



**SPECIAL EDUCATION DISCIPLINE
PROCEDURES AND MANIFESTATION
DETERMINATION REVIEWS**

Fall ICASE 2017

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Topics

Defensible Manifestation Determination Conferences

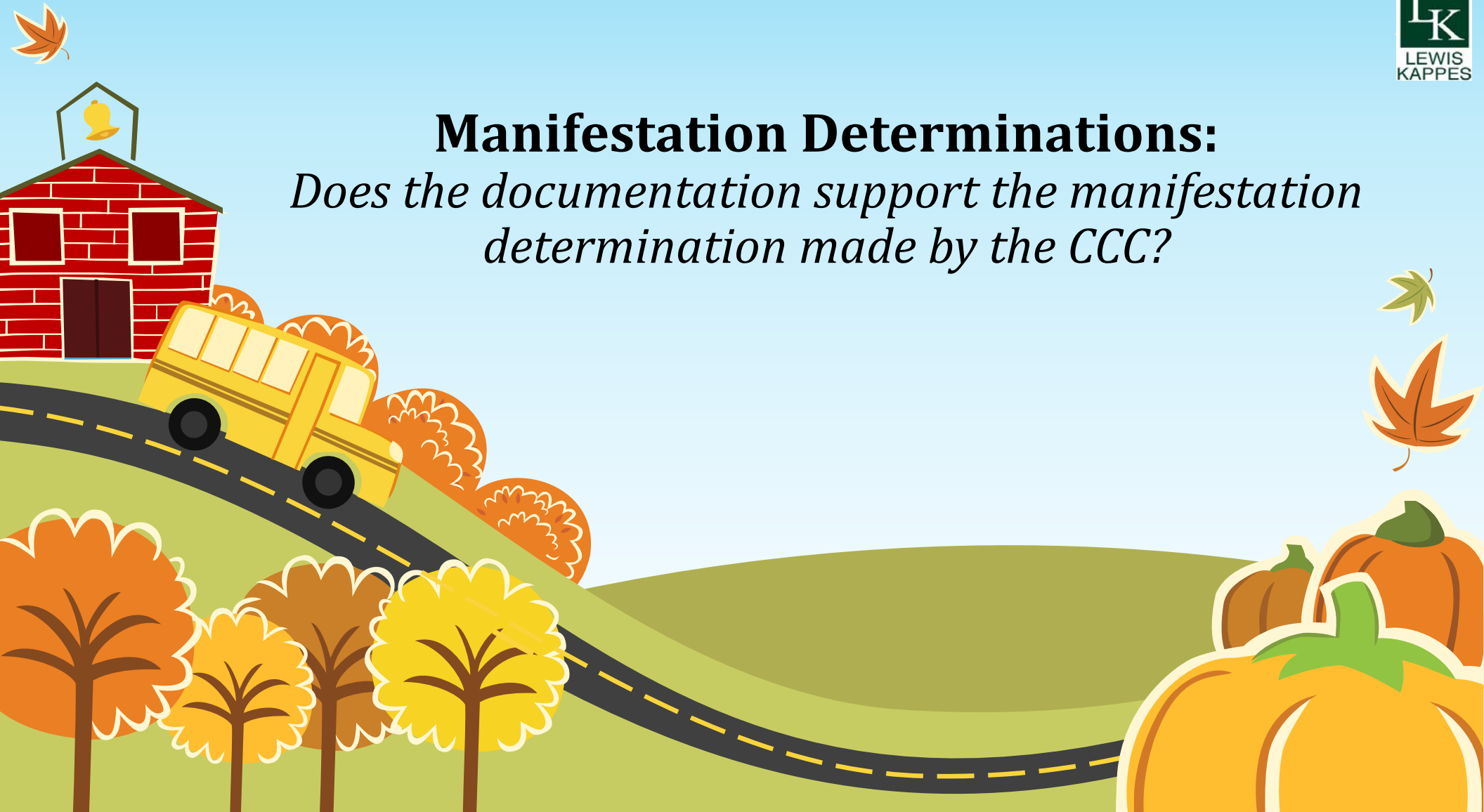
- **Preparation**
- **Review of MDC questions**
- **Development of FBA or Review of BIP**
- **Development of IAES**

11th Day Removals

- **Ensuring proper services during removal**

Manifestation Determinations:


Does the documentation support the manifestation determination made by the CCC?





What must be reviewed in a Manifestation Determination Conference?

Components of a Review. Within 10 school days of any decision to change the placement of a child with a disability, the case conference shall review all relevant information including:

- the student's IEP;
 - any teacher observations; and
 - any relevant information provided by the parents.
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What decisions must be documented?

After reviewing the relevant information the MDC will 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 School's failure to implement the IEP.

What needs to be prepared in advance of a manifestation determination conference?

(1) Get a copy of the incident report and review it for details – clear up any questions prior to getting to the meeting. Bring a copy to the MDC.

(2) Check with all teachers who may have been responsible for implementing any part of the IEP on the day of the incident and make sure that a) they were aware of the IEP, and b) they implemented the IEP, as written. If there is a behavior plan in place or an IEP goal that addresses behavior, bring documentation to support that you followed the plan

What needs to be prepared in advance of a manifestation determination conference?

(3) Review the student's educational file:

- What has been the trend of the student's IEPs for the past several years?
- What are the areas of focus for goals and objectives?
- What information is provided in the present levels of performance that is relevant to the behavior in question?

MDC preparation - continued -

- Has there been any functional behavior assessments or behavior intervention planning?
- What has been the level or intensity of special education programming over the past couple years?
- How does the current IEP address behaviors that relate to the misconduct?
- Was the IEP being followed in all settings by all persons?
- What trends are seen in the evaluations that have been conducted?

MDC preparation - continued -

- What behaviors occurred on the date of the incident?
- How did the student respond in the investigatory interview?
- Who was involved in observing the misconduct?
- Have similarly related behaviors been observed prior to this misconduct?
- What and which teacher observations will be shared?
- If this MDC concerns cumulative suspensions, then review discipline history.

Was the misconduct a manifestation of the student's disability?

YES: Related to Disability	NO: Not Related to Disability
<p>If the misconduct IS related to the student's disability, then the CCC:</p> <ul style="list-style-type: none"> • must conduct a FBA and implement a BIP (if none has been done before); • review and/or revise any existing BIP to address the behavior; and • return the student to the former placement before the incident occurred, unless otherwise agreed to by the parent and the School. <p>Even if the conduct is related, CCC may still recommend the removal of the student to an IAES <u>for up to 45 days only if weapons, drug, or serious bodily injury was involved</u></p>	<p>If the misconduct is NOT related to the student's disability, then:</p> <ul style="list-style-type: none"> • School personnel may apply the relevant disciplinary procedures to the student in the same manner and for the same duration as students without disabilities <p>For instance, the CCC may recommend the removal of the student to an interim alternative educational setting</p> <p>During any removal the student must continue to receive appropriate services as defined in 511 IAC 7-44-5(f)(1)-(3)</p> <ul style="list-style-type: none"> • A copy of the CCC recommendation is submitted to the expulsion examiner for the expulsion hearing.

The background is a vibrant autumn scene. In the foreground, there are several large, stylized pumpkins in shades of orange and yellow. In the middle ground, two scarecrows are visible: one in an orange outfit and one in a blue outfit, both with black crow-like figures perched on their shoulders. Behind them are tall green corn stalks with yellow tassels. The sky is a light blue, and there are a few falling leaves scattered throughout.

Review and Revise BIP or Development of a FBA

If the student's conduct was a manifestation of the student's disability



If the CCC determines that the conduct was a manifestation of the student's disability, the student's CCC must [either]

- (A) **conduct a functional behavioral assessment**, unless the public agency had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, **and implement a behavioral intervention plan** for the student; or*
- (B) if a behavioral intervention plan already has been developed, **review the behavioral intervention plan and modify it**, as necessary, to address the behavior*

511 IAC 7-44-5(e)(1)



Reviewing FBAs/BIPs as part of a MDC

- **A pattern of behavior or an isolated event?**
 - **Behavior occurring in academic or nonacademic settings?**
 - **Does the BIP specify how interventions will be implemented with maximum consistency across settings and people?**
 - **Was regular progress monitor, review, and revision of BIPs available for review by MDC?**
 - **How will FAPE or appropriate FBA and/or BIP be provided during periods of removals?**
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Quick Review: What is an FBA?

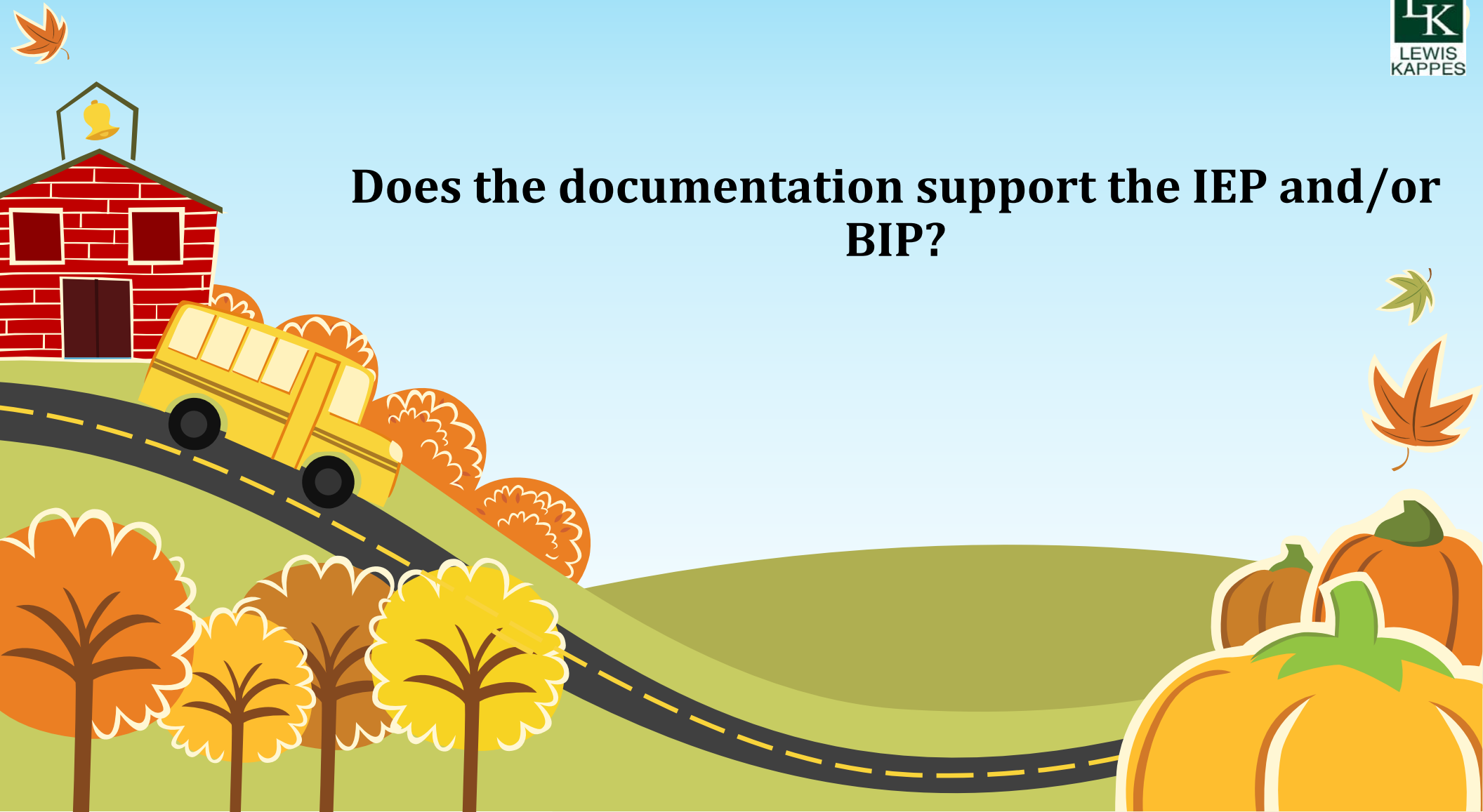
- "Functional behavioral assessment" means *a process that uses data to identify:*
 - (1) *patterns in the student's behavior* and
 - (2) *the purpose or function of the behavior* for the student.
- *FBA's are typically done preceding the creating of a Behavioral Intervention Plan (BIP)*

511 IAC 7-32-41

Is parental consent required to conduct an FBA?

- **Parental consent:**
 - A functional behavioral assessment may require written parental consent if it is an *educational evaluation*
 - Written **parental consent is not required** when a functional behavioral assessment *reviews existing data regarding a student* (511 IAC 7-32-41)
 - OR before “A screening of students by a teacher or a specialist to determine appropriate instructional strategies for curriculum implementation.” 511 IAC 7-40-3

Does the documentation support the IEP and/or BIP?



Behavior Intervention Plan Defined

- (a) "Behavioral intervention plan" means a plan agreed upon by the CCC and incorporated into a student's IEP that describes the following:
 - (1) The *pattern of behavior that impedes the student's learning* or the learning of others.
 - (2) The *purpose or function of the behavior* as identified in a functional behavioral assessment.
 - (3) The *positive interventions and supports, and other strategies*, to:
 - (A) address the behavior; and
 - (B) maximize consistency of implementation across people and settings in which the student is involved.
 - (4) If applicable, the skills that will be taught and monitored in an effort to change a specific pattern of behavior of the student.
- (b) The *IEP can serve as the behavioral intervention plan* as long as the documentation the parent receives meets all the requirements in this section





Development of the IEAS

The background features a stylized autumn landscape. On the left, a red brick barn with a yellow bell tower sits on a green hill. A yellow school bus is driving on a winding road that curves across the scene. The foreground is filled with various autumn trees in shades of orange, yellow, and brown. In the bottom right corner, there are several large, detailed pumpkins. The sky is a clear, light blue, with a few scattered autumn leaves floating in the air.



Determining An Appropriate IAES:

- IAES likely to come up in 4 situations:
 - (1) **Student brings weapon, illegal drugs, or inflicts serious bodily injury**
 - *School personnel may remove a student to an **interim alternative educational setting** for **not more than 45 school days** without regard to whether the behavior is determined to be a manifestation of the child's disability, **if the child**—*
 - (1) *Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;*
 - (2) *Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or*
 - (3) *Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA (IDEA § 300.530(g)).*
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IAES (continued)

- **(2) IHO determines current placement likely to result in injury to student or others**
 - *"an independent hearing officer may order a change of placement to an appropriate interim alternative educational setting for not more than forty-five (45) instructional days if the hearing officer determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others." ((511 IAC 7-32-53(4))*
- **(3) Expulsion for behavior is not a manifestation of disability**
 - *"when a CCC determines that a student's conduct is not a manifestation of the student's disability. The CCC may determine that during any period of removal a student will receive services in an interim alternative educational setting "* (511 IAC 7-32-53(3))

IAES (continued)

- **(4) Removals exceeding 10 days in “unique circumstances”**
 - *“The public agency may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with other requirements in this rule, is appropriate for a student with a disability who violates a code of student conduct. Unique circumstances may include the following:*
 - *(1) A student’s:*
 - *(A) disciplinary history; and*
 - *(B) ability to understand consequences.*
 - *(2) Supports provided to the student prior to violating a code of student conduct.(3) Other relevant considerations.” (511 IAC 7-44-2 (c))*

What services need to be in place to support a FAPE for interim alternative education services?



Appropriate services that enable the student to:

- continue to participate in the general education curriculum, although in another setting;
- progress toward goals set out in the student's IEP; and
- receive FBA/BIP services and modifications that are designed to address the behavior violation so that it does not recur, if appropriate. (If deemed not explain appropriate, why not.)

511 IAC 7-44-5(f)

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What documentation needs to be in place to support a FAPE for interim alternative education services?

- Did the CCC review the student's IEP and plan for how the goals and objectives would continue to be addressed through the IAES?
 - Did the CCC determine the duration of service from beginning date to end date? (If not related, then the period of time will be the duration of the expulsion period – not simply 45 school day.)
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What documentation needs to be in place to support a FAPE for interim alternative education services?

- Did the CCC review all the general education courses that the student participates in and develop of plan for how those areas would be addressed through the IAES?
 - Did the CCC determine the frequency and location of the services provided?
 - Did the CCC review any provision of related services that may need to be provided?
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Appropriateness of IAES

- Each decision will be a case by case analysis; however, previous IHO decisions can assist the CCC decision for an IAES placement.
 - School sending work packets home to the student for him to complete was not appropriate IAES; school should have provided a program to attend at which services were provided - 115 LRP 16763.
 - IHO concluded that the proposed IAES at an alternative school with smaller class sizes and more structure was an appropriate placement for a student who if stayed in current placement would “substantially likely to result in injury to student or others” - 111 LRP 21577.

Practice Points on the IAES

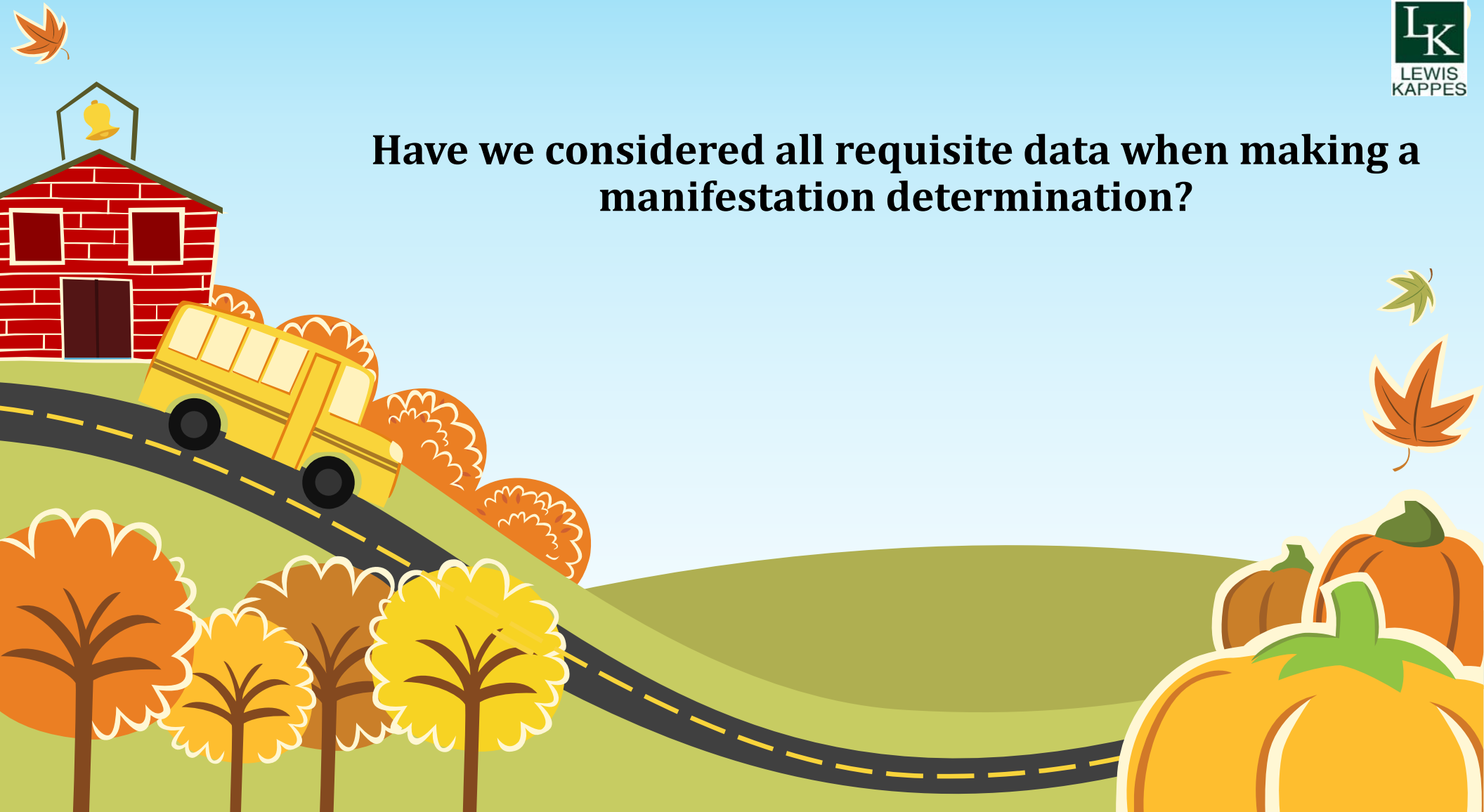
- ***Does the IAES have to comply with LRE? → NO!***
- ***Can you use homebound services for the IAES? → YES!***
 - Eg. HR-072-2017-E, August, 2017,
 - IHO found a change of placement to homebound (5 hrs per week) for the 2017-2018 school year was appropriate after a high school student with a mild cognitive disability was involved in a school bus fight and repetitive name calling/taunting of another student
 - IHO considered:
 - whether or not the student was aware of the consequences of his actions; cited student's possession of student handbook and previous fight at school that made him aware of consequences
 - Prior discipline history
 - Other students involved were expelled
 - IHO also ordered:
 - An FBA of the student and development of BIP if the FBA so determines one is needed.
 - Social work/counseling for 1 hour per week

What should be covered at the manifestation determination conference?

It is important to focus the MDC discussions.

- A MDC is not to determine whether the misconduct did or did not occur. *(This is an issue for an expulsion meeting.)*
- A MDC is not to determine or review whether the recommended discipline is appropriate for the offense. *(This is an issue for an expulsion meeting.)*
- The MDC must not presume relatedness based categorically on the student's disability.

Have we considered all requisite data when making a manifestation determination?



Written Notice Requirements for MDC determination





- Has the MDC provided prior written notice of:
 - A description of the proposed or refused action;
 - An explanation of why the action was proposed or refused;
 - A description of each evaluation, procedure, assessment, or record used as the basis for the proposed or refused action.

Removals Beyond 10 Days





Steps to Ensure Appropriate Services Provided during Removal

- **Step 1: *How many days has the student been removed?***
 - calculate how many days the student has been “removed”
 - 1-10 days: No services likely required
 - 11+ days: move to step 2
 - **Step 2: *Were removals beyond 11 days a change of placement?***
 - No: services are still required for each day of suspension beyond 11th day (See Step 4) However, holding a MDC is helpful.
 - Yes: manifestation determination required; move to step 3
 - **Step 3: *Was behavior a manifestation of the disability?***
 - CCC says YES: FBA and/or revise BIP and remain in placement
 - CCC says NO: student must continue to receive “appropriate” services; can be in an IAES → move to Step 4
 - **Step 4: *What is the appropriate IAES?***
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Step 1: How many days was the student “removed?”

Not a “removal” under Article 7

- A short-term removal of a student pursuant to the student’s IEP is not a removal.
- An in-school suspension is not considered a removal if, during the in-school suspension, the student has the opportunity to:
 - (1) progress appropriately in the general curriculum;
 - (2) receive the special education services specified in the student’s IEP; and
 - (3) participate with nondisabled students to the extent the student would have in the student’s current placement.

511 IAC 7-44-1 (c) & (d)

Considered a “removal” under Article 7

- Article 7 defines a removal as the removal of a student for **any** part of a day.
- If bus transportation is part of a student’s IEP, a removal of a student off the bus is considered a removal for purposes of discipline procedures.
 - *unless* the school provides transportation in an alternative manner

511 IAC 7-44-1(b) & (e))

Step 1: How many days has the student been removed?

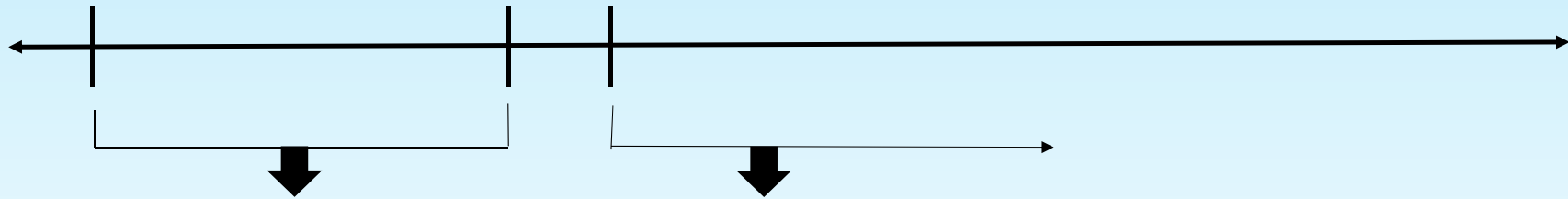
Removals for days 1-10

Removals for day 11+

Day #1

Day #10

Day #11



Schools are **not required to provide services** to a student with a disability during any of the first ten (10) cumulative instructional days of removal in a school year, for violating a code of student conduct, if services are not provided to a nondisabled student who has been similarly removed.

511 IAC 7-44-1

Certain procedures must be followed by the school (**and services provided**) if a student is either

- Removed for **more than (10) consecutive instructional days** in a school year; or,
- Removed for **more than ten (10) cumulative instructional days** in a school year AND the school determined that the *removals constitute a change of placement.*

511 IAC 7-44-1(g) & (h)

Step 2: Was 11th day Removal a “change of placement”?

Certain procedures must be followed by the school if a student is either:

- Removed for **more than (10) consecutive instructional days** in a school year; or
- Removed for **more than ten (10) cumulative instructional days** in a school year **AND the school determined that the removals constitute a change of placement.**

How is it determined that a series of removals results in a “change of placement?”

student must be subjected to a series of removals that constitute a pattern

A review must be made on a case-by-case basis, considering:





- The student’s disciplinary history;
- Ability to understand consequences; and
- Supports provided to student prior to misconduct
- Similarity of the behavior in each suspension;
- Length of removals;
- Cumulative time of removals; and
- Proximity of removals to one another.

Not a change of placement: no services required
Yes a change of placement: MDC required (move to step 3)



How should documentation support the services offered for services in the 11th day of suspension?

Provide notice to the parent informing the parent of:

- number of days of removals;
 - the rationale for determining that it is not considered to be a pattern/change in placement;
 - the personnel (including teachers) who were consulted in the decision;
 - the students' IEP with an explanation of how the students will be provided with services that continues to meet his/her IEP and general education curricular needs;
 - a description of the duration, frequency and location of the services provided; and
 - Procedural safeguards.
 - *Strongly consider either using the CCC process or to follow up with a CCC soon after providing notice.*
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