



Manifestation Determinations: How Solid Are Yours?

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Polling the Audience:

- Superintendent or Assistant Superintendent?
- Central Office Personnel?
- School Administrator?
- Teacher?



Polling the Audience (cont.):

- Disciplined a special education student?
- Participated in a Manifestation Determination Review (“MDR”) meeting?
- Participated in a manifestation determination hearing?
- Participated in a special education due process hearing?



By the time a parent files a due process petition:

- All the facts and decisions are already there.
- All the documentation already exists (or doesn't exist).
- Any misunderstandings about the law are no excuse.
- These mistakes are expensive, but . . .
- **AVOIDABLE!**

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The Basics



LEA Representative
Through Day 10
Day 11 and beyond



LEA Representative:

- What is the role of the LEA Representative on the IEP Team?
- What are the disadvantages to delegating this responsibility?
- How can delegating this responsibility affect an administrator?



General Discipline Documentation

Tips:

- Keep accurate attendance logs.
- Code suspensions as suspensions.
- Sign in and sign out sheets may become evidence.



Groups of students entitled to discipline protections:

- EC students;
- 504 students; and
- Students not yet identified but the school system “knows” the child is a child with a disability.



For each identified student, the LEA representative should know:

- The student's disability;
- If the school has done a Functional Behavior Analysis ("FBA"); and
- If the student has a Behavior Intervention Plan ("BIP")?
- If the student's teachers are aware of the BIP and if it is being implemented consistently.

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Rule 1:

Students receive no special protections for disciplinary removals totaling 10 days or less in a school year.

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What constitutes a “removal”?:

- Bus suspensions?
- Alternative school?
- Half days?
- In-school suspension?
- Out of school suspension?
- Parent signed student out “in lieu of” suspension?
- Make sure the suspensions are properly coded and sign in/ sign out logs are accurate.
- Attendance records, sign in/out logs, etc., may be entered as evidence in a due process hearing or judicial procedure.

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Day 11 and beyond. . .



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Rule 2:

On the 11th day of removal, what a child is entitled to depends on whether a removal is “change in placement.”



What is a “change in placement”?:

- Single “removal” (i.e., suspension) for more than ten (10) days;
- OR
- A “Pattern” of shorter suspensions totaling more than ten (10) days.

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“Pattern”:

Removals were due to similar types of behavior.



Other “various factors” must be considered:

- Total amount of time that student has been removed;
- How close the removals are to one another; and
- The length of each removal.

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First things first:

- If no change in placement, “FAPE lite” (services decided on by an administrator and a teacher).
- If change in placement, FAPE as decided by the IEP Team.



Test Yourself:

- Suspended for 5 days in September for walking the hallways and disrespect toward staff +
 - Suspended for 4 days in November for being out of class and walking in the hallways +
 - Suspended for 4 days in January for being disorderly in the girls' locker room +
 - Suspended for 5 days in February for disobedience and walking in the hallways.
- = Pattern?



Test Yourself (cont.):

- 4.5 days in October for theft +
 - 3 days in early December for theft +
 - 8 days in late December for weapon possession
- = Pattern?



Test Yourself (cont.):

- 1 day ISS +
 - 9 days OSS +
 - 9 days of bus suspension
 - All suspensions were for “physical or verbal altercations and/or name calling”
 - 14 of the 19 suspensions were in April and May
- = Pattern?

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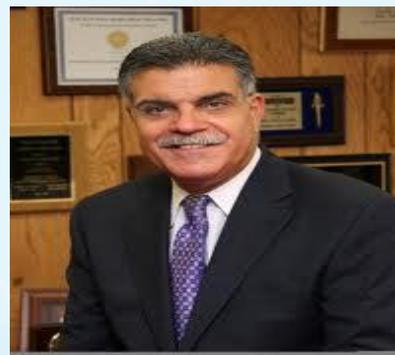
Who Makes the Decision as to Whether There Has Been a Change in Placement?

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Your Principals





So be sure your principals:

- Know and understand the law;
- Have accurate knowledge of the number of suspensions;
- Understand the actual reason for each suspension;
- Gather ALL the information they need BEFORE making a decision.



Best Practices:

- Identify which administrator will make the decision at each school.
- Offer professional development for these identified administrators.
- Provide a “cheat sheet” for the administrators making the decision that outlines what they must consider at each step and what evidence they need.
- Establish a process for checking with the EC Director (or other designated central office administrator) before decision is finalized.

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What about the parents?





Duty to inform?

If the principal decides that the suspension is NOT a change in placement, then ... the principal has NO duty to conduct a Manifestation Determination Review (“MDR”) meeting or notify the parents of his/her decision.

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When Must a Manifestation Determination Review Be Conducted?





When the suspension is a change in placement (i.e., more than 10 days, pattern of removals, etc.):

1. The principal **MUST** inform the parents of the decision;
2. Schedule a MDR meeting; and
3. Hold the MDR meeting within 10 school days from the date the principal decides to change the placement of the student.



What about LEA practice to always conduct a MDR meeting on Day 11:

- Pros/Cons.
- If the LEA representative (i.e., Principal) doesn't believe the suspension is a change in placement, then say so at the beginning of the meeting.
 - Be sure this is reflected in the minutes.

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Manifestation Determination Review Meeting



Who?
When?
What?



Who comprises the MDR Committee?

- LEA Representative.
- Parent.
- *Relevant* members of the IEP Team.
- Per 4th Circuit decision: the LEA Representative determines the school system's members of the MDR Committee and the parents may determine who they wish to invite.



When is the MDR meeting held?

- Within 10 school days of the decision.
- For example:
 - The principal decides to suspend the student on October 10, 2013.
 - The MDR meeting must be held by October 24, 2013.



What happens at the MDR meeting?

- The MDR Committee reviews:
 - A history of the student's disability;
 - The student's IEP, BIP, etc.;
 - Formal test results;
 - Disciplinary history;
 - Behavior in class;
 - Reports from teachers;
 - Additional information from parents;
 - **Finally**, the student's involvement in the specific incident in question.



What an MDR meeting is NOT:

- The time to investigate the incident.
- The time to discuss whether the penalty is too harsh.

Remember:

- The decision as to whether or not the student violated the code of conduct should be made in the same way that it is made for non-disabled students.



What is decided at the MDR meeting?

1. Is the conduct that the student is being disciplined for caused by or does it have a direct and substantial relationship to the student's disability?
2. Is the conduct in question the direct result of the LEA's failure to implement the IEP?



When does a disability “cause” a student to misbehave?

Look at the disability → behavior:

- Student identified as:
 - disabled in speech with an articulation disorder
 - hits a teacher.



When does a disability “cause” a student to misbehave? (cont.):

Look at the disability → behavior:

- Student identified as:
 - Autistic.
 - screams in the cafeteria.
- Student identified as:
 - Other Health Impaired due to her ADHD.
 - Disrupts class by interrupting teacher.



A little harder to decide:

- Student identified as:
 - Autistic.
 - hits another student who is sitting at the lunch table eating.
- Student identified as:
 - specific learning disabled but has a diagnosis of Oppositional Defiant Disorder in his file.
 - refuses to comply with the directives of the teacher.
- Student identified as:
 - severely emotionally disabled.
 - initiates a fight in the bathroom.



Failure to implement the IEP:

- Did the LEA fail to implement the IEP?
- More importantly, was the conduct in question the direct result of that failure?

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The Lasting Effects of the Decision Made at the MDR Meeting





Conduct IS a manifestation of the disability:

- LEA must conduct an FBA and implement a BIP or review and/or modify an existing BIP.

AND

- Student is returned to most recent placement prior to removal.



Conduct is NOT a manifestation of the disability:

- Student is disciplined as if the student is not disabled.
- Student continues to receive FAPE.
- IEP Team determines the appropriate setting for the student.



Exception 1:

- Regardless of whether the conduct is a manifestation of the student's disability, if the conduct involves weapons, drugs, or infliction or serious bodily injury =

Removal for 45 school days.



Exception 2:

If the parents and the school agree to the change of placement (e.g., to the alternative school) after a violation of the student code of conduct, then there is no disciplinary “removal” and no manifestation determination is needed.

DOCUMENT this conversation!

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IDEA v. 504



What Is the Difference?



Section 504 - Changes In Placement:

A district's ability to discipline a disabled student is significantly limited if it would constitute a "significant change" in the child's placement.

"It is OCR policy that, when the exclusion of a student with a disability is permanent (expulsion), or for more than ten consecutive school days, the exclusion constitutes a **significant change in placement.**"
Greenville County Sch. Dist., 34 IDELR 188 (S.C. 2000).



Section 504 - Changes In Placement

(cont.):

A series of suspensions may create a **pattern** that constitutes a significant change in placement.

A change in physical location (school) is not necessarily a change in placement if there is no change in the student's educational program. *AW by Wilson v. Fairfax County School Bd.*, 372 F.3d 674 (4th Cir. 2004).



Section 504 - Changes In Placement

(cont.):

A change in placement is determined on a case-by-case basis.

Factors include:

- Proximity of the suspensions to one another; and
- Total amount of time excluded from school.

If a student's placement remains unchanged, a school may utilize the same disciplinary measures as for any other student.



Section 504 - Manifestation

Determinations:

According to OCR, and similar to the IDEA, Section 504 requires a district to conduct a manifestation determination if a disciplinary action constitutes a “significant change” in a disabled child’s placement. *OCR Memorandum Re: Suspension of Students with Disabilities*, 16 EHLR 491 (1989).

The requirement of a manifestation determination is not expressly stated in the Section 504 statute or regulations. OCR supports its interpretation using 34 C.F.R. § 104.35, which requires a reevaluation before any “significant change in placement.”



Section 504 - Manifestation

Determinations (cont.):

Unlike the IDEA, the Section 504 regulations do not explicitly provide procedures or requirements for conducting a manifestation determination hearing. It is clear that compliance with the IDEA regulations regarding manifestation determinations will satisfy Section 504.

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Section 504 - Manifestation

Determinations (cont.):

If it is determined that the disabled child's misconduct **is** a manifestation of the child's disability:

- the child's placement and 504 plan should be reviewed and revised as appropriate; and
- according to OCR, the child may not be excluded from school for more than ten (10) days.

If it is determined that the misconduct **is not** a manifestation of the child's disability, the child may be excluded from school in the same manner as similarly situated non-disabled children are excluded.

NO SERVICES REQUIRED

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What if parents disagree with the decisions?

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Parents can:

- File an OCR complaint.
- File a state complaint.
- Institute a due process action.



Stay Put:

- Under IDEA, if the parent challenges the decision, then the student must “stay put” in the setting decided by the LEA until:

1. The hearing officer renders his/her decision



OR

2. The timeline for the disciplinary removal naturally expires.



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Final Thoughts





Law Enforcement:

Nothing in the IDEA prohibits the LEA from reporting any crime to the appropriate authorities.

Nothing in the IDEA prohibits the SRO from intervening when necessary to ensure student safety.

Nothing in the IDEA allows the IEP Team to restrict law enforcement's access to disabled students.

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Parents challenge these decisions!

A LOT!

And not just the parents who usually advocate for their children's rights.



Timeline:

- The timeline is expedited (i.e., 7 days).
- Seven days is not long to gather information and prepare for a hearing.
- The school system only has 7 days, but the parent has a year to plan and prepare to file.
- So . . . be prepared and gather your facts and supporting documents **BEFORE** the MDR meeting.



Homebound:

- Don't use homebound as a way to avoid serving and disciplining disabled students.
- Homebound is appropriate **ONLY** if it is the least restrictive environment appropriate for that student.
- The IEP Team must meet every 30 days to revisit this same question: Is this the least restrictive environment for this student?

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Practical Suggestions:

- Be sure your administrators are serving as the LEA Representative in IEP meetings.
- Designate administrators in each building to make change of placement decisions.
- Conduct professional development for these administrators.
- Work with your legal counsel to draft a *guiding statement* for your administrators about what constitutes a “pattern” in your district.

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Be cognizant of the impact of the MDR decision on:

- Future MDR meetings.
- Administrators.

A close-up, slightly blurred photograph of a crowd of people. Many individuals have their hands raised in the air, suggesting an interactive session like a Q&A period or a public meeting. The focus is on the hands and forearms, with some people wearing watches or jewelry. The background is out of focus, showing more people and what appears to be an outdoor setting.

Questions?