



**Office of Educational Services
Level I / III
Internal Management Procedures**

**Internal Management
Procedure #
SUP.003.MDN.01**

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Internal Management Procedure Title:

Manifestation Determination

Effective Date:

July 1, 2020

Revised:

July 19, 2021

Authority :

N.J.A.C. 6A:14-2.8., N.J.A.C. 10A:4-9.8.

Promulgating Office:

Office of Educational Services
Division of Programs and Community Services

**Professional Association
Standard cited:**

Applicability: This Level I/III Internal Management Procedure applies to all New Jersey Department of Corrections' Organizational Unit Education Departments

Supersedes: *SUP.003.MDN.01 dated July 2020*

Review Schedule:

This document is scheduled for review on or about July 1, 2023 or as necessary.

This document was reviewed and approved by:

**Darcella Patterson Sessomes, Assistant Commissioner
Division of Programs and Community Services on July 12, 2021**

and

Jecrois Jean-Baptiste, Director, Office of Educational Services on July 10, 2021.

Documentation of the reviews/approvals are maintained by the APPM Unit.

I. PURPOSE

To establish a process to conduct a Manifestation Determination to address the behavioral needs of the SFEA student-inmates entitled to Special Education Services.

II. DEFINITIONS

The following words and terms, when used in this policy, must have the following meanings, unless the context clearly indicates otherwise:

Active Teaching Staff means teaching staff employed by the Office of Educational Services whose positions require possession of the instructional or educational services licenses in accordance with N.J.A.C. 6A:9-5.1 et. seq., and teaching staff employed by all district boards of education, charter

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schools, and non-public schools who hold positions which require the possession of the instructional or educational services licenses.

Assistant Supervisor of Education (ASOE) means under the direction of a Supervisor of Education in a state department, institution or agency, organizes, administers, and supervises the total educational program in institutions or agencies; does related work as required. Serves as the designated secondary supervisor and in the absence of the SOE, must serve as the primary supervisor.

Case Manager/Case Management means a member of the CST whose role is to oversee the implementation of the student-inmate's IEP. The case manager coordinates the development, monitoring and evaluation of the effectiveness of the IEP.

Child Study Team (CST) the CST is comprised of the Learning Disabilities Specialist (LDS), the School Psychologist, the School Social Worker, a general education teacher, a special education teacher, and the student-inmate. The CST's primary function is to evaluate and design appropriate programs for students who are experiencing learning, health and/or behavioral difficulties.

Division of Programs and Community Services means the division responsible for correctional facility and community-based program opportunities for offenders, which includes the offices of Community Programs, Educational services, Transitional and Social Services, Chaplaincy, County Services, Victim Services, and Volunteer Services.

Educational Staff means all staff hired to provide services within the NJ Department of Corrections at a state agency and/or Central office personnel under the direction of the Office of Educational Services. Educational Staff includes Educational Program Specialist 1 & 2, Supervisor of Education, Assistant Supervisor of Education, Teacher 1, 2, 3 (academic and vocational), Instructor Counselor, Instructional Technician Secured Facilities, Education Program Assistant 1 & 2, Secretarial Assistant, Software Development Specialist, Learning Disability Teacher Consultant, School Social Worker, School Counselor, and School Psychologist.

New Jersey Department of Corrections (NJ DOC) means that agency of the Executive Branch of the New Jersey State Government whose functions are to protect the public and provide for the custody, care, discipline, training and treatment of persons committed to the State correctional facilities.

Office of Educational Services (OES) means the office within the Department of Corrections, Division of Programs and Community Services, that has been established to ensure that inmates are provided with academic, vocational, and life skills programming that meet their demonstrated needs, within a framework that is consistent with the department's overall mission and in concert with all appropriate federal and State education statutes, codes, and regulations.

SFEA means the State Facilities Education Act of 1979 that was enacted for the purpose of providing a thorough and efficient education to all eligible students residing in state facilities.

III. POLICY

It is the policy of NJDOC Office of Educational Services to provide Manifestation Determination hearings to eligible students as required by N.J.A.C. 6A:14-2.8.

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IV. PROCEDURES

To address the behavioral needs of students entitled to Special Education services, the New Jersey Department of Corrections Office of Educational Services will provide Manifestation Determination hearings to eligible students as required by N.J.A.C. 6A:14-2.8. The following procedures outline the steps necessary once a special education student's behavior warrants Custody intervention:

1. The SOE/ASOE at each facilities that houses SFEA student-inmates will develop a "Sp. Ed. List" (SEL) to include all students with IEPs.
2. Upon documentation of a charge/disciplinary incident as defined in N.J.A.C. 10A:4-4.1 involving a student-inmate included on the SEL that occurs during the school day or during SFEA evening classes, the SOE/ASOE will notify Administration of the student-inmate's SEL status through provision of the incident report.
3. The SOE/ASOE will notify the Administration whether or not the incident occurred during the school day or movement to and from the school. The school day shall be defined as 30 minutes before the first class period of the day through 30 minutes after the final class period of the day, as well as 30 minutes before through 30 minutes after any given period of evening classes.
4. If the incident involved an SEL student during the school day, the SOE/ASOE will submit the report to the SFEA Coordinator who will review the report and determine if a Manifestation Determination meeting is appropriate.
5. If a Manifestation Determination meeting is appropriate, the SFEA Coordinator will direct the SOE to ensure the meeting is held within 10 school days of the date of the incident report.
6. Members of the Manifestation Determination meeting include, but are not limited to, the SOE/ASOE, the School Psychologist, the Learning Disabilities Specialist, a special education teacher, the student-inmate if available, and the individual who generated the report if appropriate.
7. If the student-inmate is unable to attend the meeting, the case manager will ensure that an effort is made to obtain the student-inmate's record and reasoning for the incident. These attempts can include, but are not limited to, face-to-face interview with the student-inmate, a telephone conference call, or a written statement from the student-inmate. The information gleaned from the student-inmate will be provided to the team leader of the Manifestation Determination meeting and incorporated into the decision-making process.
8. An impending Manifestation Determination hearing may not be cause for a "reasonable postponement" of a disciplinary hearing which must occur within seven calendar days of the alleged violation under N.J.A.C. 10A:4-9.8. If the disciplinary adjudication under the aforementioned statute occurs prior to the Manifestation Determination hearing, the sanction will be reviewed depending upon the results of the Manifestation Determination hearing.

Manifestation Determination hearing procedure:

- A. Meeting attendees review student-inmate's IEP and any other pertinent documentation to complete Manifestation Determination form. The SOE/ASOE or the student-inmate's case manager will serve as the team leader and ensure the form is completed.

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B. Based upon IEP review and completion of Manifestation Determination form, meeting attendees make a determination whether the problematic behavior resulting in disciplinary action is a manifestation of the student-inmate's disability. The team leader will make the final determination.

i. If NO: Student-inmate's re-evaluation schedule and IEP will remain in place.

ii. If YES: An IEP Re-evaluation meeting will be scheduled within the following 10 school days and a Functional Behavior Assessment (FBA) will be conducted to determine the need for a Behavior Intervention Plan (BIP) to be added to the student's existing IEP. The student may only be sanctioned with placement in administrative segregation upon confirmation of a bona fide security risk and/or other compelling penological interest as determined by facility Administrator and/or designee (e.g., Courtline authority). The team leader will inform the Administrator and/or designee of this decision so that the Administrator and/or designee may make this determination. An adjudication of guilt for a violation of N.J.A.C. 10A:4-4.1 will not be sufficient, without more, for a finding of a bona fide security or other compelling penological interest. An individualized finding by the facility Administrator or their designee as to that interest will be required in each case.

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V. CROSS REFERENCE DOCUMENTS and POLICIES

Document/ Policy Number	Title	Effective/ Revision Date
SUP.003.000	Office of Educational Services: MGO	August 1, 2016 revised

VI. APPLICABLE FORMS

Form Number	Form Title	Effective/ Revision Date
	SFEA Behavioral Intervention Plan (BIP) Form	June 1, 2020
	Functional Behavior Assessment (FBA) Form	June 1, 2020