

Discipline & Manifestation Determination Reviews

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Roadmap

- Student Discipline
- Change in Placement
- Manifestation Determination Review
- Functional Behavior Assessments & Behavior Intervention Plans
- Special Circumstances
- Reminders for Manifestation Determinations
- Students Not Yet Identified
- Emergency Removals Under Title IX
- Questions



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Rules of Student Discipline

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Short-Term and Long-Term Suspensions

- *Principal: I think we are going to have to suspend this student...but he has an IEP...do we need to conduct a Manifestation Determination?*
- *How will the student's services be impacted if they are long-term suspended?*
- *Teacher: I thought that the school suspended this student...but they are back in the classroom?*



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Short-Term Suspension

- Has the student been suspended for less than 10 days?
 - If Yes→ This is a short-term suspension and students with IEP's are treated just like any other student regarding discipline.
 - Student is not entitled to appeal to Board of Education by law (check your own Board policies).
 - No FBA or Manifestation Determination Review is required.

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Short-Term and Long-Term Suspensions

- Has the student received **multiple short-term suspensions**?
 - If yes→ Does a series of removals/suspensions constitute a pattern of behavior?
 - If yes→ Will this short-term suspension take the student over the 10 day threshold?
 - If yes→ Hold an MDR.
- Has the student been suspended for **more than 10 days for one incident during the school year**?
 - Current suspension is a "change in placement" and an MDR is required.

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Change in Placement

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Change in Placement?

- Change in Placement = Disciplinary removal for more than ten (10) consecutive school days; or
- A series of removals that constitute a pattern *because*:
 - i) removals total more than ten(10) school days in a school year;
 - ii) the child's behavior is substantially similar to the child's behavior in previous incidents; and
 - iii) additional factors such as the length of removal, the total amount of time the child has been removed, and proximity of the removals to one another.

Policies Governing Students with Disabilities, NC 1504-2.7(s)

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Change in Placement?

- The LEA determines on case-by-case basis whether disciplinary removals constitute a pattern *Policies Governing Students with Disabilities*, NC 1504-2.7(b)(1)

How do you count days – what is a removal?

- In-school suspensions
- Shortened school days
- School bus suspensions

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In-School Suspension (ISS)

DOE has clarified that ISS does not need to be counted as removal days for purposes of triggering an MDR if the student:

- Appropriately participates in the general curriculum;
- Receives the services specified on the IEP; and
- Participates with nondisabled students to the same extent.

Caution: Repeated use of ISS can be considered a removal.

➤ See Dear Colleague Letter dated August 1, 2016 (OSERS/OSEP) and 71 Fed. Reg. 46, 715 (2006)

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Shortened School Day

Administratively shortened day due to behavior may constitute a pattern resulting in a change in placement.

- See *Letter to Mason* (OSEP July 27, 2018).
- Applies when shortened school days are imposed repeatedly as a disciplinary measure.
- May create a "pattern" of removals triggering IDEA disciplinary protections, including the right to a manifestation determination review.

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School Bus Suspensions

- If the bus transportation is a part of the child's IEP, a bus suspension is treated as a suspension under 34 CFR 300.530 unless the school system provides the bus services in some other way.
- If the bus transportation is not a part of the child's IEP, a bus suspension is not a suspension under 34 CFR 300.530.

➤ 71 Fed. Reg. 46715 (August 14, 2006)



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School Bus Suspensions

School systems should consider whether behavior on the bus is similar to behavior in a classroom that is addressed in an IEP and whether the child's behavior on the bus should be addressed in the IEP or a behavioral intervention plan for the child.

- 71 Fed. Reg. 46715 (August 14, 2006)



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Notification - Parent's Right Handbook

On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of the Code of Student Conduct, the LEA must notify the parents of that decision, and provide the parents the **procedural safeguards notice** described in NC 1504-1.5.

Policies Governing Students with Disabilities, NC 1504-2.1(h)

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Notification- Parent's Rights Handbook

- North Carolina has a 1-year statute of limitations on IDEA claims.
- Exceptions:
 - Parent was "prevented" from filing due process b/c:
 - Misrepresentation; or
 - Withholding of information required to be provided the parent under state or federal law.

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Be Proactive

Proactive strategies for IEP teams to Consider

- Develop a procedure/document to record removals in your school.
- Ensure teams are implementing positive behavioral supports.
- If a student is starting to have behavioral issues with or without removals, call an IEP meeting. Team may need to revise behavior goals, revise the BIP or initiate a functional behavior assessment.
- Talk to the parents and student about the concerns.
- Request assistance from others in your district.

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Manifestation Determination Review

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Manifestation Determination Review

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

- (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.

Policies Governing Students with Disabilities, NC 1504-2.1(e)(1)

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Manifestation Determination Review

WHEN must the MDR be conducted?

- The MDR analysis must be performed *within 10 school days* of "any decision to change the placement of a child with a disability because of a violation of a code of student conduct."

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Manifestation Determination Review

WHO are the MDR Team Members?

- The MDR should be conducted by the district, the parent, and relevant members of the IEP team (as determined by the parent and the district).
- Parents have the right to invite additional participants to the MDR; however, they do not have the right to veto the district's choice of team members.

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Manifestation Determination Review

WHAT Information does Team Review?

- The MDR must involve a review of "all relevant information in the [child]'s file, including the child's IEP, any teacher observations, and any relevant information provided by the parents."
- The "relevant information" may also include recent evaluations, discipline reports, FBA, BIP, etc.
- It is not the role of the MDR team to investigate or determine facts underlying the misconduct.

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Manifestation Determination Review

The conduct must be determined to be a manifestation of the child's disability if it is determined that:

- The conduct was **caused by**, or had a **direct and substantial relationship** to, the child's disability; or
- The conduct was the **direct result** of the agency's failure to implement the IEP.

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Manifestation Determination Review

The administration should defer to the IEP team's decision on the MDR.

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Manifestation Determination Review

If the conduct WAS NOT a Manifestation of the Child's Disability:

- Student is disciplined as if not disabled.
- Allow the child to continue to participate in the general education curriculum and to continue to make progress on their IEP goals.
- IEP team determines services and placement.
- As appropriate, review and modify FBA and BIP in order to address the behavior "so that it does not recur."

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Due Process

- If the parent disagrees, the Parent has the right to request an expedited due process hearing.
- The ALJ may find that the behavior was a manifestation of the child's disability and return the child to the placement from which the child was removed.
- The Parents may also request mediation.
- The Parent also has the right to file a State complaint.

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Manifestation Determination Review

If the conduct WAS a Manifestation of the Child's Disability:

- Child cannot be suspended for the conduct.
- Return child to their current placement, unless IEP team, **including the parents**, agree to a change in placement.
- Conduct an FBA, unless the FBA was previously conducted.
- Implement a BIP, or if already developed, review and modify as necessary.
- If IEP was not being implemented correctly, take immediate steps to remedy deficiencies.

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Due Process

- If the LEA disagrees, the LEA may request an expedited due process hearing.
- The ALJ may find that returning the child to the original placement is substantially likely to result in injury to the child or to others.
- ALJ may change the placement to an Interim Alternative Educational Setting for 45 school days.
- This procedure may be repeated at the end of 45 days.

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Manifestation Determination Review

If the IEP Team cannot reach consensus:

- The LEA must make the determination and provide the parent with prior written notice.

➤ Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions, OSERS, July 19, 2022, Question F-6

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Expedited Hearings

- Must occur within 20 school days of receipt of the petition by the other party.
- Hearing officer must make a determination within 10 school days after the hearing.



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Functional Behavioral Assessments & Behavior Intervention Plans



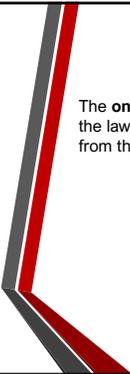
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Requirements

The **only** time a functional behavioral assessment (FBA) is mentioned in the law is in relation to school personnel's authority to remove a child from their educational placement for disciplinary reasons.

➤ See 34 C.F.R. 300.530(f)(1)



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Requirements

If the IEP team determines that the conduct was a manifestation of the child's disability, the team must:

- Conduct an FBA unless the LEA had conducted an FBA before the behavior that resulted in the change of placement occurred and implement a BIP.
- If the BIP already has been developed, review the BIP and modify it, as necessary, to address the behavior.



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Requirements

When it is determined that the behavior is not a manifestation of the child's disability and the child is removed from his or her current placement, the child must:

- Receive, as appropriate, an FBA and "behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur."
- If a behavioral intervention plan already has been developed, it must be reviewed and modified, as necessary, to address the behavior.

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Requirements

Who is qualified to conduct an FBA?

- There is no requirement that a Board Certified Behavioral Analyst (BCBA) conduct an FBA.
- Each LEA must ensure that all personnel necessary to carry out the purposes of IDEA are appropriately and adequately prepared, including personnel who conduct FBAs.

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Special Circumstances

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Special Circumstances

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 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.

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Special Circumstances

(4) Upon the end of the removal to the **interim alternative educational setting** for not more than 45 school days for reasons (1) through (3) above, the child shall be returned to the placement from which he/she was removed, **unless the parent and the LEA**, through the IEP Team process, agree to a change of placement.

Policies Governing Students with Disabilities, NC 1504-2.1(g)

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Definitions

- (1) **Controlled substances** means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
- (2) **Illegal drug** means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

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Definitions

(3) **Serious bodily injury** is defined as: (i) Bodily injury which involves – (ii) a substantial risk of death; (iii) extreme physical pain; (iv) protracted and obvious disfigurement; or (v) protracted loss or impairment of function of a bodily member, organ, or mental faculty. (20 U.S.C. 1415(k)(7)(D) and 18 U.S.C. 1365(h)(3)).

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Definitions

(4) **Weapon** has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code and includes a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such a term does not include a pocketknife with a blade of less than 2 ½ inches in length.

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Special Circumstances

The district must still conduct an MDR after the removal, regardless of the seriousness of the student's conduct.

➤ See 71 Fed. Reg. 46,714

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Interim Alternative Educational Setting

Whether a **child's home** would be an appropriate interim alternative educational setting under §300.530 would depend on the particular circumstances of an individual case such as the length of the removal, the extent to which the child previously has been removed from his or her regular placement, and the child's individual needs and educational goals.

Where the removal is for a longer period, such as a 45-day removal under 34 CFR §300.530(g), special care should be taken to ensure that the services required under 34 CFR §300.530(d) can be properly provided if the IEP Team determines that a **child's home** is the appropriate IAES.

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Preparation for MDR Meeting/Reminders

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Preparing for the MDR Meeting

- Discuss the purpose of the meeting with the parent PRIOR to the meeting. Assist the parent in understanding this meeting is NOT an opportunity to appeal or to debate the facts of the incident. Make sure parent has been provided with information on how to appeal the suspension and facts of the incident.
- Gather all documentation, including the student's IEP, most recent evaluations, any medical information, information from the student's teachers and other staff, observation data, discipline reports, FBA, BIP and any other information pertinent to this process.

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Preparing for the MDR Meeting

- Talk to the teachers/staff about how each implement the student's IEP, including accommodations, modifications, BIP and related services. Allow teachers to give input on the student's behavior in their classroom.
- Gather specific information about the removal including any facts prior to the incident that led to the behavior in question.
- Do your best to ensure the parent's participation. Inform the parents they may bring any documentation they feel is relevant to the process.

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Reminders

- Remember the purpose of the meeting and stay to the facts.
- Review all information, including information provided by the parents.
- Allow for input from each member, including the parents.
- Keep the process professional (teachers may need to vent prior to the meeting).
- ***If the team does not agree, the LEA representative makes the decision.***

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Reminders—The Aftermath

- Discuss with the student's teachers any revisions made to the student's IEP and/or BIP.
- Ensure the student is receiving services (if suspension was served).
- Ensure student is making IEP progress and has access to the general curriculum.
- Frequent check ins with the student and teachers regarding student's progress.
- Share positive feedback with the parent.

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Students Not Yet Found Eligible

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Students Not Yet Found Eligible

Obligation for MDR for students not identified?

- District must have **knowledge** that the child was a child with a disability prior to the behavior that led to the disciplinary action.
- **Knowledge** means:
 - Parent has notified supervisory/administrative personnel of their child's need for special ed.
 - Parent has requested an evaluation.
 - Teacher/district personnel have expressed specific concerns to the EC Director or supervisory personnel.

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Students Not Yet Found Eligible

- The district does not have **knowledge** if
 - The child's parent did not consent to an evaluation or refused special education services; or
 - The child was evaluated and determined not to be a child with a disability.
- A district must evaluate a child referred for special education during a period of disciplinary removal.
- The evaluation must be conducted in an expedited manner.

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Emergency Removals Under Title IX

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Title IX Emergency Removals

- Issue: A child with a disability under IDEA, or a student with a disability under Section 504, is accused of "sexual harassment" under Title IX.
- Title IX requires investigation of the allegations; however, the Grievance Process can last 30-90 days.



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Title IX Emergency Removals

- **What is sexual harassment?**
 - **Unwelcome conduct** on the basis of sex determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it effectively **denies a person equal access** to the school system's education program or activities.
 - Sexual assault, dating violence, domestic violence or stalking
 - This determination requires consideration of all the facts and circumstances, including, but not limited to, the ages and disability statuses of the harasser and the victim...; and/or

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Title IX Emergency Removals

- **Title IX Presumption of Non-Responsibility**
 - Under Title IX, a student is presumed not to be responsible for sexual harassment, until and unless, a decision-maker has found the student responsible following the completion of the District's Title IX Grievance Process.
- **IDEA**
 - Under IDEA, a district must conduct a manifestation determination review for a student with a disability within 10 days of "any decision to change the placement of the [student] because of a **violation of a code of student conduct**."

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Title IX Emergency Removals

- Under Title IX, a school may remove a student from its education program or activity on an emergency basis, if:
 - The School conducts an individualized safety and risk analysis
 - Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and
 - Provides notice and an opportunity to challenge the decision immediately following the removal.
- "This provision [of Title IX] may not be construed to modify any rights under IDEA, Section 504, or the ADA."

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Title IX Emergency Removals

- "[N]othing in [Title IX] prevents a [district] from involving a student's IEP team before making an emergency removal decision, and [Title IX] does not require a district to remove a [student] where the [district] has determined that the threat posed by the [student], arising from the sexual harassment allegations, is a manifestation of a disability such that the [district's] discretion to remove the [student] is constrained by IDEA requirements."

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So When Should I Conduct the MDR?
Before, During, or After the Title IX Process?



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Title IX Emergency Removal

- What does your district's Title IX policy say?
- Is the student being considered for an emergency removal?
- Would the Emergency Removal be a change in placement?
- Are there special circumstances under IDEA?

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Title IX Emergency Removal

- **If no Title IX Emergency Removal**
 - Was the student found responsible in the Grievance Process?
 - Is the Decision-maker recommending or imposing long-term suspension?
 - Consider MDR following completion of the Title IX Process but before imposition of a long-term suspension.
- **If District is Considering Title IX Emergency Removal**
 - Call your Board Attorney!

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Best Practices

- Communication between Title IX Coordinator & EC Director.
- Communication between Threat Assessment Team & EC Director.
- Remember IDEA's "special circumstances".
- Stay Tuned! New Title IX Regulations are on the way!

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