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Manifestation Determinations: How Do Iowa's AEA Adopted Procedures Compare To Federal And State Requirements And Expert Guidelines?

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MANIFESTATION DETERMINATIONS: HOW DO IOWA'S AEA ADOPTED
PROCEDURES COMPARE TO FEDERAL AND STATE REQUIREMENTS
AND EXPERT GUIDELINES?

An Abstract of A Thesis
Submitted
In Partial Fulfillment
of the Requirements for the Degree
Education Specialist

Keely J. Beam
University of Northern Iowa
May 2004

ABSTRACT

Due to the qualitative nature of manifestation determinations there is variation in how manifestation determinations are applied across situations and settings. In addition, IEP teams remain uncertain and uniformed regarding conducting manifestation determinations.

This study investigate how Iowa's Area Education Agencies (AEAs) adopted procedures compare with federal and state requirements and expert guidelines.

The reliability of manifestation determinations may be improved when AEA's adopt procedures are consistent with federal and state requirements, and expert guidelines. The information gleaned from this document review may also be of value to AEA's in establishing their own procedures for manifestation determinations.

The study utilizes manifestation determination guidelines from 12 of Iowa's 15 AEAs. The instrument used to conduct this quantitative document analysis contained 14 items. Items 1-8 represented federal (and state) requirements, while Items 9-14 represented expert guidelines for conducting manifestation determinations. Inter-rater reliability was established at 95% overall.

The analysis used descriptive statistics to compare the adopted procedures to federal requirements and expert guidelines. The overall match range for was 5/14-10/14 (36%-71%) for the 12 AEAs. The match range for the Items 1-8 was 5/8-8/8 (63%-100%). When the items were analyzed the match range for Items 1-8 was 2/12-12/12 (17%-100%). Items 9-14 had a match range of 1/12-0/12 (8%-0%).

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Entitled: MANIFESTATION DETERMINATIONS: HOW DO IOWA'S AEAS
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REQUIREMENTS AND EXPERT GUIDELINS?

has been approved as meeting the thesis requirement for the Degree of
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CHAPTER I

INTRODUCTION

The history of education in the United States is progressive in many respects. However, one population of students, those with special needs, has historically not been so fortunate (Winzer, 1993). Special needs children, including those who were deaf, blind, emotionally and behaviorally disordered, and the mentally handicapped, have been excluded, through a multitude of means, from public education.

Primarily, exceptional children were excluded from public education because educators and the medical community believed, and propagated the notion; that these children could not learn. During the 1800s and well into the 1900s parents of disabled children were given two placement options for their child, (a) keep the child home or (b) institutionalize the child in institutions that were generally abominable (Winzer, 1993).

In the early 1900s the current paradigm for educating disabled children began to shift. Teacher training and schools for disabled children were established in some areas. In addition, parents groups were formed, giving disabled students a voice in society. Although this movement stalled temporarily due to the Great Depression and World War II, the findings of the Supreme Court in *Brown v. Board of Education* galvanized the parents of disabled children to seek redress in the courts and legislative bodies.

Through the last half of the twentieth century parental groups and lawmakers have worked together to ensure a free and appropriate education for children with disabilities. As with laws in general, in

special education law there is a symbiotic relationship between the courts and the legislation. In this relationship the legislation passes the law (after holding hearings in which parents and educators testify), the court then clarifies the law when a challenge is presented, and then when the law is re-authorized the legislation usually encompasses the new interpretation of the courts (Yell, 1998).

One of the fundamental rights of all students in the United States, as established through legislation, is a free and appropriate public education (FAPE). Students in regular education can be excluded from educational programs by their actions, if those actions are known to violate in a fundamentally dangerous or chronic manner the code of conduct for a school. However, the right to FAPE is inviolate to students with disabilities. Although students with disabilities can be expelled for misconduct they must be afforded certain procedural safeguards prior to expulsion and continue to receive educational services throughout the expulsion period at public expense.

One aspect of the procedural safeguards governing the disciplining of students with disabilities is manifestation determinations. A manifestation determination is required when a special education student faces a disciplinary change of placement of greater than 10 days either at one time or cumulatively in a school year. A manifestation determination is, as its name implies, the determination of whether a behavior (the cause of the disciplinary incident) is a manifestation of the student's disability. Manifestation determinations are to be carried out by an IEP team convened for this purpose. To comply with the law, manifestation determinations must include answering a prescribe set of

questions as well as taking into account information provided by behavioral intervention plans, functional behavior assessments, and the IEP team which should include the parents of the child in question (U.S.C. 20 § 1415 (k)(4)).

If the behavior of concern is determined not to be a manifestation of the student's disability then the student may be disciplined as a non-disabled peer, except that educational services must be continued. If the behavior is considered a manifestation of the student's disability then the student may not be disciplined as a non-disabled peer. However, the IEP team may reconvene to discuss moving the child to an educational setting more equipped to deal the behavior of concern. Students with disabilities are not free from consequences, but they are protected from having their educational programs interrupted for more than 10 days in a school year.

Statement of the Problem

Manifestation determinations are inherently qualitative decisions. As such, there is great variation in how manifestation determinations are applied across situations and settings. Smith (2000) has questioned the validity of manifestation determination as practiced, "We have always been limited in our ability to definitely identify causation relationships even in our most sophisticated clinical settings. What leads us to believe that such a causal relationship can be determined (and determined reliably) across multiple staffing arrangements throughout our country?"(p. 7).

However, in a study of legal cases involving manifestation determinations, manifestation determinations made according to the

provisions of the IDEA 97 held up well under scrutiny by the courts. Smith continues that, "While such an analysis may be somewhat superficial, when compared to the ultimate question this result does confirm the importance of operationalizing an expectation for the IEP team, regardless of the vagueness of the construct under consideration" (Smith, 2000, p. 7).

When an IEP team is required to conduct a manifestation determination they are being asked to apply a behavioral construct to real life situations. While this task is difficult in clinical settings, IEP teams are asked to accomplish this lofty goal amid the turmoil of real life. However, research has indicated that IEP teams can be successful in this endeavor, to a certain extent, by operationally defining terms and asking the right questions (Smith, 2000).

However, members of IEP teams remain uncertain, confused and uninformed of regarding the conduct of manifestation determinations. In a recent (Spring, 2002) course on Special Education Law at the University of Northern Iowa, students, who were at four different sites (the class was taught via video link) and work in many different schools across Iowa were asked to bring the manifestation determination procedures for their schools to class for discussion. Responses to this assignment ranged from those who brought developed manifestation determination procedures to those who were asked, "a manifest what?" by their administrators (personal recollection of Dr. Susan Etscheidt, March, 2002).

Research Question

How do Iowa's area education agency adopted procedures for manifestation determinations compare with federal and state requirements and expert procedures?

Importance of Study

The foundation of this study is that the reliability of manifestation determinations can be improved when AEAs adopt procedures consistent with federal, state, and expert procedures. In addition, research indicates that judicial validity, the ability of a manifestation determination to withstand the scrutiny of the courts, can be improved by following a prescribed procedure (Smith, 2000).

Reviewing the procedures for manifestation determinations of Iowa's area education agencies (AEAs) will determine their consistency with federal, state, and expert procedures

In the future, this review can be used by AEAs and local education agencies (LEAs) as a guide in modifying current procedures or developing sound manifestation determination procedures. The development of procedures, which are reliable and judicially valid, is important to school districts on several levels. Litigation is costly, and bearing the cost of litigation when a school district is in violation of legal requirements, is even more costly. In addition, developing procedures based not only on the legal requirements, but also on expert opinion, will improve the overall quality of manifestation determinations.

Limitations of Study

One limitation of this study may be the quantitative content analysis of documents employed for this study. Documents rely on

written language to convey meaning. No attempt will be made at this time to ascertain meaning if not conveyed by the document. In addition, often written language can have dual meanings. In these instances meaning will have to be decided by the researcher, which subjects it to researcher bias. However, all issues of unclear meaning will be noted in the discussion section.

Another limitation is the source of the procedures under review. The research will focus on AEA procedures, which may differ from the procedures of the LEAs operating in the same geographical area.

Finally, written procedures may not be representative of practice in the field. Often, practitioners who comprise IEP teams have had more training and may supplement the procedures they were given by the AEAs if they feel they are not adequate. The opposite could be true as well. A practitioner that has not been well trained may fail to meet a requirement included in the procedures.

CHAPTER II

LITERATURE REVIEW

A Brief History of Educational Services to Exceptional Students Case Study

In 1938, Mrs. Jones*, a former school teacher and mother of six living on a ranch near LaGrange, Wyoming took in a 13-year-old foster daughter named Rita. Rita was considered "mentally deficient" and therefore was never sent to school. Mrs. Jones was told by educators and doctors that Rita was unable to learn anything beyond rudimentary personal care and that attempts to educate Rita would be frustrating to her and possibly damaging to Rita. At 13, Rita spent most of her days quietly playing with dolls or simply staring into space; she communicated with monosyllabic words and only if spoken to first. Mrs. Jones personal belief was that every child had potential and could be taught. After several weeks in the Jones household Rita began to show interest in the routine of the family and Mrs. Jones began to teach her housekeeping skills, including simple cooking tasks. When the younger Jones children were taught to read, Rita joined the lessons and eventually learned to read proficiently enough to enjoy children's books and magazines. Although Rita was never able to live fully on her own, she became a valued member of her foster family and contributed selflessly to her community and church for many years (*all names have been changed; personal recollections of Richard Miskimins).

Rita's story is the exception for disabled children during the early 20th century. During the 18th and 19th centuries disabled children were considered uneducable regardless of the category of disability. Blind, deaf, physically and mentally disabled children were excluded from all public and most private schools (Winzer, 1993). Physicians and educators counseled parents with means to institutionalize disabled children, while those without means were left to their own devices (Winzer, 1993).

In the late 1800s a movement began to classify different kinds of disabilities. Much of this movement was supported by parents whose children had been left deaf and/or blind by epidemics of scarlet fever, measles, mumps, and meningitis which had swept the United States (Winzer, 1993). These parents and a small group of physicians and pedagogues recognized that while the sensory receptors had been damaged, these children were the same cognitively as they were prior to the disease (Winzer, 1993). This is the first example of the parent-led "grass-roots type" organization that would prove to be (and still is) the driving force behind the education of exceptional children (Smith, 1998). Prominent advocates for the education of children with special needs during this time included Helen Keller and Alexander Graham Bell (Winzer, 1993).

While strides were being made in the education of the deaf and blind, including the opening of state-sponsored schools and teacher-training programs, children with mental or physical disabilities continued to be excluded from education. Many children with mental and physical disabilities were sent to institutions (still referred to as asylums) at this time. Care in such institutions was basic in the best of cases and barbaric in the worst cases (Winzer, 1993). In addition to the belief that these children were not educable, it was widely held at the time that these children did not feel pain in the same manner as "regular" people and they were often denied basic medical care (Winzer, 1993).

In 1904, collegiate training for teachers of mentally handicapped students began at the New Jersey Institution for Feeble-Minded Boys and Girls at Vineland. This was a major step forward for children with mental disabilities as the art of educating them began its life as a professional discipline (Winzer, 1993). During the early part of the 20th century other factors also impacted the need for special programming in schools. The first of these factors was mass immigration from non-English speaking countries. In 1909, 57.8% of students in the United States' 37 largest cities were foreign-born and did not speak English as their primary language (Winzer, 1993). In addition, recently-passed

child labor and compulsory education laws saw schools inundated with students of varying degrees of ability (Winzer, 1993).

Between 1852 and 1925 all of the current U.S. States passed compulsory education laws. Compulsory education laws provided a free and appropriate education to all children deemed educable (Winzer, 1993). However, the definition of educable varied greatly between school districts, providing schools with a means for excluding special needs students, which they were poorly equipped to handle. Some districts did accept special needs students on a case-by-case basis, yet other districts used bright-line criteria such as an IQ test to exclude special needs children (Jasper, 2000). By 1930, 17 states had passed permissive legislation allowing schools to use state funding for special education classes. However, this law did not require schools to have special education classes, and local administrators and school boards were allowed to decide whether or not to allocate resources to special education (Winzer, 1993). This system of identification, exclusion and half-hearted attempts would undergo radical changes during the last forty years of the 20th century.

In 1954, the U.S. Supreme Court heard *Brown v. Board of Education*. *Brown* dealt with an African American elementary student forced to go to an African-American only school across town, when there was a white only school two blocks from her home. Schools in Topeka

(Kansas) at the time were segregated by race. The Supreme Court struck down segregation stating that "separate cannot be equal." Although *Brown* dealt exclusion due to race it opened the door for challenges by groups that felt the sting of exclusion for a host of reasons (Yell, 1998). By 1960, parents of disabled children had organized grass-roots organizations which used *Brown* to as a precedent to file suits on behalf of their children (Jasper, 2000). Many of the child-advocate groups we are familiar with today were formed during this period of history including (but not limited to): The National Association for Retarded Citizens (ARC), The Council for Exceptional Children, The Association for Persons with Severe Handicaps, and many other disability-specific groups (Yell, 1998).

Important Court Decisions and Legislation in Special Education

As with other areas of civil rights progression in the United States, court decisions and legislation dealing with special education are inevitably entwined. It is asserted by scholars that Thomas Jefferson hoped that this relationship between judicial and legislative actions would provide Americans with dynamic rather than absolute civil codes (Simon, 2002). Nowhere is this relationship more evident than in the evolution of special education law and regulation. In the area of special education the courts have clarified aspects and application of the laws;

in turn, the legislature contributes to this symbiotic relationship by reconstructing laws to improve their application.

In 1954, *Brown v. Board of Education*, 347 U.S. 483 (*Brown*) rocked the educational establishment. *Brown* was a landmark case granting equal educational opportunity to all children. The Supreme Court stated that, "it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education...[S]uch an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms" (p. 493).

Although the issue in *Brown* was exclusion based on race, parents of disabled children saw the ruling as a means of gaining court decisions against the exclusion of their children from school (Yell, 1998). The language of *Brown* set forth equal access to education and protection of educational rights for all children. The door *Brown* opened swung wide and by 1960, parents of disabled children had begun to use advocacy groups to challenge exclusionary educational practices in the courts (Yell, 1998). Advocacy groups used *Brown* to "file lawsuits against their school district for segregating children with disabilities, arguing that exclusion of disabled children was also discrimination" (Jasper, 2000 p. 2).

The landmark case for disabled children was in 1972, *the Pennsylvania Association for Retarded Children (PARC) v. Pennsylvania*.

The lawsuit brought against the educational authorities of the state of Pennsylvania asserted that their failure to provide educational services to disabled children violated disabled children's right to the Equal Protection under the Laws Clause of the 14th Amendment to the United States Constitution (Yell, 1998). Witnesses for the plaintiffs established four critical points: First, all children benefit from educational programs including those with mental disabilities. Second, academics are not the only provision of the educational experience; independent living skills, such as dressing, cooking, shopping, etc. can also constitute an educational experience. Third, once the Commonwealth of Pennsylvania undertook the education of all its children, mentally disabled children could not be excluded simply because they need modification and accommodations to the general education curriculum. The plaintiffs asserted that all children were entitled to a free and appropriate public education (FAPE). Finally, experts testified that there was a cumulative effect to the education of mentally disabled children. Therefore, the earlier the education began for these students, the more benefit these students gleaned from their educational program (Yell, 1998).

PARC was resolved in favor of the plaintiffs. The federal district court ordered Pennsylvania to provide educational services to mentally handicapped children ages 6 through 21 years of age in programs as similar to those of their non-disabled peers as possible (Yell, 1998).

In the same year that the *PARC* decision was handed down *Mills v. the Board of Education of the District of Columbia* (1972) was heard by the courts. The suit was brought by the parents of seven children with various disabilities brought suit against the Board of Education of the District of Columbia for excluding their children from public education. The seven students were deemed a class representing 18,000 students being excluded from public education at the time. The case, *Mills v. Board of Education, District of Columbia (Mills)* challenged the right of the school board to exclude children with disabilities from public education without the benefit of due process safeguards. The plaintiffs in *Mills* also argued that their rights to Equal Protection under the Law, under the 14th Amendment were being violated.

A federal court found in favor of the plaintiffs and ordered the Board of Education of the District of Columbia to provide procedural safeguards. These safeguards provided the framework for the due process protections included in the Education for All Handicapped Children Act (1975).

Shortly after *PARC* and *MILLS*, Congress passed *The Rehabilitation Act of 1973*. The Rehabilitation Act was “enacted to protect the rights of disabled persons” (Jasper, 2000, p. 7). It is the predecessor to, and provided the framework for, the Americans with Disabilities Act of 1990 (Jasper, 2000). Section 504 of the Rehabilitation Act prohibited the

discrimination on the basis of handicap if the program in question receives federal funding. It states:

“No otherwise qualified handicapped individual in the United States...shall solely by reason of his handicap, be excluded from the participation in, be denied benefits of, or be subject to discrimination under any activity receiving federal assistance” (Section 504, 29 U.S.C. § 794(a)).

Section 504 also placed the burden on to schools to prove that they were providing educational programs for disabled students comparable to their non-disabled peers.

The Education Amendments of 1974 (P.L. 93-380) added provisions covering the education of disabled children to the *Elementary and Secondary Education Act*. Public Law 93-380 provided the charter and funding for the Bureau of Education for the Handicapped as well as the National Advisory Council on Handicapped Children.

The main focus of P.L. 93-380 was to require states receiving federal funds to provide services (educational opportunities) to disabled students. In addition, P.L. 93-380 solidified in legislation a federal court's order to afford students with disabilities specific due process rights and procedures. P.L. 93-380 was first legislation to address “least restrictive environment,” the concept that children with disabilities

should be served in programs as similar (or with) their non-disabled peers.

On November 29, 1975, *the Education for All Handicapped Children Act (EAHCA)* was signed into law. The EAHCA outlined a special education “bill of rights” and combined it with federal financial incentives for participating states. EAHCA required all states receiving federal funding to provide a free and appropriate public education (FAPE) for all disabled children ages 3 through 18 years.

Specifically, EAHCA required that students that qualified for special education had the right to:

- a) nondiscriminatory testing, evaluation, and placement procedures,
- b) education in the least restrictive environment,
- c) procedural due process, including parent involvement,
- d) a free education,
- e) an appropriate education” (Yell, 1998 p. 62).

The EAHCA provided funding which flowed from the federal government to the states and eventually to the local educational agencies (LEAs). States were expected to submit compliance plans and to submit to compliance audits in order to receive federal funding. By 1985, all states had met the federal requirements of the EAHCA.

In 1986, Congress passed *Public Law 99-372, the Handicapped Children's Protection Act*, which clarified and amended EAHCA. The main focus of the amendment was to protect parents who prevailed in legal case from exorbitant personal cost by awarding reasonable attorneys' fees and court costs to school districts if they did not prevail in a court case (Yell, 1998).

The P.L. 99-372 also extended the rights and protections of the EAHCA to infants and toddlers, ages birth to three years of age (Yell, 1998).

The *Individuals with Disabilities Education Act (IDEA, 1990)* amended the EAHCA in three major ways. First, the language of the law was changed to emphasize the person and not the handicap. For instance, disabled children were referred to as "children with disabilities" (Yell & Shriner, 1998). Second, autistic and brain injured students were given their own distinct class entitled to the benefits and protections of the IDEA. Finally, transition plans were required for students as part of their IEP by the time the student was 16 years old (Yell & Shriner, 1998).

The *American with Disabilities Act (ADA)*, of 1990, was touted as the most sweeping civil rights legislation since 1964 (Yell, 1998). The ADA, "expanded civil rights for individuals with disabilities in the public

and private sector” (Yell, 1998 p. 61). This protection included, but was not limited to disabled students attending private and public schools.

On June 4th, 1997 *the Individuals with Disabilities Act Amendments of 1997 (IDEA 97)* were signed into law. The changes were significant: to improve the IDEA, Congress passed the most significant amendments to it since the original passage in 1975 (The Education of All Handicapped Children Act). These amendments were seen as the next step in providing special education and related services by ensuring that students with disabilities would receive a quality public education emphasizing the improvement of student performance (Yell & Shriner, 1997). The Amendments of 1997 restructured the IDEA to reflect court decisions, advancements in educational research, and to attempt to close loopholes which led to exclusionary educational practices (Yell & Shriner, 1997). Congress also used the reauthorization of the IDEA to focus on teaching, and learning was given precedence over paperwork. In addition, issues of diversity were considered, safe school provisions were strengthened, issues of discipline were clarified, and a system of non-adversarial mediation was initiated for cases when parents and educators disagreed (Jasper, 2000; Yell & Shriner, 1997).

The IDEA 97 document was redesigned to be more “user-friendly.” For clarity, IDEA 97 begins with definitions of terminology in Part A; Part B details aspects of funding: sources, division, and requirements. States

must meet certain criteria to comply with the requirements and prove they are doing so in order to secure federal funds. Part B also defines the procedural safeguards designed to protect the rights of students with disabilities. In Part C of the IDEA 97, the Part B protections are extended to infants and toddlers (children birth through 3 years of age). The final section, Part D, provides states with a means of gaining additional funds in the form of grants for educating students with disabilities, research, personnel preparation, technical assistance, dissemination of information, parent training, and technology development.

One of the most meaningful changes was to the IEP team itself. The role of the parents was strengthened by making them members of the IEP team (Yell, 1998). Schools, from 1997 on, had to make "good faith" efforts to include parents in the IEP decision-making process or face the consequences (the possible loss of federal funds; Yell & Shriner, 1998). By making parents part of the IEP team, IDEA 97 ensured parents of disabled children that their students would have access to the general education curriculum or meaningful documentation of why they didn't (Least Restrictive Environment Statements on IEPs) and that the IEPs of disabled students would have meaningful educational goals directly linked to their needs (Yell, 1998).

IDEA 97 and Discipline

One of the most controversial areas of change within the IDEA 97 concerned disciplinary procedures for students with disabilities. One concern which prompted Congress to clarify the discipline section of the IDEA 97 was the disproportionate number of identified students involved in long-term suspensions and expulsions (Etscheidt, 2002; Smith, 1998). The purpose of the discipline changes to the IDEA 97 was to help educators balance the need to run safe, effective schools with the right of disabled children to obtain free and appropriate public education (FAPE; Yell & Shriner, 1998).

The IDEA 97 allowed educators to discipline disabled children in the same manner they disciplined non-disabled peers, except in a few respects (Yell & Shriner, 1998). When disciplining regular education students, educators can enact a change of placement such as an interim alternative educational setting (IAES), suspension, or expulsion unilaterally in accordance with the school's code of conduct. Special education students are subject to the same consequences with the exception that any change in placement greater than 10 days in a given school year triggers certain procedural safeguards. Safeguards for students with disabilities facing a disciplinary change of placement for greater than 10 days in a given school year include manifestation determinations and functional behavioral assessments to gauge the

behavior of concern in relationship to the student's disability. In order to protect schools, students who bring a weapon or drugs to school or a school function may be placed in an IAES for up to 45 days while the proceedings are ongoing. In addition, school officials can ask for an expedited due process hearing to place the child in an IAES if there is a compelling reason and the parents disagree with the IAES (20 U.S.C. § 1415 (k)(7)).

One due process safeguard for special educational students when facing disciplinary action is the manifestation determination. When school's desire to change the placement of a special education student due to a behavioral incident for more than 10 days (consecutively or cumulatively in a given school year), the IEP team has ten schools days in which to conduct a review of the student's disability in relationship to the disciplinary incident. This review is a manifestation determination: a determination if a behavior is a manifestation of a student's disability. If the behavior is determined not to be a manifestation of a student's disability the student may be disciplined as their non-disabled peers, with the exception that educational services must be continued (Yell, 1998). Even if the behavior is considered a manifestation of the student's disability, the IEP team may move for a change of placement, but not for long-term suspension or expulsion. As with other areas of discipline, parents have the option of asking for an expedited due

process hearing if they disagree with the outcomes of the manifestation determination. The specific components and requirements of manifestation determinations are the larger focus of this paper and will be addressed in the next chapter.

IDEA 97 also contained a suggested professional standard for conducting a Functional Behavioral Assessment (Hartwig & Ruesch, 2000). Functional Behavioral Assessments (FBAs) combine multiple forms of data collection to assess the antecedents, manifestations and consequences of a student's behavior. An FBA is now required by law (20 U.S.C. § 1415 (k)(1)(B)(I)). FBAs should help teams establish Behavioral Intervention Plans (BIPs). When constructing a behavioral intervention plan, IEP teams are required to take into account the FBA information and to individualize the BIP (Hartwig & Ruesch, 2000). In addition, IDEA 97 requires that BIPs contain some positive behavioral interventions and not just punishments (20 U.S.C. § 1415 (k)(1)(B)(I)).

Many educators and legal experts have grave concerns about the disciplinary provisions in IDEA 97. Among these concerns is that, because of the due process protections of IDEA 97, there now exists a dual disciplinary code in schools: one for disabled students and one for non-disabled students. Some assert that this duality promotes controversy:

Many schools and parents complained that a dual system of discipline is not justified, that the school's authority over disabled

youth was too limited, that the disabled should not be protected from punishment for their dangerous actions, and that others in the school should not be forced to accept the presence of any type of dangerous or highly disruptive students. Others felt that any intrusion on the rights of the disabled to an education ran the risk of returning the country to the "bad old days," when disabled children were shamefully neglected by the public education system. (Bryant, 1998 p. 491)

The premise of Bryant's 1998 article, *The Death Knell for School*

Expulsion: the 1997 Amendments to the Individuals with Disabilities Act,

was that IDEA 97 has leveled a lethal blow to the disciplinary tactics historically used to keep order in schools: suspension and expulsion.

Congress's purpose for IDEA 97 procedural safeguards was not to give free reign to disabled students to run amuck. The intention was to protect the educational rights of disabled students while balancing the need of educators to run safe, effective schools. Disabled students were not immune from consequences, merely immune from an interruption of their educational services for lengthy periods of time (more than 10 days per school year).

Educators choose whether the IDEA 97 discipline provisions mean death to orderliness and effectiveness in their schools. Do they throw up their hands because certain disciplinary tools have been removed from their repertoire or do they roll up their sleeves and find consequences which do not interfere with educational services?

Etscheidt (2002) asserts that the disciplinary reforms of IDEA 97 are

tacit reforms which, when applied correctly to practice, will improve the school culture for all students.

Manifestation Determinations

As stated previously, one of the most important and controversial changes to the disciplinary section of IDEA 97 was the legal requirement of manifestation determinations for students facing disciplinary changes of placement (Hartwig & Ruesch, 2000). The concept of determining if a behavior of concern is a manifestation of a student's disability prior to disciplinary action is supported by various court decisions, as described hereafter.

Manifestation determinations first appear by name in *Doe v. Kroger, 1979(480 F.225)*. In this ruling the Supreme Court for the State of Indiana stated that a school which accepts funds to educate disabled children cannot expel children whose behavior is a manifestation of their disability. However, if the behavior is not a manifestation of the disability the child can be expelled. The court maintained that it was the purpose of the EAHCA to provide a FAPE, but not at the expense of the other students attending the school.

Another court ruling in which manifestation determinations featured prominently was *S-1 v. Turlington (5th Circuit, 1981)*. *Turlington* established 4 guiding principles for manifestation determinations. First, the 5th Circuit Court affirmed that expulsion and long-term suspension

are a change of placement and invoke the due process protections under the EAHCA. Second, the 5th Circuit maintained that when due process procedures are followed that disabled can be expelled; however, educational services during the expulsion period must be continued. Third, if the manifestation determination team finds that the behavior is a manifestation of a child's disability, expulsion ceases to be an option. The court also stated that the child knowing right from wrong is not tantamount to a determination. Finally, the 5th Circuit deemed that a manifestation determination should be made by a knowledgeable team and that raising the question of the manifestation determination was the responsibility of the state and/or local educational agency.

Additional cases such as *Kaelin v. Grubbs, 1982*, also supported the judgment of the 5th Circuit Court, which became the standard for manifestation determinations and the foundation on which Congress based the manifestation determination requirement in the IDEA (Bagley, McGuire, & Evans, 1994). Although the IDEA required manifestation determinations, the exact requirements remained unclear to most educators (Bagley et al., 1994). In an effort to clarify the requirements for manifestation determinations, the Office of Special Education Programs (a branch of the Department of Education) wrote a memorandum to that end in 1995. The OSEP memorandum became the

basis for the restructuring of the manifestation determination section of the IDEA 97 (Yell, 1998).

IDEA 97 requires a manifestation determination if a disabled student is removed from school (suspended) for more than 10 days in a given school year (Hartwig & Ruesch, 2000). The ten-day time limit is reached through one ten-day suspension or the accumulation of ten days of suspension in a school year. The ten-day time limit resets with each educational setting (Yell, 1998). A manifestation determination is also required if a student has been placed in an IAES for possessing drugs or weapons on school property or if the student has been removed by a hearing officer for presenting a danger to themselves or others (Hartwig & Ruesch, 2000).

There are only two possible outcomes of a manifestation determination as defined in IDEA 97. Either the behavior is a manifestation of the student's disability or it isn't. If the behavior is determined not to be a manifestation of the student's disability then the disabled student can be disciplined like their non-disabled peers with the exception that educational services cannot be interrupted. If the behavior is a manifestation of a student's disability the student cannot be suspended or expelled; school officials can, however, move the child to a more restrictive educational environment if they use the appropriate process (20 U.S.C. 1415 (I)(A)(4)).

However, the decision is not one that should be made unilaterally nor in haste. Although IDEA 97 requires a determination decision in ten school days from the time of the incident, they also require that a manifestation determination be a team effort, the “many heads are better than one” concept. Ideally, the team making the determination should be a reconvened IEP team, including the parents of the disabled student--the inference being that the disabled student’s IEP team would have understanding of the student in relationship to the behavior of concern (Hartwig & Ruesch, 2000).

The team should also consider the assessment data collected for a student. IDEA 97 indicates that behavioral intervention plans (BIPs) and functional behavioral assessments (FBAs) should be conducted during the information gather stage of a manifestation determination (Hartwig & Ruesch, 2000). Clear procedures in IDEA 97 for BIPs and FBAs should, in theory, improve the team’s ability to arrive at the correct determination (Smith, 2000). IDEA 97 states clearly that information used to make a manifestation determination should be recent, and Smith (2000) clarifies that recent information is one year-old or less.

IDEA 97 lists several considerations for the IEP team when making a manifestation determination. First, the IEP team should consider the evaluation and diagnostic results and all other relevant materials,

including parental input. Second, observations of the student should be considered. Third, the IEP team should review the IEP and the educational setting in which the student has been placed. The team should make sure all the provisions of the IEP were being followed by school personnel and that the placement of the student was appropriate. Finally, IEP teams conducting a manifestation determination must determine if the disabled student had the ability to “understand the impact and consequences” of the behavior of concern (20 U.S.C. § 1415 (k)(4)(C)(i&ii).

Yell (1998), identified several considerations that are not appropriate when conducting manifestation determinations. First, the determination must be independent of the student’s disability classification. The court in *Turlington* supported this when they asserted that a causal relationship between disability and action can occur in any disability category. Therefore, a manifestation determination is required when any disabled student faces a disciplinary change of placement, not just those students classified as behaviorally disordered. Yell (1998) also states that the purpose of a manifestation determination is not an inquiry into whether the student knows the difference between right and wrong. Also supported by *Turlington*, the 5th Circuit court asserted that the disabled student knowing right from

wrong was not tantamount to determining that the student's misconduct was or was not a manifestation of the disability.

In an effort to further clarify the manifestation determination process Hartwig and Ruesch (2000) identified several questions the IEP team could ask when conducting a manifestation determination:

1. At the time of the incident, did the student have a disability?
2. In relation to the behavior subject to disciplinary action, are the student's IEP and placement appropriate?
3. Did the disability impair the student's capacity to understand the impact and consequences of the behavior subject to the disciplinary action?
4. Did the disability impair the student's capacity to control the behavior subject to disciplinary action? (U.S.C. § 1415 (k)(4)(C))

In the IDEA 97 the burden of proof that the behavior of concern is not a manifestation of a student's disability falls on the school (Yell, 1998).

The IEP team conducting the determination must follow prescribed procedures including: a hearing notice sent well in advance to the parents of the disabled student, a letter stating the behavior of concern and that the student may be expelled, the student's legal right to counsel, an explanation of the family's right to appeal the decision, and, finally, that the expulsion would constitute a change in educational placement (Hartwig & Ruesch, 2000).

Manifestation determinations continue to be a difficult area for IEP teams (Yell, 1998). Although manifestation determinations have been defined by both the courts and the legislature, it remains a largely qualitative judgment made by IEP teams, and therefore subject to bias (Hartwig & Ruesch, 2000). This bias can be exacerbated due to the population of students who often face disciplinary action. The majority of students facing a manifestation determination are labeled as behaviorally disordered and in many cases have turbulent histories with school personnel (Hartwig & Ruesch, 2000). Therefore, there is often additional incentive (whether purposeful or inadvertent) to find that a behavior is not a manifestation of a child's behavior in order to more easily move that child to a more restrictive educational setting (Katsiyannis, 1998).

As stated earlier manifestation determinations continue to be a controversial aspect of the disciplinary procedural safeguards within IDEA 97. When conducting manifestation determinations, IEP teams are asked to apply behavioral constructs to real world situations to determine causation, a process which behaviorist have yet to perfect in pristine environments (Smith, 2000). In addition, due to the qualitative nature of manifestation determinations they are subject to the bias of the IEP team. These factors in combination with anecdotal accounts of the implementation process, necessitates investigation into how AEA's

(and other educational agencies) apply the manifestation determination requirements (Conroy, Katsiyannis, Clark, & Gable, 2002).

CHAPTER III

METHODOLOGY

This study utilized a quantitative content analysis of documents to compare the adopted procedures for conducting manifestation determinations of 12 of the 15 AEAs in the state of Iowa to federal and state requirements and expert guidelines for conducting manifestation determinations. Gall, Borg, and Gall (1996) define content analysis of documents as, “a research technique for the objective, systematic, and quantitative description of the manifest content of communication” (p. 357). Each of the AEAs’ adopted procedures for conducting manifestation determination was reviewed to determine if the process was compliant with federal and state requirements and consistent with expert guidelines.

Quantitative content analysis of documents is advantageous for several reasons. Quantitative content analysis of documents employs a set instrument with which to review documents; therefore, the analysis is subject to less researcher bias (Gall et al., 1996). Quantitative content analysis of documents is also advantageous because it can identify strengths and weaknesses in the communication under scrutiny. For instance, if the AEAs’ adopted procedures compare favorably to federal and state requirements and to expert guidelines, then researchers can turn their attention elsewhere to understand why

manifestation determinations continue to cause confusion and controversy.

Sample Collection

The documents used for this quantitative content analysis were the adopted procedures for conducting manifestation determinations from 12 of the 15 AEAs in Iowa. The documents were collected by writing a letter of request (Appendix A) to the Directors of Special Education of each AEA. Two weeks after the initial mailing, a follow-up phone call was made to each AEA which had yet to submit a procedure, requesting the documents. It was requested that the documents be mailed to the home of the primary researcher. Upon arrival, all identifying information was removed or covered, by an assistant not involved in the research project, to preserve the anonymity of the AEAs. The procedures were assigned an identification letter (A-L) randomly, prior to the analysis of the documents.

Instrument

The instrument (see Appendix B) used to analyze the content of the AEAs' adopted procedures for conducting manifestation determinations was developed by the primary researcher. The instrument compared the AEAs' adopted procedures to the requirements of IDEA 97 and the IARSE and to expert guidelines. IDEA 97 and IARSE require the identical information for conducting a manifestation determination. The

items that pertained to federal and state requirements were numbers one through eight:

1. Does the document identify which members of the IEP team were present? (U.S.C. 20 § 1415 (4)(B))

2. Does the document solicit information from the student? (U.S.C. 20 § 1415 (4)(B))

3. Does the document solicit information from the parents of the student? (U.S.C. 20 § 1415 (4)(B))

4. Does the document solicit information concerning the appropriateness of the student's IEP placement? (U.S.C. 20 § 1415 (4)(C)(I))

5. Does the document solicit information concerning the appropriateness of the student's aids and services? (U.S.C. 20 § 1415 (4)(C)(I))

6. Does the document solicit information concerning the consistency of the behavior intervention strategies with the student's IEP? (U.S.C. 20 § 1415 (4)(C)(I))

7. Does the document examine the student's disability and how it may have impaired his/her ability to understand the impact and consequences of the disciplinary action? (U.S.C. 20 § 1415 (4)(C)(II))

8. Does the document examine the student's disability and how it may have impaired his/her ability to control the action of concern? (U.S.C. 20 § 1415 (4)(C)(III))

In addition, the instrument contained six items from expert guidelines found in the written work of Smith (2000), and Katsiyannis and Maag (2001):

9. Does the document solicit information from a recent (less than 1 year old) functional behavior assessment? (Smith, 2000)

10. Does the document solicit information from a recent (less than 1 year-old) behavioral intervention plan? (Smith, 2000)

11. Does the document examine whether or not the student had the prerequisite skills to engage in appropriate alternative behavior? (Katsiyannis & Maag, 2001)

12. Does the document examine whether or not the student was able to analyze problems, generate solutions, evaluate their effectiveness and select one? (Katsiyannis & Maag, 2001)

13. Does the document examine whether or not the student is capable of interpreting a situation factually? (Katsiyannis & Maag, 2001)

14. Does the document examine whether or not the student is capable of monitoring his/her behavior? (Katsiyannis & Maag, 2001)

The expert guidelines of Smith (2000) and Katsiyannis and Maag (2001) were based on case law dealing with manifestation determinations since IDEA 97 was enacted. The recommendations are sensitive to the legal requirements of IDEA 97 and judicial interpretations of compliance. In addition, the conclusions and recommendations presented in these articles are consistent with the general assessment procedures from the Standards for the Provision of School Psychological Services, published by the National Association of School Psychologists (1997).

The 14-item instrument served to analyze the adopted procedures for each AEA with the federal and state requirements and the expert recommendations for conducting manifestation determinations.

Inter-Rater Reliability

To establish the inter-rater reliability of the instrument, three of the AEA's adopted procedures were analyzed by the author as primary researcher and two independent raters, using the research instrument. Each of the three raters has completed a graduate-level course in Special Education Policy and Law and is familiar with manifestation determinations. In addition, the independent raters met with the primary researcher prior to rating the AEA's adopted procedures, for a training and feedback session.

First, the independent raters were asked to read the instructions on the top of the instrument (see Appendix B). After a solicitation for questions from the primary researcher (there were none), the independent raters were asked to review AEA A's adopted procedure for conducting manifestation determinations. Each of the 14 items was marked as present or absent as the documents were reviewed. The inter-rater reliability rate for the adopted procedures for AEA A was 86% (6/7) on Items 1-7, and 100% (6/6) on Items 8-13. A comparison of the ratings indicated that Item 2, Does the document solicit information from the student and his/her parents? (U.S.C. 20 § 1415 (4)(B)) was the cause of the discrepancy. After considerable discussion, the aforementioned Item was divided into: Item 2, Does the document solicit information from the student? (U.S.C. 20 § 1415 (4)(B)) and Item

3, Does the document solicit information from the parents of the student? (U.S.C. 20 § 1415 (4)(B)).

After this change, the adopted procedures for conducting manifestation determinations for AEA B and AEA C were reviewed by the primary researcher and the independent raters. On each of these reviews the inter-rater reliability was 100% for Items 1-8 (8/8) and 100% for Items 9-14 (6/6).

The average inter-rater reliability for the adopted procedures for conducting manifestation determinations for AEAs A, B, and C was 95% (39/41). Following the establishment of 100% inter-rater reliability on the final two adopted procedures, the primary researcher collected the remaining data. The primary researcher and the independent raters felt that the inter-reliability score accurately reflected that the instrument design was user-friendly, pertinent, and reviewed the data in a reliable manner.

Review of Data

A review of the data collected through comparing the AEAs' adopted guidelines with federal and state requirements and with expert guidelines was reported as descriptive statistics. The data were presented in four ways. First, the overall percentage match of the 14 items is presented in Table 1. Second, the items required by federal and state law (Items 1-8) were analyzed as being present or absent in each of

the AEAs' adopted procedures and represented as a percent of match. This is presented in Table 2. Third, the individual items (Items 1-8) were analyzed for all 12 AEAs. This is presented in Table 3. Fourth, the items which were expert guidelines (Items 9-14) were analyzed by percentage match also. These data are presented in Table 4. All data were reported as a number of items present out of a total number possible and then converted by percentage.

CHAPTER IV

RESULTS

Data from the quantitative document analysis of AEA adopted procedures for conducting manifestation determinations are presented in Table 1. This table reports the percentage of match between the 14 items on the instrument and the content each of the AEA's adopted procedures for conducting manifestation determinations. The overall match ranged from 36% to 57%.

Table 1

Percentage Match Between the Instrument Items and the AEA's Adopted Procedures

AEA	Number & Percentage Match
A	5/14 (36%)
B	5/14 (36%)
C	5/14 (36%)
D	6/14 (43%)
E	5/14 (36%)
F	10/14 (71%)
G	6/14 (43%)
H	5/14 (36%)
I	5/14 (36%)
J	7/14 (50%)
K	5/14 (36%)
L	5/14 (36%)

In Table 2, the AEA adopted procedures are compared to federal and state requirements as represented by Items 1-8 on the instrument. In addition, the percent match between Items 1-8 and the inclusion of

each item in the AEA adopted procedures. When the AEA adopted procedures for conducting manifestation determinations were compared to federal and state requirements (Items 1-8), the percentage of match ranged from 63-100%. When compared to federal and state requirements, one AEA had adopted procedures which matched all eight (100%) of the items, one of the AEA's adopted procedures matched seven of the eight items (88%), two of the AEA's adopted procedures matched six of the eight items and eight of the AEA's adopted procedures matched five of the eight items (63%).

Table 2

Comparison of Items Represented in AEA Adopted Procedures and Federal Requirements

AEA	Number & Percentage Match
A	5/8 (63%)
B	5/8 (63%)
C	5/8 (63%)
D	6/8 (75%)
E	5/8 (63%)
F	8/8 (100%)
G	6/8 (75%)
H	5/8 (63%)
I	5/8 (63%)
J	7/8 (88%)
K	5/8 (63%)
L	5/8 (63%)

In Table 3, the Items 1-8 which represent the federal and state requirements are presented according to the number of times they appear in the AEA's adopted procedures. An analysis of each item was conducted. The federal and state requirements were matched in a range of 17% to 100% within the AEA adopted procedures.

As reported in Table 3, instrument Item 4 and Item 6 were matched in AEA adopted procedures 12/12 times (100%), Item 3 was matched in the AEA adopted procedures 10/12 times (83%), Item 7 was matched in AEA adopted procedures 9/12 times (75%), Item 5 was matched in AEA adopted procedures 8/12 times (67%), and Item 1 and Item 2 were matched in AEA adopted procedures 2/12 times (17%).

In Table 4, the AEA adopted procedures were compared to expert guidelines as represented by Items 9-14 on the instrument. When compared to expert guidelines, only AEA F included Item 9 and Item 10 in their adopted procedures (2/12, 17%). Items 11-14 were not represented in any of the AEA adopted procedures (0/12, 0%). The number of times AEA adopted procedures matched instrument items representing expert guidelines is reported in Table 4.

Table 3

AEA Adopted Procedures Compared to Instrument Items 1-8

Item #	Number Matched & Percent
1. Does the document identify which members of the IEP were present? (U.S.C. 20 § 1415 (4)(B))	2/12 (17%)
2. Does the document solicit information from the student? U.S.C. 20 § 1415 (4)(B))	2/12 (17%)
3. Does the document solicit information from the parents of the student? (U.S.C. 20 § 1415 (4)(B))	10/12 (83%)
4. Does the document solicit information concerning the appropriateness of the student's IEP placement? (U.S.C. 20 § 1415 (4)(C)(I))	12/12 (100%)
5. Does the document solicit information concerning the appropriateness of the student's supplementary aids & services? (U.S.C. 20 § 1415 (4)(C)(I))	8/12 (67%)
6. Does the document solicit information concerning the consistency of behavior intervention strategies with the student's IEP? (U.S.C. 20 § 1415 (4)(C)(I))	12/12 (100%)
7. Does the document examine the student's disability and how it may have impaired his/her ability to understand the impact and consequences of the behavior of concern? (U.S.C. 20 § 1415 (4)(C)(II))	9/12 (75%)
8. Does the document examine the student's disability and how it may have impaired his/her ability to control the behavior of concern? (U.S.C. 20 § 1415 (4)(C)(III))	12/12 (100%)

Table 4

AEA Adopted Procedures Compared to Instrument Items 9-14

Item #	Number Matched & Percent
9. Does the document solicit information from a recent (less than 1-year-old) functional behavior assessments? (Smith, 2000)	1/12 (8%)
10. Does the document solicit information from a recent (less than 1-year-old) behavioral intervention plan? (Smith, 2000)	1/12 (8%)
11. Does the document examine whether or not the student had the prerequisite skills to engage in appropriate alternative behavior? (Katsiyannis & Maag, 2001)	0/12 (0%)
12. Does the document examine whether or not the student was able to analyze problems, generate solutions, evaluate their effectiveness and select one? (Katsiyannis & Maag, 2001)	0/12 (0%)
13. Does the document examine whether or not the student is capable of interpreting a situation factually? (Katsiyannis & Maag, 2001)	0/12 (0%)
14. Does the document examine whether or not the student is capable of monitoring his/her behavior? (Katsiyannis & Maag, 2001)	0/12 (0%)

CHAPTER V

DISCUSSION

The purpose of this study was to compare the adopted procedures of Iowa's AEAs for conducting manifestation determinations with federal and state requirements for conducting manifestation determinations and expert guidelines. The comparison was conducted as quantitative document analyses and was reported as descriptive statistics. The results are presented as a number out of the number of items possible and as a percentage thereof.

When AEA adopted procedures for manifestation determinations are compared with federal and state requirements, the match ranged from 2/12 to 100 (17%-100%). This finding may indicate that few AEAs have adopted procedures for conducting manifestation determinations which are completely consistent with federal and state requirements. Only three of the federal- and state-required items were present in 12/12 (100%) AEA adopted procedures for conducting manifestation determinations. The three aforementioned items were: Item 4. Does the document solicit information concerning the appropriateness of the student's IEP placement? (U.S.C. 20 § 1415 (4)(C)(I)), Item 6. Does the document solicit information concerning the consistency of behavior intervention strategies with the student's IEP? (U.S.C. 20 § 1415 (4)(C)(I)), and Item 8. Does the document examine the student's disability and how it may have impaired his/her ability to control the behavior of concern? (U.S.C. 20 § 1415 (4)(C)(III)).

Item 3. Does the document solicit information from the parents of the student? (U.S.C. 20 § 1415 (4)(B)) was present in 10 of the 12 (83%) AEA adopted procedures for conducting manifestation determinations.

Item 7. Does the document examine the student's disability and how it may have impaired his/her ability to understand the impact and consequences of the behavior of concern? (U.S.C. 20 § 1415 (4)(C)(II)) was present in 9 of the 12 (75%) AEA adopted procedures for conducting manifestation determinations.

Item 5. Does the document solicit information concerning the appropriateness of the student's supplementary aids and services? (U.S.C. 20 § 1415 (4)(C)(I)) was present in 8 of the 12 (67%) AEA adopted procedures.

In contrast, there were two items which were only present in 2/12 (17%) of the AEA adopted procedures for conducting a manifestation determination. Omitted most frequently were: Item 1. Does the document identify which members of the IEP were present? (U.S.C. 20 § 1415 (4)(B)) and Item 2. Does the document solicit information from the student? (U.S.C. 20 § 1415 (4)(B)) It is interesting to note that the two AEA adopted procedures which clearly listed the members of the IEP team to be involved in manifestation determinations were the same two that solicited information from the student.

Two of the AEAs adopted procedures for conducting manifestation determination omitted soliciting information from the parents. Parents are always to be part of the IEP team and must be included when any change to a student's IEP is under consideration (U.S.C. 20 § 1414 (d)(1)(B)(vii)). Indeed, parents are to have "meaningful participation in all

special education decision making, including IEP development and placement decisions” (Yell, 1998 p. 50).

Three of the AEA adopted procedures missed the item that addressed an examination of the student’s disability and how it may have impaired his/her ability to understand the impact and consequences of the behavior of concern. Interestingly, however, the same three AEA adopted procedures which omitted this item solicited information concerning whether the student understood right and wrong. While the former is required by law, the later has been legally rejected as a component of manifestation determinations. In rejecting this inappropriate consideration, Yell (1998) states, “According to the Fifth Circuit court in *Turlington (S-1 v. Turlington (1981))*, determining whether students are capable of understanding rules or regulations or right from wrong is not tantamount to determining that the student’s misconduct was or was not a manifestation of the disability” (p. 233).

Four of the 12 AEA adopted procedures omitted the item concerning the appropriateness of the student’s supplementary aids and services. Supplemental aids and services must be provided in compliance with a student’s IEP and those aids and services must be appropriate for an IEP team to determine that a behavior of concern is not a manifestation of a student’s disability. For example, a 16-year-old with an emotional disorder was subject to a disciplinary change in placement due to repeated behavior incidents. However, the hearing officer learned that the student in question had not received the supplementary aids and services as outlined in his IEP and therefore

overruled the change of placement (South Pasadena Unified School District, 28 IDELR 1112 (SEA CA 1998)).

The two most frequently missed items concerning documenting the IEP team members and soliciting information from the student, both apply to ensuring that the team making the manifestation determination is a legally constituted IEP team. Any change to an IEP, which is one of the primary purposes of a manifestation determination, requires reconvening a legally constituted IEP team. A legally constituted IEP team requires: the parents of the child with the disability, a regular education teacher, a special education teacher, a representative of the local educational agency, the child (when appropriate), and other individuals who have knowledge regarding the child (at the discretion of the parents and the school; U.S.C. 20 § 1414 (d)(1)(B)). If any of these IEP team members are not present at the manifestation determination meeting, the manifestation determination can be overturned. For example, a 16 year-old tenth grade student with a learning disability arrived at basketball practice disorientated. A blood alcohol test indicated that the student was, in fact, inebriated; the student was suspended for ten days and recommended for expulsion. At the manifestation determination review, the IEP team concluded that the behavior of concern was not a manifestation of the student's disability and upheld the disciplinary action. However, a hearing officer later overturned the manifestation determination finding due to the fact that a regular education teacher had not been present at the meeting and therefore a legally constituted IEP team had not been convened to make

the determination (Searcy Public Schools, 30 IDELR 825 (SEA AK 1999)).

Students (when appropriate) are also members of this IEP team (U.S.C. 20 § 1414 (d)(1)(B)(vii)). Logic would dictate that because all members of the IEP team, including the student, are required to give their input during a manifestation determination, a manifestation determination could not be conducted without input from the student. In all instances, good faith efforts must be made to solicit input from all members of the IEP team. If good faith efforts fail, the IEP team should document what efforts were made in specific reference to the manifestation determination.

When compared to the expert guidelines, the AEA adopted procedures for conducting manifestation determinations fared much worse. Only the adopted procedures of AEA F contained any of the expert guideline items, which constituted a match of 1/12 (.08%) for Items 9, and 10. The items represented in AEA F's adopted procedures for conducting manifestation determinations were: 9. Does the document solicit information from a recent (less than 1-year-old) functional behavior assessments? (Smith, 2000), and 10. Does the document solicit information from a recent (less than 1-year-old) behavioral intervention plan? (Smith, 2000).

Although behavioral intervention plans (BIP) and functional behavior assessments (FBA) are not part of the federal and state requirements for conducting manifestation determinations, they are required by law for any disabled student with "a tendency to misbehave" regardless of their disability category (Yell, 1998). FBAs examine the

antecedent and consequences of a particular behavior of concern in an effort to highlight triggers (O'Neill et al., 1997). IEP teams are required to incorporate data from a FBA into a BIP and must include positive behavioral supports (20 U.S.C. § 1415 (k)(1)(B)). Given that BIPs are part of an IEP, not implementing a BIP is equal in gravity to not implementing an IEP.

The remaining four items on the instrument: Item 11, Does the document examine whether or not the student had the prerequisite skills to engage in appropriate alternative behavior? (Katsiyannis & Maag, 2001). Item 12, Does the document examine whether or not the student was able to analyze problems, generate solutions, evaluate their effectiveness and select one? (Katsiyannis & Maag, 2001), Item 13, Does the document examine whether or not the student is capable of interpreting a situation factually? (Katsiyannis & Maag, 2001), and Item 14, Does the document examine whether or not the student is capable of monitoring his/her behavior? (Katsiyannis & Maag, 2001) were not represented in any of the AEA's adopted procedures for conducting manifestation determinations (0/12 or 0%).

Implications and Recommendations

There are several implications which may be drawn from the results of this review. Including all 12 AEAs, the research instrument had a possible 96 ($12 \times 8 = 96$) items for matching federal and state requirements for conducting manifestations. However, the AEA's adopted procedures for conducting manifestation determinations matched only 67 of the possible 96 items (70%). Although 70% is a passing grade in school terms, the results of this review may indicate a

lack of completeness with the adopted procedures for conducting manifestation determinations many AEAs are using.

In addition to completeness, consistency may also be an issue. The rate at which items on the instrument matched items found in the AEAs' adopted procedures for conducting manifestation determinations ranged from 17-100%, which may indicate a variation in how manifestation determination decisions are made from one AEA to another.

Hypothetically, a student with disabilities in AEA A who is not receiving supplementary aids and services required by his/her IEP may be removed from his/her current education placement because AEA A's adopted procedures for conducting manifestation determinations does not solicit the aforementioned information. That same student may not be removed from his/her educational placement in AEA F because information concerning the appropriateness of supplementary aids and services is solicited by AEA F's adopted procedures for conducting manifestation determinations. Consistency between AEA adopted procedures for conducting manifestation determinations may provide transient students with disabilities more equal protection under the law, the main tenet of the American With Disabilities Act (1990) and IDEA 97.

In the future, Iowa's AEAs may want to adopt statewide procedures for conducting manifestation determinations. Statewide procedures for conducting manifestation determinations may improve the completeness and consistency of manifestation determinations between AEAs.

The number of required items missing overall from AEA adopted procedures may call into question the ability of the AEA adopted

procedures to withstand legal scrutiny. A national review of cases indicated that, when manifestation determinations are contested, the judgment generally favors the school (Smith, 2000). Theoretically however, even one omission of the federal and state requirements, may cause a legal judgment in favor of a student. Such a judgment could involve a number of remedies ranging from reconvening the IEP team to review the original decision to financial remuneration (Yell, 1998). By including all of the federal and state requirements in their adopted procedures, AEA's may comply more strictly with those requirements and reduce their exposure to legal judgments.

There are additional implications which may be drawn from the results of the review of expert guidelines. Including all 12 AEA's, the research instrument had a possible 72 ($12 \times 6 = 72$) items for matching to expert guidelines. However, the AEA's adopted procedures for conducting manifestation determinations matched only 2 of the possible 72 items (3%). Granted, these expert guidelines are not as available or widely known as the federal and state requirements, nor are there legal consequences in not adhering to these guidelines. However, there may be value in their practice.

While FBAs and BIPs are federal and state requirements, they are not a required for conducting manifestation determinations. However, reviewing the information contained within a FBA or a BIP may assist IEP teams in "examining misconduct and planning supportive programs" within the educational environment instead of using the traditional dumping grounds of suspension, expulsion, and more restrictive placements (Etscheidt, 2002).

The questions raised by Katsiyannis and Maag (2001) in Items 11-14 on the research instrument are valuable not for their legal implications, but for the processing of information concerning the student's ability to not only control the behavior of concern but to engage in appropriate behavior. While the Items 1-8 (which represent federal and state requirements) address the issues surrounding the behavior of concern, they can not be directly linked to an intervention. In contrast, one of the values inherent in Items 11-14 is that the responses would link directly to interventions. For example, if the answer to Item 12, Does the document examine whether or not the student was able to analyze problems, generate solutions, evaluate their effectiveness and select one? was a resounding "no" the IEP team could design an intervention to work on those skills.

Federal and state requirements represent the minimum requirement acceptable before the law, not necessarily best practice (Yell, 1998). As high jumpers in the educational arena, maybe we should seek to place the bar higher than the minimum. Although it is unnecessary to duplicate effort or paperwork, being aware of expert guidelines as well as federal and state requirements may assist IEP team members to hone their thought processes in respect to conducting manifestation determinations. Such a paradigm shift in thinking may enable IEP teams to make the manifestation determination process a practice of helping students instead of "jumping through hoops" to remove a disruptive students (Etscheidt, 2002).

Future Direction

Comparison of AEA adopted procedures for conducting manifestation determinations with federal and state requirements and expert guidelines yielded results that may be useful in directing future attempts to clarify the manifestation determination process.

In the future, AEAs may want to examine their adopted procedures for conducting manifestation determinations in comparison to federal and state guidelines. Such a review may be advantageous to AEAs not only for legal validity, but also for the sense of professional competence that may be attained by following requirements precisely. In addition, by incorporating expert guidelines into the manifestation determination process the IEP team may also improve their educational programming decisions as well as improve their ability to link the manifestation determination process to interventions for the student.

AEAs may also need to examine the training IEP teams receive in conducting manifestation determinations. Once the AEAs have adopted procedures for conducting manifestation determinations that match federal and state guidelines 100%, the next logical step is to ensure that IEP team members have the skills they need to implement the procedures. Training materials used to train AEA personnel and other educators involved in the IEP process may need to be reviewed by not only AEA and LEA personnel, but also by experts who have studied the discipline and due process provisions of the IDEA 97. By allowing the aforementioned experts access to the training process it may be possible to expedite the use of manifestations determinations as a tool for improvement of educational programming as opposed to using

manifestation determinations as a tool for ridding schools of unwanted students.

Conclusion

This review focused on the AEA adopted procedures for conducting a manifestation determination and how those procedures compared to federal and state requirements and expert guidelines for conducting a manifestation determination. The review indicated that 11 of the 12 AEA adopted procedures were missing federal and state required items. In addition, only one of the AEAs included two of the six expert guidelines items. The remaining expert guidelines items were unrepresented in the AEAs adopted procedures for conducting manifestation determinations.

The results of the review may indicate that the AEAs need to review and revise their adopted procedures for conducting manifestation determinations. In addition, AEAs may want to consider the expert guidelines in an effort to improve placement decisions and link the manifestation determination process to interventions.

By utilizing manifestation determination procedures which match federal and state requirements and by utilizing expert guidelines in the process of reviewing behavior, it is possible that behavior will be addressed instead of schools using suspension and expulsion to rid themselves of disruptive students (Etschreit, 2002). Educating IEP teams to deal with behavior through intervention rather than removal may cause educators to examine the continued use of suspension and expulsion for regular education students as well. Such a paradigm shift

may improve the educational environment for all students, not just those with disabilities.

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APPENDIX A
LETTER OF REQUEST FOR AEA ADOPTED PROCEDURES TO
AEA DIRECTORORS OF SPECIAL EDUCATION

Keely J. Beam
UNI-SEC 617
Cedar Falls, IA 50614

July 15, 2002

Dear Director of Special Education,

Does it make you frown when you can't find a pen that works?

I am writing to request a copy of the procedures your AEA has adopted for conducting manifestation determinations. The procedures will be used in a statewide review of AEA adopted procedures for conducting manifestation determinations. The results of the review will be an integral part of an Ed.S. thesis at the University of Northern Iowa.

I am desirous of obtaining the procedures your AEA has adopted for conducting manifestation determinations because this document, formulated by an experienced team of professionals from your AEA, will contribute greatly toward understanding the problems faced in this area of service delivery.

All of the procedures collected will be assigned a code letter at random and identification will be removed prior to the review to preserve confidentiality.

If you would like a copy of the review results, please return the enclosed self-addressed, stamped postcard.

We would appreciate you sending your AEA's adopted procedures for conducting manifestation determinations in the enclosed self-addressed, stamped envelope by August 4th, 2002.

Enclosed is a pen and a smile. Thank you for you time.

Sincerely,

APPENDIX B
QUANTITATIVE DOCUMENT ANALYSIS INSTRUMENT

