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SECTION 504 AND MANIFESTATION DETERMINATIONS.

The question of conducting a “manifestation determination” with a Section 504 protected student is a rather regular one. Recognizing that the question’s genesis lies in semantics will quickly get you to the right answer. “Manifestation determination” is a term of art created by the IDEA. The term itself is not part of Section 504’s provenance. But, and very critically, the concept is fully embodied in Section 504.

The important take away is that a public school must assure that any discipline meted out to a disabled student is not discriminatory. The particular path for doing so is not important so long as the process involved is considered and genuine.

Not too long ago the Office for Civil Rights issued a Determination ruling that provides a telling example of a wrong process. In the matter of Greenville Independent School District, OCR No. 06-12-1326, 113 LRP 27897 (Texas April 11, 2013), the OCR considered a complaint alleging that a disciplinary change of placement to an alternative educational setting violated Section 504. Finding that the school employed a flawed and outcome-justifying process, OCR ruled against the school district.

In the case above, the student most definitely engaged in conduct running afoul of the school’s rules for behavior, e.g., he struck the teacher, among other things. After a three day suspension, the school, through the assistant principal, decided to assign the student to an alternative education setting. It did so, however, pretty much as a matter of administrative fiat. Among other missteps, the school staff asserted the code of conduct trumps Section 504, but somewhat contradictorily and at the last minute, also decided to conduct a manifestation meeting, the effect of which would confirm the punishment.

OCR, of course, was not impressed at many different levels by the school’s decisional process. The school was faulted by OCR because, among other things, school “staff members convened and initially conducted the meeting with the [parent] . . . with no intention of using appropriate evaluation procedures that conform with the Section 504 regulations to determine whether the Student’s misconduct . . . was caused by his disabling condition.”

Citing the federal regulations, OCR determined that an exclusion of more than 10 days requires a reevaluation in accordance with 34 C.F.R. § 104.35. “As a first step in this reevaluation, the [school] must determine, using appropriate evaluation procedures that conform with the 504 regulation, whether the misconduct is caused by the child’s [disabling] condition.”

Notice that OCR did not require a “manifestation determination” as the regulations do not require one. A “manifestation determination” is a creation of the IDEA. But by requiring an “evaluation” to determine “whether the misconduct is caused by the child’s [disabling] condition” before changing a placement, OCR is grafting the IDEA-based concept into Section 504.

Nonetheless, as we have long said, when reviewing a Section 504 student’s conduct, you are not conducting a “manifestation determination” as we know it under the IDEA. But you are indeed assessing the student and the circumstances to determine whether the conduct was a manifestation. The process may, coincidentally, be quite similar to the IDEA manifestation determination process. But it is not a “manifestation

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determination.”

Regarding placement decisions, OCR stated that “[t]he placement determination may not be made by the individual responsible for the school’s regular disciplinary procedures. Placement decisions must be made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.” In other words, the assistant principal may be a proper team member, but he/she is not the sole decider. We have in the past, and continue to recommend, that the disciplinary should not make the placement decision.

In short, the advice we have provided remains correct: Section 504 and Chapter 15 of the Pennsylvania education regulations mandate that the school not discriminate against a child by punishing the student for manifestations of his/her disability. The school does not, however, conduct a “manifestation determination” for a Section 504-only protected student.

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.