; Parent, Conference Call)
			14. In its *Motion*, the District concededthat Student is entitled to the protections of IDEA. (*Motion*)
1. **LEGAL STANDARD**
	1. *Legal Standard for Motion for Summary Judgment*

Pursuant to 801 CMR 1.01(7)(h), summary decision may be granted when there is “no genuine issue of fact relating to all or part of a claim or defense and [the moving party] is entitled to prevail as a matter of law.”[[6]](#footnote-6) As with motions to dismiss, in determining whether to grant summary judgment, BSEA hearing officers are guided by Rule 56 of the Federal and Massachusetts Rules of Civil Procedure, which provide that summary judgment may be granted only if the "pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there are no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law."[[7]](#footnote-7)

The party seeking summary judgment must first demonstrate, with the support of its documents (pleadings, affidavits, and other evidence), that there is no genuine issue of fact relating to the claim or defense. The moving party bears the burden of proof, and all evidence and inferences must be viewed in the light most favorable to the party opposing summary judgment.[[8]](#footnote-8)

In response to a motion for summary judgment, the opposing party “must set forth specific facts showing that there is a genuine issue for trial.”[[9]](#footnote-9) An issue is genuine if it “may reasonably be resolved in favor of either party.”[[10]](#footnote-10) To survive this motion and proceed to hearing, the adverse party must show that there is “sufficient evidence” in her favor that the fact finder could decide for her.[[11]](#footnote-11) In other words, the evidence presented by the non-moving party “must have substance in the sense that it [demonstrates] differing versions of the truth which a factfinder must resolve at an ensuing trial.”[[12]](#footnote-12) The non-moving party’s evidence will not suffice if it is comprised merely of “conclusory allegations, improbable inferences, and unsupported speculation.”[[13]](#footnote-13)

Based on the District’s *Motion* and Parent’s arguments on January 20, 2022, the sole issue before me is whether a genuine issue exists with respect to the timing of the manifestation determination that would preclude entry of summary judgment and if not, whether either party prevails as a matter of law. For either party to prevail in the instant case, that party must demonstrate, through the documents submitted, that “there is no genuine issue of fact relating to all or part of a claim or defense and [the party] is entitled to prevail as a matter of law…” 801 CMR 1.01(7)(h). Accordingly, for the District to prevail, it must establish that there is no dispute that the District conducted a manifestation determination review in a timely manner in accordance with federal statute and regulations. In contrast, Parent must show that there is no dispute that the District failed to conduct a manifestation determination in a timely manner.

I first turn to the legal standards regarding manifestation determination reviews.

* 1. *Substantive Legal Standard Regarding the Timing of a Manifestation Determination*
		1. Individuals with Disabilities in Education Act (IDEA)

Pursuant to the Individuals with Disabilities in Education Act (IDEA), school personnel “may remove a child with a disability who violates the code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).”[[14]](#footnote-14) In addition, if school personnel “seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child’s disability …, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities.”[[15]](#footnote-15) The IDEA also provides certain rights to children not yet found to be a child with a disability under the Act.[[16]](#footnote-16)

IDEA regulations establish a process for removing a child with a disability from school when a change in the child’s placement is implicated. A change of placement occurs if

(1) The removal is for more than 10 consecutive school days; or

(2) The child has been subjected to a series of removals that constitute a pattern—

(i) Because the series of removals total more than 10 school days in a school year;

(ii) Because the child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and

(iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.[[17]](#footnote-17)

The regulations go on to state,

[w]ithin 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.[[18]](#footnote-18)

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.[[19]](#footnote-19)

* + 1. Section 504 of the Rehabilitation Act (Section 504)

Similar to the IDEA, Section 504 of the Rehabilitation Act (Section 504) deems long-term suspensions of more than 10 school days and, in some cases, cumulative short-term suspensions exceeding 10 school days, to be “a significant change of placement.”[[20]](#footnote-20) A significant change of placement triggers the district’s duty to conduct a reevaluation.[[21]](#footnote-21) That reevaluation, according to the Office of Civil Rights (OCR), must include a determination regarding whether the student’s conduct was a manifestation of a disability.[[22]](#footnote-22) Hence, although the term "manifestation determination" does not appear in the regulatory language of Section 504, OCR and most courts interpret Section 504 as requiring a manifestation determination review in connection with disciplinary actions that constitute a "significant change in placement."[[23]](#footnote-23) If the determination is that the student's misconduct was not related to her disability, then a long-term suspension may be imposed (provided that the same discipline would be imposed on a nondisabled student under the same circumstances).[[24]](#footnote-24)

1. **APPLICATION OF LEGAL STANDARDS**

Based on my review of the parties’ submissions and of the relevant statutes and regulations, caselaw, and decisions issued by the Bureau of Special Education Appeals, I conclude that Parent is correct that, as a matter of law, the District failed to hold a timely manifestation determination review with regard to Student’s second 10 day suspension on January 7, 2022.

The District and Parent agree as to the relevant facts in this case: Student is a student with a disability under Section 504. She has been referred by the District for special education and is protected by special education law. In November 2021, Student served a ten-day suspension. Following a disciplinary incident on December 10, 2022, a disciplinary hearing was held on January 6, 2022. On January 7, 2022, the Principal issued a suspension letter indicating that Student would be suspended for 10 school days, beginning on January 10, 2022. Student began serving her suspension on January 10, 2022. On January 18, 2022, a manifestation determination meeting was held with Student and Parent in attendance. Student’s behavior was found to be a manifestation of her disability. Student returned to school on January 19, 2022. [[25]](#footnote-25)

The IDEA was enacted “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.”[[26]](#footnote-26) Section 504 states, “No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance…”.[[27]](#footnote-27) The purpose of the manifestation determination provision in IDEA and the “reevaluation” provision in Section 504, which calls for same, is to ensure that students with disabilities do not experience a significant disciplinary change in placement for actions that are caused by their disabilities.[[28]](#footnote-28) This reflects both laws’ equity-based foundations.

The District argues that, in accordance with 34 CFR 300.530(e), it held a manifestation determination review “[w]ithin 10 school days of [the District’s] decision to change [Student’s] placement.” The District furthermore cites to OCR’s finding that a “manifestation determination review is triggered on the date that the decision is made to implement a removal that constitutes a change of placement, and such review must occur ‘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.’”[[29]](#footnote-29) Specifically, the District asserts it met its obligation to hold a timely manifestation determination review since the “decision to change Student’s placement” was made on January 7, and the District held a manifestation review on January 18, which is “within”10 school days of the decision to change placement.[[30]](#footnote-30)

However, 34 CFR 300.530(e)(1) cannot be read in isolation. Although the regulation provides 10 school days to hold a manifestation determination review from the date of the decision to change a placement, a school district remains bound by the other provisions of IDEA. These provisions limit the removal of a child with a disability to “not more than 10 school days”[[31]](#footnote-31) and provide that regular discipline can be imposed beyond the 10 school days only if there is a determination that the behavior that gave rise to the violation of the school code is not a manifestation of the child’s disability.[[32]](#footnote-32) Thus, in circumstances where a child has **not** **already** served a suspension of 10 school days in a school year, the district may, pursuant to 34 CFR 300.530(e)(1), delay the manifestation determination for 10 school days from the decision to change a student’s placement. If appropriate, a school administrator may even impose a short-term suspension while awaiting the manifestation determination meeting to take place, provided the district holds the manifestation determination review prior to the imposition of additional suspension days that would render the removal a change of placement (i.e., more than 10 days).[[33]](#footnote-33) In such a case, once there is a determination that the conduct was a manifestation of the student’s disability, the student must “return” to the placement from which she was removed, [[34]](#footnote-34) except under special circumstances. [[35]](#footnote-35)

However, in circumstances such as the instant case, where the student **has already reached 10 days** of removal, the district has no leeway to access the 10-day window prescribed by 34 CFR 300.530(e)(1) because any additional day of removal would create a change in placement. In such cases, the district must hold the manifestation determination review prior to the student serving any additional day of suspension. A review of relevant case law and BSEA decisions supports this conclusion. Most courts have interpreted 20 U.S.C. § 1415(k)(1) and 34 CFR 300.530(e) to require that, prior to taking disciplinary action against a child with a disability, the school must conduct a “manifestation determination” during which the student's parents and educators consider the relevant information in the student's file, as well as information provided by teacher observations and the parents, to determine whether the conduct at issue was caused by, or had a direct and substantial relationship to, the child's disability or was the direct result of the local educational agency's failure to implement the IEP.[[36]](#footnote-36) Similarly, the BSEA has determined that “[o]nly after the manifestation determination has been conducted, and only if no manifestation is found, may districts proceed to discipline a special education student as they would a child in regular education.”[[37]](#footnote-37) Likewise, relative to Section 504, OCR has found discrimination where a district failed to convene manifestation determination meetings for students with disabilities after they were excluded from school for more than 10 days.[[38]](#footnote-38)

Here, Student had already served a 10 day suspension in November 2021.[[39]](#footnote-39) Hence, any additional day of removal was a change of placement for her[[40]](#footnote-40) Although the District made its decision to change Student’s placement on January 7, 2022, it should not have implemented her suspension (i.e., changed Student’s placement) until it had held a manifestation determination review, which it was required to do within 10 school days of January 7. Had the District not implemented Student’s suspension on January 10, thus changing her placement, the District’s decision to hold the manifestation review on January 18 would not have violated the IDEA and its implementing regulations, as it was within 10 school days of its decision to change Student’s placement. However, because Student began her suspension on January 10, before a manifestation determination review was held, the District erred by improperly changing her placement prior to the manifestation determination review.

Therefore, I find that, as a matter of law, the District failed to hold a timely manifestation determination review with regards to the Student’s second 10 day suspension.

1. **ORDER**

*The District’s Motion for Summary Judgment* is hereby DENIED.  Upon consideration of the District’s *Motion for Summary Judgment* and supporting documents, as well as Parent’s pleadings and oral argument, I find that, as a matter of law, the District failed to hold a timely manifestation determination review prior to Student’s second day suspension.  As the only issue before me in the hearing on the merits is whether the District timely conducted a manifestation determination review, and as there are no facts in dispute which relate to this issue, the Hearing scheduled for January 26, 2022 is therefore cancelled as moot.

So Ordered by the Hearing Officer:

/s/ Alina Kantor Nir

Alina Kantor Nir

Dated: January 21, 2022

COMMONWEALTH OF MASSACHUSETTS

BUREAU OF SPECIAL EDUCATION APPEALS

EFFECT OF FINAL BSEA ACTIONS AND RIGHTS OF APPEAL

# Effect of BSEA Decision, Dismissal with Prejudice and Allowance of Motion for Summary Judgment

20 U.S.C. s. 1415(i)(1)(B) requires that a decision of the Bureau of Special Education Appeals be final and subject to no further agency review. Similarly, a Ruling Dismissing a Matter with Prejudice and a Ruling Allowing a Motion for Summary Judgment are final agency actions. If a ruling orders Dismissal with Prejudice of some, but not all claims in the hearing request, or if a ruling orders Summary Judgment with respect to some but not all claims, the ruling of Dismissal with Prejudice or Summary Judgment is final with respect to those claims only.

Accordingly~~,~~ the Bureau cannot permit motions to reconsider or to re-open either a Bureau decision or the Rulings set forth above once they have issued. They are final subject only to judicial (court) review.

Except as set forth below, the final decision of the Bureau must be implemented immediately. Pursuant to M.G.L. c. 30A, s. 14(3), appeal of the decision does not operate as a stay. This means that the decision must be implemented immediately even if the other party files an appeal in court, and implementation cannot be delayed while the appeal is being decided. Rather, a party seeking to stay—that is, delay implementation of-- the decision of the Bureau must request and obtain such stay from the court having jurisdiction over the party’s appeal.

Under the provisions of 20 U.S.C. s. 1415(j), “unless the State or local education agency and the parents otherwise agree, the child shall remain in the then-current educational placement,” while a judicial appeal of the Bureau decision is pending, unless the child is seeking initial admission to a public school, in which case “with the consent of the parents, the child shall be placed in the public school program.”

Therefore, where the Bureau has ordered the public school to place the child in a new placement, and the parents or guardian agree with that order, the public school shall immediately implement the placement ordered by the Bureau. *School Committee of Burlington v. Massachusetts Department of Education*, 471 U.S. 359 (1985). Otherwise, a party seeking to change the child’s placement while judicial proceedings are pending must ask the court having jurisdiction over the appeal to grant a preliminary injunction ordering such a change in placement. *Honig v. Doe*, 484 U.S. 305 (1988); *Doe v. Brookline*, 722 F.2d 910 (1st Cir. 1983).

# Compliance

A party contending that a Bureau of Special Education Appeals decision is not being implemented may file a motion with the Bureau of Special Education Appeals contending that the decision is not being implemented and setting out the areas of non-compliance. The Hearing Officer may convene a hearing at which the scope of the inquiry shall be limited to the facts on the issue of compliance, facts of such a nature as to excuse performance, and facts bearing on a remedy. Upon a finding of non-compliance, the Hearing Officer may fashion appropriate relief, including referral of the matter to the Legal Office of the Department of Elementary and Secondary Education or other office for appropriate enforcement action. 603 CMR 28.08(6)(b).

# Rights of Appeal

Any party aggrieved by a final agency action by the Bureau of Special Education Appeals may file a complaint in the state superior court of competent jurisdiction or in the District Court of the United States for Massachusetts, for review. 20 U.S.C. s. 1415(i)(2).

An appeal of a Bureau decision to state superior court or to federal district court must be filed within ninety (90) days from the date of the decision. 20 U.S.C. s. 1415(i)(2)(B).

# Confidentiality

In order to preserve the confidentiality of the student involved in these proceedings, when an appeal is taken to superior court or to federal district court, the parties are strongly urged to file the complaint without identifying the true name of the parents or the child, and to move that all exhibits, including the transcript of the hearing before the Bureau of Special Education Appeals, be impounded by the court. See *Webster Grove\_School District v. Pulitzer Publishing*

*Company*, 898 F.2d 1371 (8th. Cir. 1990). If the appealing party does not seek to impound the documents, the Bureau of Special Education Appeals, through the Attorney General's Office, may move to impound the documents.

Record of the Hearing

The Bureau of Special Education Appeals will provide an electronic verbatim record of the hearing to any party, free of charge, upon receipt of a written request. Pursuant to federal law, upon receipt of a written request from any party, the Bureau of Special Education Appeals will arrange for and provide a certified written transcription of the entire proceedings by a certified court reporter, free of charge.

1. The information in this section is drawn from the Parties’ pleadings and is subject to revision in further proceedings. [↑](#footnote-ref-1)
2. Student’s father resides in Mendon, Massachusetts but is not participating in Student’s education at this time. (Request for Hearing) [↑](#footnote-ref-2)
3. Parent disputed that this action constituted “assault.” (Conference Call, January 20, 2022) [↑](#footnote-ref-3)
4. Parent disputed that Student “kicked” the crutches. (Conference Call, January 20, 2022) [↑](#footnote-ref-4)
5. During the conference call, and in a subsequent email on the same day, Parent disputed that the District has implemented Student’s 504 Plan, asserting that Student had indicated that she had not received regular check ins with her counselor. [↑](#footnote-ref-5)
6. 801 CMR 1.01(7)(h). [↑](#footnote-ref-6)
7. *Id*. [↑](#footnote-ref-7)
8. *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 252 (1986); see also In Re: Westwood Pub. Schl., BSEA No. 10-1162 (Figueroa, 2010); In Re: Mike v. Boston Public Schools, BSEA No. 10-2417 (Oliver, 2010); Zelda v. Bridgewater-Raynham Pub. Schl. and Bristol Cty Agricultural Schl., BSEA No. 06-0256 (Byrne, 2006). [↑](#footnote-ref-8)
9. *Anderson v. Liberty Lobby, Inc.* 477 U.S*.* at 250. [↑](#footnote-ref-9)
10. *Maldanado-Denis v. Castillo-Rodriguez,* 23 F.3d 576, 581 (1st Cir. 1994). [↑](#footnote-ref-10)
11. *Anderson*, 477 U.S. at 249. [↑](#footnote-ref-11)
12. *Mack v. Great Atl. & Pac. Tea Co.,* 871 F.2d 179, 181 (1st Cir. 1989). [↑](#footnote-ref-12)
13. *Medina-Munoz v. R.J. Reynolds Tobacco Co.,* 896 F.2d 5, 8 (1st Cir. 1990). [↑](#footnote-ref-13)
14. 20 USC 1415(k)(1)(B). [↑](#footnote-ref-14)
15. 20 USC 1415(k)(1)(C). [↑](#footnote-ref-15)
16. 20 U.S.C. § 1415(k)(5); *see also* 34 C.F.R. § 300.534. In the instant matter, the District has conceded that the protections of IDEA and its implementing regulations apply to Student. [↑](#footnote-ref-16)
17. 34 CFR 300.536 (a). [↑](#footnote-ref-17)
18. 34 CFR 300.530(e)(1); see also 20 USC 1415(k)(1)(E)(i). [↑](#footnote-ref-18)
19. 34 CFR 530(f). [↑](#footnote-ref-19)
20. 34 CFR 104.35(a); see also *Broward Cty (FL) Sch. Dist.*, [36 IDELR 159](https://www.specialedconnection.com/LrpSecStoryTool/servlet/GetCase?cite=36+IDELR+159)  (OCR 2001); *Rutherford County (TN) Schs.*,[62 IDELR 271](https://www.specialedconnection.com/LrpSecStoryTool/servlet/GetCase?cite=62+IDELR+271)  (OCR 2013); *Confluence Academies (MO)*,[64 IDELR 85](https://www.specialedconnection.com/LrpSecStoryTool/servlet/GetCase?cite=64+IDELR+85)(OCR 2013); *Youngstown (OH) City Sch. Dist.*,[114 LRP 29317](https://www.specialedconnection.com/LrpSecStoryTool/servlet/GetCase?cite=114+LRP+29317)(OCR 02/26/14); *Twinsburg (OH) City Sch. Dist.*,[58 IDELR 231](file:////LrpSecStoryTool/servlet/GetCase%3Fcite%3D58%2BIDELR%2B231) (OCR 2011). [↑](#footnote-ref-20)
21. 34 CFR 104.35. See Letter to Williams , 21 IDELR 73 (OSEP 1994).  [↑](#footnote-ref-21)
22. *OCR Staff Memorandum*,[16 IDELR 491](file:////LrpSecStoryTool/servlet/GetCase%3Fcite%3D16%2BIDELR%2B491)(OCR 1989).  [↑](#footnote-ref-22)
23. See, e.g., *Dunkin (MO) R-V Sch. Dist.*,[52 IDELR 138](https://www.specialedconnection.com/LrpSecStoryTool/servlet/GetCase?cite=52+IDELR+138)(OCR 2009) (interpreting the Section 504 regulations at[34 CFR 104.35](https://www.specialedconnection.com/LrpSecStoryTool/servlet/GetReg?cite=34+CFR+104.35)to require a manifestation determination prior to a suspension of more than 10 days); *South Harrison County (MO) R-II Sch. Dist.*,[51 IDELR 110](https://www.specialedconnection.com/LrpSecStoryTool/servlet/GetCase?cite=51+IDELR+110)(OCR 2008) (finding that a seventh-grader's receipt of services under Section 504, not the IDEA, did not relieve a Missouri district of its duty to conduct an MDR); and *Kalamazoo (MI) Pub. Sch. Dist.*,[50 IDELR 80](https://www.specialedconnection.com/LrpSecStoryTool/servlet/GetCase?cite=50+IDELR+80)(OCR 2007) (concluding that a district should have conducted an MDR for a student with ADHD who was suspended for 22 days over seven months). [↑](#footnote-ref-23)
24. See, e.g., *West Haven (CT) Bd. of Educ.*,[74 IDELR 265](https://www.specialedconnection.com/LrpSecStoryTool/servlet/GetCase?cite=74+IDELR+265) (OCR 2018) (concluding that because the MDR team found the student's inappropriate touching of classmates was not a manifestation of his disability, the district did not violate Section 504 by imposing a long-term suspension on the student). [↑](#footnote-ref-24)
25. Parent disputed that Student was invited to return to school immediately following the finding of manifestation, asserting that she was asked to wait until the next day. (*Motion*; Parent, Conference Call) Regardless, this issue of fact is not material to the issue presented by Parent in the Request for Hearing which relates solely to the timing of the manifestation determination review and not to the District’s subsequent actions. [↑](#footnote-ref-25)
26. 20 U.S.C. § 1400(d)(1)(A). See 20 U.S.C. 1412(a)(1)(A); *Mr. I. ex rel. L.I. v. Maine Sch. Admin. Dist. No. 55*, 480 F.3d 1, 12 (1st Cir. 2007) (discussing broad purpose of IDEA). [↑](#footnote-ref-26)
27. 29 USC sec. 794(a). [↑](#footnote-ref-27)
28. See, e.g., *In Re: Adam*, BSEA **#**1708888 (Reichbach, 2017) (“Taunton’s failures to conduct MDRs over the course of this time period, leading to Adam’s changes in placement, amount to discrimination based solely upon Adam’s disability”). [↑](#footnote-ref-28)
29. *Mesa Unified School District*, 115 LRP 52091 (2015); see also *Santa Ana Unified District*, 19 IDELR 501 (1992); *Vallejo Unified*, 116 LRP 21989 (2015) (finding that a manifestation determination meeting must be held within 10 school days of the decision to change the placement of a special education and/or Section 504 qualified student by removing her from her placement for a total of ten or more school days due to a code of conduct violation); *Somerset Prep DC,* 115 LRP 24950 (2014) (finding that the school discriminated against students based on their disability when it failed to convene manifestation determination meetings after they were excluded from school for more than 10 days) and *St. Lucie County (FL) School District*, 22 LRP 3128 (1995) (finding that a district violated Section 504 due to its failure to convene manifestation determination meetings prior to the accumulation of suspensions which constituted a change in placement). [↑](#footnote-ref-29)
30. The District also argues that because Section 504 does not include specific timeline for procedures like manifestation determinations, the District followed OCR’s guidance in utilizing IDEA timelines in determining what is reasonable under Section 504. (Motion) [↑](#footnote-ref-30)
31. 20 USC 1415(k)(1)(B). [↑](#footnote-ref-31)
32. 20 USC 1415(k)(1) (C). [↑](#footnote-ref-32)
33. See *School District of the City of Flint*, 115 LRP 23751 (SEA MI, 2015) (where a student with a disability was suspended for more than 10 days over the course of a year for a pattern of behaviors, the district should have convened a manifestation determination review after the 10th removal day). See also Answer F-3 in Questions and Answers on Discipline Procedures, 109 LRP 41915 (OSEP 2009) (concluding that a manifestation determination is required each time that a student is removed for more than 10 days or each time that the public agency determines that a series of removal constitutes a change in placement. [↑](#footnote-ref-33)
34. See 20 USC 1415(K)(1)(F)(iii). The District points to *In Re: Milton Pub. Schl.* BSEA # 08-2284 (Crane, 2008) to argue that “If the expectation was that a manifestation were to occur before any removal, the Hearing Officer would not be discussing returning a student to his or her placement after a removal.  Instead, as demonstrated by the language, school districts have ten school days from the decision to hold a manifestation.” (Email from Counsel, January 20, 2022). However, in that case, the student had been excluded for two months before the district held a manifestation determination review. Even after finding manifestation, the district refused to allow student to return to school. The Hearing Officer did not address the timing of the manifestation determination but rather references 20 USC 1415(K)(1)(F)(iii) to highlight the district’s failure to “return” the student to school once manifestation was determined. [↑](#footnote-ref-34)
35. See 20 USC 1415(K)(1)(G). [↑](#footnote-ref-35)
36. See, e.g., *Boutelle v. Bd. of Educ. of Las Cruces Pub. Sch.*, No. CV 17-1232 GJF/SMV, 2019 WL 2061086, at \*13 (D.N.M. May 9, 2019) (“Procedurally, for suspensions exceeding ten days, the IDEA first requires the school to determine whether the conduct in question was a “manifestation of the child's disability”) (emphasis added, internal citations omitted);  *Spring v. Allegany-Limestone Cent. Sch. Dist.,* 138 F. Supp. 3d 282, 288 (W.D.N.Y. 2015), *aff'd in part, vacated in part, remanded,* 655 F. App'x 25 (2d Cir. 2016) (“Under the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 *et seq.,* a child with a disability who is found to have violated a code of student conduct is entitled to a determination whether the violating conduct was caused by or related to the student's disability or the school's failure to implement the child's individualized education plan prior to any change in the child's educational placement. 20 U.S.C. § 1415(k)(1)(E)”) (emphasis added, internal citations omitted); *Grine v. Sylvania Sch. Bd. Of Edn.*, 2004-Ohio-6904, ¶ 59 (“A disciplinary action which constitutes a change of placement cannot occur prior to an IEP meeting and a manifestation determination ….School officials and the IEP team are required, therefore, to hold a manifestation determination *prior to* imposing any discipline that would constitute a removal”) (emphasis added); Sch. Bd. Of the City of Norfolk v. Brown, 769 F. Supp. 2d 928, 946 (E.D. Va. 2010 (“Where school personnel intend to place the disabled child in an alternative educational setting for a period of more than ten school days, the school must first determine that the student’s behavior was not a manifestation of his disability”) (emphasis added, internal citations omitted); *Jackson v. Nw. Loc. Sch. Dist.,* No. 1:09-CV-300, 2010 WL 3452333, at \*9 (S.D. Ohio Aug. 3, 2010), *report and recommendation adopted,* No. 1:09CV300, 2010 WL 3474970 (S.D. Ohio Sept. 1, 2010) (“Prior to taking disciplinary action against a child with a disability, the school must conduct a “manifestation determination” during which the student’s parents and educators consider the relevant information in the student’s file, as well as information provided by teacher observations and the parents, to determine whether the conduct at issue ‘was caused by, or had a direct and substantial relationship to, the child’s disability’ or ‘was the direct result of the local educational agency’s failure to implement the IEP’”) (emphasis added, internal citations omitted); *Schl. Dist. of the City of Flint*, 115 LRP 23751 (SEA MI, 2015) (where a student with a disability was suspended for more than 10 days over the course of a year for a pattern of behaviors, the district should have convened a manifestation determination review after the 10th removal day). Also, in *Central (NM) Consolidated Schl. Dist.*, 120 LRP 25586, (OCR 2020), (finding that a school district erred when it imposed a long term suspension on a student with a disability pending an expulsion without first holding a manifestation determination review). [↑](#footnote-ref-36)
37. *In Re: Student v. Blue Hills Reg’l Tech’l Schl.*, BSEA # 07-4082 (Figueroa, 2007); see also *In Re: Student v. Boston Pub. Schl.*, BSEA # 01-5104 (Figueroa, 2001) (“Boston’s consideration of a change of placement could not have proceeded until after [a manifestation determination]”). [↑](#footnote-ref-37)
38. See *Somerset Prep DC,* 115 LRP 24950 (2014); see also *St. Lucie County (FL) School District*, 22 LRP 3128 (1995) (finding that a district violated Section 504 due to its failure to convene manifestation determination meetings prior to the accumulation of suspensions which constituted a change in placement). [↑](#footnote-ref-38)
39. The present matter is distinguishable from *N.F. v. Antioch Unified Sch. Dist*., No. 4:19-CV-02453-KAW, 2021 WL 1746366, at \*9 (N.D. Cal. Mar. 30, 2021), relied upon by the District. In that case, a student was suspended for five days beginning on Tuesday, December 19, 2017, such that, with the winter break, he was suspended until January 10, 2018. The school district held a manifestation on January 17, 2018 after the student returned.  The Court and Hearing Officer found the manifestation timely explaining that “[w]ith the winter holiday, the District was obligated to hold a manifestation determination within 10 school days of December 19, 2017, which was January 18, 2018.” However, it is unclear in *N.F. v. Antioch Unified Sch. Dist*. whether the student’s suspensions prior to the imposition of the 5-day suspension exceeded 10 school days for that school year. [↑](#footnote-ref-39)
40. In its *Motion*, the District conceded that Student’s change of placement occurred on the first day of her suspension, January 10, 2022. [↑](#footnote-ref-40)