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Were the Student's Actions a Manifestation of the Student's Disability? The Need for Policy Change and Guidance

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Abstract: Under federal special education law, before a school district may discipline a student with a disability for greater than 10 days, it must first determine whether the student's actions were a manifestation of his or her disability (IDEA, 2004). This requirement, referred to as manifestation determination review (MDR), aims to ensure that students with disabilities do not experience a significant disciplinary change in placement for actions that are caused by their disabilities. This article will discuss the evolution of the legal standard and the policy implications of a study that examined 80 MDR decisions in one large urban school district.

Keywords: policy implementation; special education; education law; student discipline

¿Dónde está la manifestación de la deficiencia del alumno? Una necesidad de cambio de políticas y orientación

Resumen: De acuerdo con el derecho federal de educación especial, antes de un distrito escolar punir un déficit con una deficiencia de más de 10 días, o incluso el primer determinar se como acciones de alumno para una manifestación de su deficiencia (IDEA, 2004). Esta exigencia, como una manifestación determinación revisión (MDR), una visa que

los estudiantes con deficiencia no experimente una cambio disciplinar significativa en la colocación de acciones que son causadas por sus deficiencias. Este artículo aborda la evolución del patrón jurídico y las implicaciones políticas de un estudio que analiza 80 años.

Palabras-clave: implementación de políticas; educación especial; direito da educação; punición estudiantil

As ações do aluno eram uma manifestação da deficiência do aluno? A necessidade de mudança de políticas e orientação

Resumo: De acordo com a lei federal de educação especial, antes de um distrito escolar punir um aluno com deficiência por mais de 10 dias, o mesmo deve primeiro determinar se as ações do aluno foram uma manifestação de sua deficiência (IDEA, 2004). Esta exigência, referida como manifestation determination review (MDR), visa garantir que os alunos com deficiência não experimentem uma mudança disciplinar significativa na colocação de ações que são causadas por suas deficiências. Este artigo discutirá a evolução do padrão jurídico e as implicações políticas de um estudo que analisou 80 decisões MDR em um grande distrito escolar urbano.

Palavras-chave: implementação de políticas; educação especial; direito da educação; punição estudiantil

Introduction

The implementation of state and federal policy is a part of the everyday work of educators (Odden, 1991; Honig, 2006). However, research demonstrates that policies are not always implemented as intended or with fidelity (Cohen and Hill, 2001; Correnti and Rowan, 2007; Kennedy 2005; Rigby, Woulfin & März, 2016; Rowan and Miller, 2007). According to Young and Lewis (2015), “variation in implementation is the rule, not the exception” (p. 14). Given the complex, individualized nature of special education law, it is not surprising that it is an area of law where variation occurs frequently (O’Laughlin, L., & Lindle, J. C., 2014).

Under federal special education law, before a school district may discipline a student with a disability for greater than 10 days, it must first determine whether the student’s actions were a manifestation of his or her disability (IDEA, 2004). This requirement, referred to as manifestation determination review (MDR), aims to ensure that students with disabilities do not experience a significant disciplinary change in placement for actions that are caused by their disabilities. This policy decision reflects the law’s equity-based underpinnings. However, implementing this standard is no easy task. Decision makers are tasked with the responsibility of determining the strength of the connection between the student’s disability and the misconduct under review. Due to the individualized nature of the decision making process, MDR is inherently subjective. Theoretically, the law assumes that this determination is accurately made when the requisite people are included in the decision making process and relevant information is reviewed. However, the relationship between MDR theory and MDR practice has not been explored.

Because MDR is an intermediate step between special education identification and student discipline, an understanding of the implementation of MDR will enhance our understanding of a large and ever-growing body of research illustrating disparities in special education identification, student discipline and placement (e.g. Harry & Klingner, 2006; Parrish, 2002; Skiba et al., 2006a; Skiba et al. 2006b). Although there is literature on best practices and courts’ treatment of manifestation determination review, little empirical research has examined how this decision making process plays out in practice (Arnberger & Shoop, 2006; Katsiyannis & Maag, 2001; Zilz, 2010; Zirkel, 2006, 2010). The closest examination of the implementation of the MDR criteria is Walker

and Bringham's 2016 study, which examined teachers' understanding of the standard through the use of two hypotheticals.

This policy-focused article is grounded in findings of a study that examined 80 decisions in one large urban school district. A separate publication provides a detailed presentation of the study's main findings and implications for practice (Lewis, in press). The purpose of this article is to situate this study's findings within the broader IDEA policy discussion. For background and context, this article will provide an in-depth analysis of the evolution of the legal standard for MDR. A brief overview of findings will be discussed and the narrative will shift to policy analysis and policy implications.

Policy Framework

Based on concerns that students with disabilities were not being provided educational services, Congress enacted the Education for All Handicapped Children Act of 1975 (EAHCA), now called the Individuals with Disabilities Education Act (IDEA). Specifically, the law sought to address the following concerns: students with disabilities were excluded from education altogether; school districts provided students with disabilities inadequate services; unidentified disabilities were interfering with students' ability to succeed academically; and school districts had insufficient funding to address students' needs (EAHCA, 1975).

Prior to 1997, IDEA did not have a discipline provision. Consequently, the concept of a manifestation determination originated in case law. However, before delving into manifestation determination case law, it is first necessary to understand that all students facing potential disciplinary action are entitled to due process under the 14th Amendment (*Goss v. Lopez*, 1975). In *Goss v. Lopez*, the Supreme Court determined that "[a]t the very minimum...students facing suspension and the consequent interference with a protected property interest must be given some kind of notice and afforded *some* kind of hearing" (p. 579). Similar to the disciplinary action under review in *Goss*, MDR requires analysis of misconduct that may lead to a greater than 10 day removal from school. Accordingly, drawing conclusions about the relationship between a student's actions and his or her disability helps to guarantee that due process is afforded to students with disabilities prior to disciplinary action.

In the years following *Goss*, courts heard a series of challenges to school district decision making with regards to disciplining students with disabilities. For example, in *Stuart v. Nappi* (1978), a Connecticut court considered the causal link between a school district's failure to provide adequate educational programming and a student's subsequent behavioral problems. The court determined that taking disciplinary action under such circumstances is "unjustifiable" in light of the law's guarantee of a free appropriate public education (p. 1241). A year later, in *Doe v. Koger* (1979), an Indiana court determined that "[a] school which accepts Handicapped Act funds is prohibited from expelling students whose handicaps cause them to be disruptive" (p. 228). Furthermore, [u]nlike any other disruptive child, before a disruptive handicapped child can be expelled, it must be determined whether the handicap is the cause of the child's propensity to disrupt. This issue must be determined through the change of placement procedures required by the handicapped act. (p. 229)

Therefore, a determination regarding the relationship between a student's actions and his or her disability is a special education decision that must be made by individuals who are designated by special education law. Disciplinary decisions should be separate from that determination.

The relationship between misconduct and a student's disability reached the federal court of appeals level in 1981 in *S-1 v. Turlington*. Because of the greater weight of authority attributed to cases reaching the appellate level, this case is worthy of greater examination. In this case, students challenged the school district's decision to discipline them under the EAHCA and Section 504 of the Rehabilitation Act, which prohibits discrimination on the basis of disability. Each of the students received an expulsion greater than one and a half school years. Although all students received a hearing upon expulsion, the school district did not make a determination regarding the relationship between the students' disabilities and their misconduct. Furthermore, the superintendent determined that because S-1's disability was not classified as seriously emotionally disturbed, it was categorically impossible to find that S-1's actions were a manifestation of his disability. School officials emphasized the student's ability to understand school rules and policies and to appreciate the differences between right and wrong. Moreover, the school district argued that psychological assessments revealed that the students' disabilities were not behavioral in nature, thereby removing the possibility that their actions could be a manifestation of their disabilities. The court found these arguments unpersuasive. The court determined that

(1) before a handicapped student can be expelled, a trained and knowledgeable group of persons must determine whether the student's misconduct bears a relationship to his handicapping condition; (2) an expulsion is a change in educational placement thereby invoking the procedural protections of the EHA and section 504; (3) expulsion is a proper disciplinary tool under the EHA and section 504, but a complete cessation of educational services is not. (p. 350)

The Sixth Circuit Court of Appeals reaffirmed *Turlington's* reasoning and interpretation of relevant disability law in the following year (*Kaelin v. Grubbs*, 1982).

The early manifestation determination case law culminated in 1986 with *Doe v. Maher*. The student in this case qualified as a student with a disability under both Section 504 of the Rehabilitation Act and EAHCA. Specifically, the student was identified as "emotionally disturbed" (p. 1476). The Ninth Circuit clarified that students with disabilities are not protected from disciplinary measures when misconduct bears only a loose relationship to the student's disability. Furthermore, the court elaborated more on the procedural protections that are available to students with disabilities in the event that school district action amounts to a significant change in placement. Among the protections were notice and "convening an [Individualized Education Program (IEP)] meeting to assess the reason for the misconduct and the appropriateness of the child's current educational placement" (p. 1482). Through its decision, the court acknowledged the difficulty in distinguishing between behaviors that bear a close enough relationship to a student's disability and those that do not.

School districts feared that the standard set forth in manifestation determination case law significantly interfered with their ability to address serious safety concerns. This issue reached the Supreme Court in *Honig v. Doe* (1988), a continuation of *Doe v. Maher* (1986). *Honig* involved two students identified as having an emotional disturbance who were suspended indefinitely pending expulsion proceedings. The conduct in question was deemed to be "related to" the students' disabilities (p. 312). The plaintiffs claimed that such a denial of services violated the EAHCA's "stay-put" provision, which requires that students with disabilities remain in the current placement during relevant review or proceedings (p. 308). However, the Court explained that the law does not leave school districts without a remedy under circumstances that present serious danger. On the contrary, school districts can reach an agreement with parents in regard to an alternative placement or, in the absence of such an agreement, seek injunctive relief from the court to grant the school district the authority to require an alternative placement.

This exploration of case law illustrates the foundation that gave rise to the statutory codification of the manifestation determination criteria in 1997. From these cases, one can see the delicate balance at stake for school districts. On the one hand, school districts have an obligation to provide a free appropriate public education, a part of which is safeguarding against the use of disciplinary measures for misconduct that was caused by students' disabilities. On the other hand, school districts have an obligation to maintain a safe learning environment.

1997 Reauthorization of IDEA

In 1997, Congress amended the federal statute through the Individuals with Disabilities Education Act Amendments (IDEA 1997), which, unlike the prior version of the law, included a provision that specifically addressed student discipline. When a student's actions violated a school discipline code such that a disciplinary change in placement greater than 10 days was possible, the law required decision makers to determine whether the student's actions were linked to his or her disability. The review was to be carried out by the IEP team and other qualified personnel. The law required consideration of "all relevant information, including—(I) evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the child (II) observations of the child and (II) the child's IEP and placement" (IDEA, 1997). The review permitted decision makers to determine that a student's conduct was not a manifestation of his or her disability only if certain standards were met. Specifically, in order to reach such a conclusion, the IEP team had to 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; (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. (IDEA, 1997)

Thus, under the 1997 standard, school districts bore the burden of demonstrating that a student's actions were a manifestation of his or her disability.

Parents had a right to appeal if they disagreed with the district's determination. Under such circumstances, the hearing officer was to determine whether the school district met its burden of demonstrating that the misconduct in question was a manifestation of the student's disability. Furthermore, the 1997 standard extended protections to students who had not yet qualified for special education services in the event that the school district had knowledge that the student had a disability. In the absence of such knowledge, with limited restrictions, the school district was free to utilize disciplinary measures that applied to students without disabilities (IDEA, 1997).

2004 Reauthorization of IDEA

The 2004 Reauthorization of the Individuals with Disabilities Education Act (IDEA, 2004) "uses a more simplified, common sense procedure for schools to use in making the actual manifestation determination" (Congressional Report, 2003). According to the Congressional Report, [u]nder the 1997 law, schools were forced to prove a negative: that a child's behavior was not a manifestation of his or her disability based upon a complicated set of factors. Many schools found this test to be confusing and unfair. (p. 44)

The 2004 Reauthorization of IDEA came with a number of procedural and substantive changes in the manifestation determination review provision of the law (Table 1). Rather than requiring the full

IEP team to conduct manifestation determination reviews, the current version of the law requires that the team of decision makers include “the local educational agency, the parent and all relevant members of the IEP team (as determined by the parent and the local educational agency)” (IDEA, 2004). In terms of the information sources reviewed, the law is much more general than it was in 1997. Decision makers now 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” (IDEA, 2004). The 2004 criteria also require a tighter link between student misconduct and the student’s disability. Specifically, decision makers must determine “if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or if the conduct in question was the direct result of the local educational agency's failure to implement the IEP” (IDEA, 2004)

Table 1 <i>IDEA 1997 and IDEA 2004 Comparison</i>		
	IDEA 1997	IDEA 2004
Decision makers	“IEP Team and other qualified personnel”	“the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency)”
Information reviewed	“(I) evaluation and diagnostic results, including such 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”	“all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents”
Criteria	Manifestation unless: “(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; (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”	Manifestation only: “(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 local educational agency's failure to implement the IEP”

The outcome of manifestation determination review is significant for students with disabilities. If decision makers find that the student’s actions were a not manifestation of his or her disability, the school district is free to discipline the student in the same manner as students without disabilities. However, it is important to note that federal special education law guarantees that students with disabilities receive post-expulsion services (IDEA, 2004), a guarantee that may not be available to students without disabilities under state law.

If decision makers determine that the student's actions were caused by or had a direct and substantial relationship to the student's disability, the law requires the IEP team to conduct a Functional Behavioral Assessment and create a Behavioral Intervention Plan (BIP) (if the student does not already have one in place). Neither of these terms are defined in the law. However, other provisions of the law discuss the use of positive behavioral interventions when a student's behavior impedes his or her learning or that of other students. (IDEA, 2004). If the student has a behavioral plan in place, the IEP must make adjustments accordingly.

If a team of decision makers finds that the student's actions were a manifestation of his or her disability, the student must return to his or her prior placement. There are some exceptions to this result. Parents and the school district may agree that a different placement is appropriate. Moreover, regardless of the strength of the connection between the student's disability and his or her conduct, students can be removed for up to 45 days for incidents involving guns, drugs, and serious bodily injury (IDEA, 2004).

In sum, this section provided background for understanding the context and significance of the manifestation determination provision of IDEA. The standard is complicated to implement and practitioners need guidance. Therefore, it is not surprising that much of the scholarship in this area focuses on the legal requirements and related court decisions (Arnberger & Shoop, 2006; Katsiyannis & Maag, 2001; Zilz, 2010; Zirkel, 2006, 2010). No published empirical research could be found that examines how decision makers sift through relevant information to implement the criteria set out in the law in practice. Consequently, this study sought to understand the factors that influence decision makers when they determine whether a student's actions were a manifestation of his or her disability.

Methods

To acquire a broad understanding of district-wide implementation, this study employed a study approach (Merriam, 1988). Recognizing the litigious nature of special education law, respect for confidentiality and privacy was critical to finding a willing school district. Initial contact was fairly informal. After discussion regarding the value of the study to the school district, I was directed to submit an application the school district IRB. Simultaneously, I worked through the University IRB process. In order to protect student identity, the University IRB required the paperwork to be redacted in compliance with FERPA.

During one school year, the school district conducted a total of 721 MDRs. More specifically, the school district conducted 470 MDRs that resulted in "No" decisions (the misbehavior and child's disability were not related) and 251 "Yes" decisions (the misbehavior was a manifestation of the child's disability). All decisions were assigned a random number using a random number table. 80 decisions were selected for review. Specifically, 40 "No" decisions and 40 "Yes" decisions were selected at random by the school district. An equal distribution of "Yes" and "No" decisions was appropriate because the study sought to conduct an in-depth analysis of the content of the paperwork. Consequently, a sample with outcome proportions equal to the population of all decisions made during the 2012-2013 school year was not necessary to understand the factors that influence decision makers during manifestation determination review.

In order to maintain anonymity of the school district, the details of the form's requirements will be discussed in general terms only. The description is based on shared characteristics between the form used by school district in the present study and the forms used in multiple states and multiple school districts across the country. In accordance with the law, state education agencies and school districts create forms that require decision makers to describe the behavior that necessitated the

MDR and provide documentation of all relevant information that was considered. The law requires decision makers to “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” (IDEA, 2004). Consequently, to document consideration of each source of information, relevant paperwork is generally divided accordingly. The document also generally requires school districts to answer the two questions posed by IDEA: Did the behavior have a substantial relationship to or cause the misconduct? Was the behavior a direct result of the school district's failure to implement the student's IEP? Generally, below each one of these questions is a space to provide justification.

Coding was an interactive process, involving multiple stages of review. The first stage consisted of a general review of all portions of the paperwork associated with all 80 decisions. General information was gathered, such as student demographic data, the nature of the infraction, and participating decision makers by title. This stage also sought to identify general themes or categories through open coding (Merriam, 2009, p. 204). Codes or categories are “conceptual elements that ‘cover’ or span many examples...of the category” (p. 181). These categories were characterizations of the factors that emerged upon review of the entire sample. Notes were taken as decisions were reviewed. To further refine the categories, the second stage involved targeted review of the portion of the paperwork that asked decision makers to determine whether a student's actions were caused by or had a direct and substantial relationship to the student's disability. Exact language from this portion of the paperwork for each decision was copied and pasted into a table for analysis and comparison. The table included both “Yes” and “No” columns. The third stage involved an examination of each remaining aspect of the paperwork in isolation (for example, information provided by parents, teacher observations, student's IEP, etc.) Similar to the second stage, each portion of the paperwork received its own “Yes” and “No” table for isolated review during stage three. This allowed for comparison according to sources of information considered by decision makers. Together, these first three stages revealed categories and themes in the implementation of both the procedural and substantive aspects of the MDR process. Moreover, stages one through three uncovered factors that may influence decision makers during manifestation determination review, the core of the research question posed in the study. The fourth stage used the factors identified in stages one through three as a “scheme of categories” for a final review and sorting of decisions (Merriam & Tisdell, 2015, p. 182). At this stage, decisions were matched with identified categories. Overall, the process of document analysis was both “inductive and comparative” (Merriam & Tisdell, 2015, p. 201).

To triangulate data reviewed during document review, an interview was conducted with two district level employees who are responsible for oversight and professional development of manifestation determination review. Interview questions included general questions about professional development and training around the topic of manifestation determination review, questions specific to themes or factors identified during document review and questions aimed directly at how interviewees believe decision makers determine whether a student's actions were a manifestation of his or her disability. Final questions focused on interviewees' understanding of district-wide practice and implications, including data use, strengths and weaknesses and the frequency of challenges or appeals. In addition to the interview, five years of district MDR professional development materials were reviewed.

Findings

Through its research design and methodology, this study sought to understand the factors that influence decision makers during manifestation determination review. In general, the factors

that influenced decision makers were not always clear. In many cases, documentation lacked detailed explanations of the decision making process. For example, a student with an unspecified disability was caught with an illegal substance at school. The paperwork indicated that various sorts of data were considered. However, it is unclear which aspects of the data were considered or how such data was used. It is also unclear whether the student had a history of behavioral problems. From the paperwork, all that is known is that the teacher or teachers stated that the “student is a hard-working and respectful student” and the parent believes that the student “demonstrates positive behavior in all settings.” Other aspects of the paperwork merely state that information was considered. Without explaining their reasoning, decision makers concluded that the student’s unspecified disability “had nothing to do with” possession of an illegal substance. While decision makers may have based their decision on a comprehensive overview of relevant information and sound reasoning, without documentation, it is difficult to track the decision making process.

Thorough analysis of sample decisions revealed that the law, as written, permits arbitrary decision making in implementation. To further validate the arbitrary nature of the decision making process as evidenced in the paperwork, when interviewees were asked what they believed was the single most influential factor impacting manifestation determination review, they cited “pressure from administrators” (School District Personnel, personal communication, June 27, 2014) As a result, the study revealed an overall disconnect between the law as implemented and the law as it was intended.

In general, decision makers appeared to be in compliance with the procedural requirements of the law. Decisions included all individuals required by law: all teams included a special education teacher, most included a special education administrator (71.25%), almost all included a general education teacher (98.75%), and a few decisions involved school psychologists (7.5%), school social workers (5%) or speech pathologists (5%). Most decisions also involved parents (83.75%). In compliance with the procedural requirements of the law, in instances where parents were not a part of the decision making process, efforts to contact the parents were documented in the paperwork.

Despite compliance with these procedural requirements, the substance of the decision making process is where the intent of the law was lost. Depending on the outcome reached, students’ actions and disabilities were either broadly or narrowly construed. These observations can be understood best through example.

Narrow Characterization of Disability

The first example represents a decision in which the disability or the student’s behavioral history was narrowly characterized. The student involved in this incident pushed and threatened staff after leaving the classroom without permission. The student had a BIP in place that addressed “argumentative behavior towards peers and staff.” The student reportedly needs redirection in class, although he becomes “very disrespectful and very angry” when redirected by staff. The student’s father indicated that the student has attended a number of schools and that he did not understand why his son behaved the way he did.

Decision makers determined that because the student’s Behavioral Intervention Plan addressed verbal abuse, not physical aggression, the student’s actions were not a manifestation of his disability (“After discussion IEP team and parent have concluded that [Student] has prior incidents on file for being verbally aggressive toward staff. His IEP behavioral plan does address his verbal abuse to staff and peers but not physical aggression toward staff. As a result the team has concluded that this incident was not a manifestation of his disability”). Decision makers deemed verbal abuse significantly distinct from physical aggression, although the incident involved both verbal abuse and physical aggression, which could arguably both fall under the umbrella of aggression. This decision also illustrates the potential role of a student’s behavioral history. The decision making process, as it

is implemented in this school district, appears to leave very little room for new behavioral manifestations of the student's disability, including behaviors that share similarities to existing behavioral patterns.

Expansive Characterization of Disability

Unlike the narrowly defined relationship described above, there were decisions in which the relationship to the disability was much more expansively examined. A student with a hearing impairment was found with alcohol at school. His teacher described him as "struggling with peer interaction" and wanting "to be accepted by his peers." Other relevant information considered included the fact that another student asked the student to bring the alcohol to school. The student's disability was described as affecting his "social judgment and in understanding the consequences of his action." As a result, the team determined that the student's actions were caused by or had a direct and substantial relationship to the student's disability. Specifically, the team reasoned that "[Student] is a student with a significant hearing loss. This hearing loss impedes his incidental learning. He does not have access to information that is presented orally which has created significant lags in social judgment and understanding the consequences of his actions. The IEP team determined that these lags impacted his decision to bring and share alcohol to school [sic]."

Without context, there is no apparent relationship between a hearing impairment and alcohol possession. However, this decision demonstrates the importance of making individualized determinations. A student's disability manifests itself in a particular way in a particular set of circumstances. For another student with a hearing impairment facing discipline for possession of alcohol at school, the reasoning and outcome may have been different. Perhaps if the student had not been asked to bring the alcohol to school or if the teacher had not observed the student's struggles with peer interactions, these factual distinctions would have proven outcome determinative. As a result, it is important to consider student-specific and incident-specific factors. Relatedly, decision makers should not base decisions on an objective understanding of the student's disability category, the misconduct under review or a preconceived idea of the relationship between the two.

Themes

Based on the paperwork, decision makers considered the nature of the student's disability, the student's behavioral history, the student's understanding of the consequences, the student's ability to control his or her behavior, the appropriateness of the student's response in normal circumstances, and the student's behavior at home or in the community (for further discussion, see Lewis, in press). Alternative explanations for student behavior were also provided. Organized by theme, Table 2 provides language from the portion of the paperwork that asked decision makers to document the relationship between the student's actions and their disability. This table is a reorganized and condensed byproduct of the content analysis table described in stage two of the methods section.

Table 2 <i>Reasoning by Outcome for Manifestation Determination Portion of Paperwork</i>	
NO, not a manifestation	YES, a manifestation
Behavioral History <ul style="list-style-type: none"> No recent behavioral problems Previous incidents haven't included assault/battery IEP addresses verbal aggression, not physical This type of aggressive behavior is atypical 	Behavioral History <ul style="list-style-type: none"> Aggression/behavioral history/anger Poor judgment /social skills Socially unacceptable choices prior Non-compliant, verbal and physical behavior FBA/BIP address play fighting and aggression
Control/Understanding <ul style="list-style-type: none"> Planned to get change in placement Planned/not impulsive/calculated/deliberate Knows consequences/fully aware of action Can control behavior Had plenty of time to tell teachers Unwilling to accept consequences Threatening others showed higher level thinking Student is influenced by desire to make friends 	Control/Understanding <ul style="list-style-type: none"> Impulsivity/lack of control Significant lags in social judgment and consequences Prior to incident, showed understanding actions Doesn't comprehend seriousness of actions Doesn't think through/know consequences Student can't control behaviors in unstructured environment Student needs to be given time to calm down Student's behavior is inconsistent
Relationship to Disability <ul style="list-style-type: none"> Behavior didn't have direct and substantial relationship Behavior was not caused by and did not have a direct or substantial relationship to disability Disability had nothing to do with behavior The IEP team decided that incident had nothing to do with student's disability and was spontaneous in nature Disability impacts ability to remain on task and be focused His disability (CD) does not make him impulsive or prone to fighting Student's disability is in the area of math, had two evaluations for additional disability categories in 2012 Disability does not include a characteristic of impulsivity Disability affects ability to remember things he has learned and to move at the pace of the general education curriculum. Specific learning disability affects his retention and learning of academics. 	Relationship to Disability <ul style="list-style-type: none"> Disability limits alertness/social cues Difficulty maintaining positive interactions/relationships with peers and staff Student was overstimulated Student does not possess the age appropriate social skills to deal appropriately with conflict, anger or frustration Disability limits his alertness which adversely affects his educational performance through both academic achievement, classroom performance and his behavior in school Student has a diagnosis of ADHD which manifests itself through aggression, and managing and maintaining attention Student's hearing loss impedes his incidental learning. He does not have access to information that is presented orally which has created significant lags in social judgment and in understanding the consequences of his actions. He currently continues to display: an inability to develop or maintain satisfactory interpersonal relationships and inappropriate affective or behavior response to a normal situation Poor decisions result from focus problems

From Table 2, it is evident that the standard permits arbitrary decision making. For example, one team of decision makers stressed that a student did not have recent behavioral problems. This team determined that this particular student's actions were not a manifestation of his or her disability. A different team of decision makers described a similar behavioral pattern as inconsistent, thereby finding a connection to the student's disability. It is important to note that many "No" decisions summarily dismissed the connection between the student's misconduct and his or her disability. Overall, there are noteworthy similarities between the two outcomes. In many instances, it appears as though the team could have reached either outcome. Given the serious implications of the MDR process, these findings raise significant policy concerns.

Discussion

What Does Relevant Mean?

The Individuals with Disabilities Education Act makes reference to the term "relevant" on several occasions. Of course, consistent with IDEA's emphasis on individualized determinations, what is deemed relevant depends upon the student and the circumstances. As a result, relevant members of the IEP team or the consideration of relevant information should vary depending on the student. Most importantly, the term "relevant" should serve a meaningful role in the implementation of manifestation determination review. According to the U.S. Department of Education,

Section 300.530(e)(1), which tracks section 615(k)(1)(E) of the Act, requires a review of all relevant information in the child's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents. We believe this clearly conveys that the list of relevant information in paragraph (e)(1) of the section is not exhaustive and may include other relevant information in the child's file, such as the information mentioned by the commenters. It would be impractical to list all the possible relevant information that may be in a child's file and, therefore, it is not necessary to further regulate on this matter (U.S. Department of Education, 2006, p. 46719.)

On the contrary, the findings of the present study demonstrate that the substance of the decision making process may benefit from a greater emphasis on the true meaning of the term "relevant." This subsection will analyze aspects of the law that implicate the term "relevant."

Relevant members of IEP team. The law requires the manifestation determination review process to include a representative of the local educational agency, the parents, and other relevant members of the IEP team, as agreed upon by the parents and the district. Fulfilling this requirement, decisions in the sample generally included: a district level administrator or a special education administrator, who served as the representative of the local educational agency; a special education teacher; a general education teacher, and the parents or student.

Although special education teachers were present in the decisions, other individuals who are trained in recognizing disabilities and the effects of those disabilities on student behavior and performance (Buck, Polloway, Kirkpatrick, Patton, & Fad, 2000) were noticeably absent from the sample. For example, school social workers and school psychologists rarely participated in the decision making process, even though they arguably have the most direct training on the issue facing the team in an MDR. A plausible explanation for this finding is expediency. However, expediency should not be valued at the expense of sound decision making. Another possible explanation is that the work load of school psychologists makes participation in MDR difficult. Once again, this is not a

sufficient justification if the decision would more accurately achieve the intent of the law with their input. This is not to say that decisions without these individuals lacked sound judgment or that the decisions that included these individuals were the most thorough decisions in the sample. In fact, decisions involving school social workers and school psychologists were subject to the same inadequacies in documentation as other decisions in the sample. Furthermore, to raise a question about the absence of social workers and psychologists is not to undermine or minimize the input of general education teachers and special education teachers, who undoubtedly bring knowledge and expertise to the decision making process. Nonetheless, questions must be raised about the absence of school social workers or school psychologists in the sample.

In addition to including professionals with expertise in teasing out the relationship between disabilities and behaviors, it is important to include individuals who have specific knowledge of the student whose misconduct is being reviewed. The sample included some decisions in which the participating teacher had little knowledge of the student because the teacher was new to the school. Moreover, there were instances in which the teacher had little knowledge of the student because the student was new to the school or the student had truancy issues. Interviewees confirmed these concerns by stating that a meeting was held by the district earlier in the year to address IEP team composition. Thus, these situations beg the question of whether there was someone better suited to participate in the decision making process. Promoting thoughtful selection of individuals who participate in the decision making process will help to ensure that decisions are individualized and based on a wealth of information from multiple, relevant sources.

Relevant information in the student's file, including IEP. Reviewing the student's IEP helps decision makers understand prior behavioral manifestations of the student's disability, especially if there is a BIP in place. In the event that there is not a BIP in place, a Functional Behavioral Assessment must be conducted. However, since neither of these terms are defined in the law, it is difficult to ensure that the law is implemented consistently from student to student, district to district or state to state. This concern is exacerbated when very little detail is provided in the paperwork associated with manifestation determination review. To illustrate, one decision in the sample merely stated that a student has a BIP in place, without describing the nature of the student's behavioral concerns or potential triggers. This lack of detail renders an audit of MDRs much more difficult if not impossible to complete. Likewise, should the MDR conclusion be challenged through administrative or judicial proceedings, the paperwork serves little more than proof that a meeting took place, while providing no assistance as to the team's fidelity to the required process. Documentation of the triggers or behavioral patterns ensures full consideration of all information necessary to understand the link between the student's misconduct and his or her disability.

A thorough review of the student's IEP also allows decision makers to determine whether the student was properly identified, whether the IEP was appropriate, and whether the IEP was implemented with fidelity. Few decisions in the sample discussed prior disabilities or not yet identified disabilities. Most of the decisions that included the disability category in the paperwork focused on the student's current eligibility category. This is understandable based on the fact that the student's current eligibility category triggered the procedural protections of manifestation determination review. However, the MDR process should include a comprehensive analysis of the student's disability-related needs.

Teacher observations. Positive descriptions of students appeared in both "Yes" and "No" MDR decisions. However, glowing descriptions of students appeared more often in "No" decisions than "Yes" decisions. A reason for this disparity may be that the student description is an attempt by the teacher to establish a positive behavioral trend, which weakens the relationship between the behavior under review and the student's usual behavior. As a result, the misconduct under review

appears as an isolated incident, which supports an assertion that the student is able to control his or her behavior and knows how to respond appropriately in social settings. However, it is important to note that most of the students in the sample had a history of behavioral problems, including students who received positive remarks from teachers. Of course, teachers' positive remarks may adequately represent teachers' positive observations of students. Consistent with interviewees' portrayal of pressure from administrators as the most important factor influencing MDR outcomes, teacher observations may also reflect pressure from administrators to create a record that supports a "No" outcome.

Relevant information provided by parents. Parental involvement is an integral component of IDEA and manifestation determination review is no exception to this policy choice. In the present study, an examination of the 80 sample decisions showed that parents or guardians provided meaningful input that allowed decision makers to consider the student's behavior across settings. From the sample, it appears that a lack of behavioral problems at home was a compelling piece of evidence to support a "No" decision. Although it is unclear from the paperwork whether decision makers in the sample relied upon this type of information to reach a final decision, a lack of behavioral problems at home was documented more often in "No" decisions than "Yes" decisions. While there may be a strong argument in favor of finding that a student's actions were not a manifestation of his or her disability if the behavior only occurs in one setting, potential environmental factors may be present in school that may not be present at home. For example, a student may experience greater stress or anxiety at school, which may affect the student's behavior. Furthermore, a trigger may be present at school but not at home. Therefore, careful consideration must be given to the reasons underlying differences in behavior across settings as these differences do not always indicate that a student can control his or her behavior but chose not to in the circumstances under consideration.

In some decisions, parents noted whether the student was taking medication at the time of the incident. A team of decision makers, in one MDR decision, determined that a student who was experiencing a modification in dosage engaged in actions that were deemed a manifestation of his disability. Accordingly, if a student has been prescribed medication, in cooperation with the professionals who prescribed the medication, decision makers should make an effort to understand if the student's misconduct was the result of improper medication. A recent increase in behavioral problems may also indicate a need to adjust the student's medication if the student was taking medication at the time of the incident. If the student recently began taking medication or changed medication, this may be an important consideration in MDR. More broadly, the consideration of medication raises a larger question about whether a disability can be medicated away such that misconduct is not a manifestation of a student's disability if the student is taking the appropriate dosage at the time of the incident. Alternatively, if a student is prescribed medication but refuses to take it, are the student's actions more likely a manifestation of his or her disability? Given these important questions, if medication is a consideration in the decision making process, the team should include input from individuals who understand the purposes and effects of the medication prescribed.

Other relevant information. Other relevant information mostly concerned students' behavioral and academic histories, although there were some instances in which additional context was provided in order to better understand the circumstances. Research demonstrates that students with disabilities are disciplined more often than students without disabilities (e.g. Rausch & Skiba, 2006). As a result, it is not surprising that most students in the sample had a history of behavioral infractions. Students in both "Yes" and "No" decision categories shared similar behavioral histories, often dating back to prior schools. The presence of similar behavioral histories in both "Yes" and

“No” decisions raises a number of significant questions. What role should a student’s behavioral history play in the decision making process? If the student has no behavioral history, should this necessarily mean that the student’s actions are not a manifestation of the student’s disability? How should behavior be characterized? Using a sample decision wherein decision makers stated that the student’s IEP addresses verbal aggression, not physical aggression, how should decision makers analyze similarities and differences between past behavioral problems and the misconduct subject to manifestation determination review? Unfortunately, an analysis of the 80 records reviewed raises these questions, but provides little understanding of how teams considered them while reaching their conclusions.

Furthermore, there were a few decisions in the sample where the students had previously identified disabilities for which they were no longer deemed eligible. Similarly, there were students who had behavioral goals in the past, but these goals were recently removed. As a result, decision makers determined that the students’ actions were not manifestations of the students’ disability. This analysis raises a critical question about whether a recent behavioral improvement is an indication that the problem is permanently resolved.

Lastly, if additional individuals participated in the decision, their input was included within “other relevant information” section of the paperwork. An outside service provider in a “Yes” decision indicated that they were working toward the student spending time with students his own age because older teens tended to negatively influence his behavior. Student contributions were not often documented, although students attended 33 of the decisions in the sample. When their contributions were referenced in the paperwork, they appeared under “Information Provided by Parents” and “Other Relevant Information.” When student input was mentioned, the student explained his or her version of the story, acknowledged that what he or she did was wrong, or expressed a desire to improve his or her behavior. In order to ensure careful and thorough consideration of all relevant information, decision makers should include individuals who represent a comprehensive understanding of the student’s behavior and disability, including outside service providers and the student, when appropriate.

The Overall Subjective Nature of the Decision Making Process

Beyond consistent themes in reasoning, decision makers relied upon similar factors to reach opposite conclusions. Behavioral inconsistencies led to both “Yes” and “No” decisions. Similarly, whether the student acted in concert with other students influenced both “Yes” and “No” outcomes. Furthermore, a student’s poor decision was understood as a desire to make friends in a “No” decision, while social considerations seemed outcome determinative in “Yes” decisions as well.

The subjective and, at times, seemingly arbitrary nature of the decision making process is particularly troubling in light of research related to special education identification and student discipline across race, ethnicity and gender (e.g. Donovan & Cross, 2002; Harry & Klingner, 2006; Skiba, 2006). The demographic data for the sample were as follows: 15% female, 85% male; 87.5 Black, 7.5% White, 2.5% Hispanic and 1% Asian. To protect district identity, district-wide demographic data was not included, yet it is important to note that these percentages are not proportionate to the overall student population. Although this study did not conduct extensive research on the ways in which the decision making process may have differed for students of color versus White students or male students versus female students, the demographic breakdown of the sample indicates that these decisions disproportionately affect students of color, particularly Black male students.

Other aspects of IDEA acknowledge that subjectivity can lead to biases in the decision making process. For example, states are required to maintain data on disproportionality in

identification, placement, and discipline (IDEA, 2004). As a part of this requirement, States must determine if “significant discrepancies” in long term suspensions and expulsions are occurring across race, ethnicity, limited English proficiency status, gender or disability category (IDEA, 2004). As this study demonstrates, the manifestation determination review process is particularly vulnerable to subjective decision making.

Although manifestation determination review is susceptible to factors such as pressure from administrators and institutional biases, Congress opted for a “common sense manifestation determination process” in 2004 (U.S. Department of Education, 2006, p. 46720). The subjective nature of manifestation determination review, like other aspects of IDEA warrants a rigorous standard that requires school districts to engage in the kind of robust analysis that is necessary to protect students from facing disciplinary action for conduct that was a manifestation of their disabilities. Unfortunately, the current MDR standard does not require this kind of analytic rigor nor does the law include manifestation determination review as a monitoring priority, despite the important interest at stake.

Implications for Policy and Practice

The findings of the present study have implications at the district, state and national level. School districts should require additional documentation, conduct audits of their own practices, and provide professional development opportunities on the topic of manifestation determination review (Lewis, in press). These efforts will help to address some of the inequities that exist in implementation. However, the arbitrary nature of the decision making process raises broad policy concerns that must be addressed in order to ensure that all students with disabilities, regardless of local contextualized factors, receive a free appropriate public education. As such, this article specifically focuses on policy recommendations.

Policy Change

The findings of this study serve as a call for a modification in the MDR standard. Although Congress adopted a new standard in 2004, themes that emerged during data collection reveal that elements of the old standard are being used to guide the implementation of the 2004 standard. For example, paperwork in the sample discussed the student’s ability to appreciate the consequences of his or her own actions. Similarly, decision makers considered whether the student had the ability to control his or her behavior under the circumstances. Because Congress removed these aspects of the standard when IDEA was amended in 2004, the U.S. Department of Education asserted that it was outside the scope of its authority to include this language in the regulations accompanying IDEA 2004 (U.S. Department of Education, 2006, p. 46719). Although the 1997 standard may have made disciplining students more difficult, it erred on the side of protecting students with disabilities. Aspects of the old 1997 standard should be combined with the 2004 standard’s focus on cause or a material and substantial relationship. Under this proposed standard, school districts should not have difficulty disciplining students with disabilities for actions that are not a manifestation of their disability. However, school districts should have difficulty disciplining students with disabilities for actions that are a manifestation of their disability.

The current version of the law swings the pendulum too far in the direction of student discipline. Taken as a whole, a new standard should require decision makers to justify each of the following statements:

The student's disability did not impair the ability of the child to understand the impact or consequences of the behavior subject to disciplinary action	
The student's disability did not impair the ability to control the behavior subject to disciplinary action	
The student's behavior was not caused by or did not have a direct and substantial relationship to the student's disability	
The IEP was implemented with fidelity	
The student's IEP appropriate	

If decision makers fail to justify any of these statements, then the student's actions are a manifestation of his or her disability. This combined standard balances school district concerns with the obligation to provide each student a free appropriate public education in the least restrictive environment.

Policy Guidance and Professional Development

Whether or not a new standard is created, policy guidance is needed to assist school districts in understanding how to determine whether a student's actions are a manifestation of his or her disability. This has the potential to inform both policy and practice at the local level. In January 2014, the U.S. Department of Education and the Department of Justice issued guidance regarding discrimination in student discipline. The Dear Colleague Letter on Nondiscrimination in the Administration of Student Discipline encourages school districts to engage in critical reflection about trends in referrals and disciplinary consequences. The letter emphasized that discrimination can be both intentional or it can be facially neutral, with the effect of treating students in a discriminatory manner.

The lessons from the Dear Colleague Letter have important implications for manifestation determination review. The letter argues for school district personnel to engage in more than a surface level analysis of student discipline. To truly understand discrimination in discipline, school districts must understand manifestation determination review as the intermediate step between student misconduct and student discipline. Only through a "No" decision is a school district able to expel a student with a disability.

A superficial look at manifestation determination review may demonstrate that school districts are acting in compliance with the procedural aspects of the law. The decision making process may involve the required decision makers and may include the required sources of information. However, the law dictates very little about the depth of analysis that is required. In other words, as the present study demonstrates, it is possible to comply with the letter of the law without engaging in the kind of analysis that is necessary to comply with the spirit of the law. Of course, this study only explored the decision makers' reasoning as it was documented in the paperwork. As a result, it is possible that all decision makers in the study engaged in a detailed analysis that was not documented throughout the paperwork. Nonetheless, the law, as it is written, permits decision makers to reach arbitrary decisions. With parental agreement or failure to challenge decisions and in the absence of federal or state oversight, these decisions will go unchallenged. The school district indicated that only one decision was challenged by parents during the year reviewed. This dispute was resolved immediately.

Similar to the 2014 Dear Colleague Letter, state or federal guidance should explain the meaning of the standard. When a student struggles with peer interactions and purchases drugs because he or she is seeking acceptance, should decision makers find this to be a manifestation of the student's disability under the current legal standard? If the student has a history of behavioral

problems similar to the incident under review, should this be considered a manifestation of the student's disability? If the student's behavioral problems are primarily limited to the educational setting, should this fact be outcome determinative?

Guidance should also clarify the meaning of "relevant" as it is used in the law. School districts have a great deal of discretion in the implementation of manifestation determination review. While it is important for decision makers to have the authority to address local and student-specific concerns, it is equally important that the implementation of the law is consistent with IDEA's equity-based underpinnings. To reflect this commitment, relevant individuals should include those with knowledge of the student and of behavioral manifestations of disabilities generally. Relevant information should include in-depth analysis of the student's IEP, a student's academic and behavioral history, teacher observations, information provided by parents and any other information that helps decision makers understand the relationship between the student's disability and the behavior under review.

Few of the decisions reviewed in this study made explicit reference to the eligibility criteria for relevant disability categories. However, in response to the manifestation determination question, decision makers relied upon criteria that are consistent with eligibility criteria. For example, federal regulations delineate the criteria for an emotional disturbance as follows:

a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors. (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers. (C) Inappropriate types of behavior or feelings under normal circumstances. (D) A general pervasive mood of unhappiness or depression. (E) A tendency to develop physical symptoms or fears associated with personal or school problems. (U.S. Department of Education, 2006 p. 46756)

Similarly, decisions in the sample considered whether the student was capable of maintaining positive relationships with peers. Furthermore, decision makers appeared to be particularly concerned about whether the student responded appropriately under the circumstances. However, inability to learn, unhappiness and depression, physical symptoms or fears appeared to receive less attention by the decision makers in the sample.

Another common disability category in the sample was Other Health Impairment (OHI). The federal regulations that accompany IDEA (2004) define OHI as follows:

Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that--
(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and
(ii) Adversely affects a child's educational performance. (U.S. Department of Education, 2006 p. 46757)

Students in the sample who were identified as having an OHI were described as having limited strength or alertness. Because OHI covers a number of "chronic or acute health problems," for the purpose of the MDR process, it would be helpful to distinguish between various conditions within

the category of OHI. However, the paperwork did not always indicate the origin of the student's needs. Nonetheless, some students were identified as having Attention Deficit Hyperactivity Disorder or Oppositional Defiant Disorder. One student's limited alertness stemmed from lead exposure. Each of these categories within OHI may manifest in different ways in general and for specific students. To truly understand the relationship between the student's disability and misconduct, it is important to consider the behavioral manifestations of the specific student in the specific circumstances under review.

Because students with disabilities are deemed eligible for special education according to explicit definitions under federal and state law, checklists associated with evaluation and eligibility determinations along with other relevant student-specific records and information can provide valuable guidance during implementation of manifestation determination review. Some decisions in the sample documented observations that gave rise to a special education referral. Furthermore, there was evidence that some decision makers considered the behavioral manifestations of the disability category in general, which at times used language that mirrored the legal definition. Although not explicitly emphasized in the paperwork reviewed, it is important for decision makers to review information regarding the student's referral and eligibility for special education. After all, the student's specific eligibility category is the impetus behind the procedural protection of manifestation determination review.

Conclusions

As the preceding analysis demonstrates, the manifestation determination review standard is problematic and difficult to implement with meaningful consistency. With the foundational case law in mind and with IDEA Reauthorization expected in the future, Congress should strongly consider not only the theory of equity underpinning the law, but also the practical obstacles to implementation. The findings of this study demonstrate that a change in the law is necessary. A new standard should aim to ensure fidelity to the purpose of the law, which is to ensure that students with disabilities are not disciplined for actions that are caused by their disabilities. In addition to a new standard, school districts need greater guidance that extends beyond the procedural aspects of the law and includes emphasis on the substance of the decision making process.

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