

## **Q&A: The Right to a Manifestation Determination Review (MDR)**

### **What is an MDR?**

An MDR is a meeting that schools<sup>1</sup> are required to hold when considering the exclusion of a student with a disability that constitutes a change of placement. The process is required by the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 (Section 504). Notably, it is **not** a hearing. Within 10 school days of a decision to change a student's placement, a review team, including the parent(s)/guardian(s) must conduct a review to determine if the behavior of concern is a manifestation of a student's disability. All relevant files and observations, including an Individualized Education Program (IEP) or Section 504 plan, if applicable, must be reviewed.

### **When is a manifestation determination required?**

Under the IDEA, manifestation determinations **must** be conducted before a disciplinary significant change in a student's placement, which happens when a student with a disability is excluded from their program for:

- 10 or more consecutive school days; or
- 10 or more cumulative school days in a school year, under circumstances that show a pattern of exclusion.

A student does not necessarily have to be formally suspended or expelled for 10 or more school days before the manifestation determination requirement is triggered. For example, in-school suspensions, bus suspensions, partial-day suspensions, and other forms of removal may count toward the 10 school days if the removal is related to behavior and the student code of conduct. The 10-day trigger does not reset after each manifestation determination. Additionally, the requirement to conduct a manifestation determination applies to students with disabilities who are not yet formally identified – i.e., students who do not have an IEP or Section 504 plan – if the school had knowledge, at the time of the removals, that the student had, or was suspected of having, a disability.

Under Section 504, a student similarly must have a manifestation determination after removal for 10 or more consecutive school days. Suspensions of less than 10 consecutive school days does not constitute a significant change in placement, but a pattern of short-term disciplinary removals that total 10 or more school days may constitute a significant change in placement.

### **How is a manifestation determination conducted?**

The school must convene a group of people – often the Section 504 team or relevant members of the IEP team – to discuss whether the misconduct that resulted in the removal(s) was caused by, or directly and substantially related to, the student's disability or disabilities.

- If the group determines that the misconduct was a manifestation of the student's disability, then a change in placement is generally prohibited. However, this often triggers the need to further evaluate the student to determine if the student's current plan, services, and placement are appropriate.
- If the group determines that the misconduct was *not* a manifestation of the disability, then a change in placement is generally allowed. The parent(s)/guardian(s) must receive a copy of the procedural safeguards.

Questions that are ***not relevant and should not be discussed*** during an MDR include:

- Whether the student knew right from wrong;
- Whether the student acted intentionally; and
- Whether the student knew what they were doing at the time of the behavior.

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<sup>1</sup> In this document, "school" is a term used to include public K-12 schools, including charter schools.

Under the IDEA, the team must also consider whether the behavior was a result of the school failing to implement the student's IEP. If the team determines it was a result of a failure to implement the IEP, then a change in placement is generally prohibited.

### **Can a school use short-term disciplinary removals?**

The U.S. Department of Education has indicated that short-term disciplinary removals from current placements may indicate that a child's IEP or Section 504 plan is not appropriately addressing the child's behavioral needs. Studies have shown that removals from school do not help reduce or eliminate misbehavior and can produce unintended or undesirable results. Instead, addressing the behavioral needs of the child is more likely to address the misbehavior. The U.S. Department of Education has also indicated that the 10 days specified are not "free days." Any short-term disciplinary removals may indicate a need for an IEP or Section 504 plan revision.

### **What if the misconduct is determined not to relate to a student's disability?**

Under both Section 504 and the IDEA, if the manifestation determination team decides that the behavior was not related to a student's disability (or due to a failure to implement an IEP), the school may impose the same long-term suspension or expulsion as a nondisabled student would receive. Under the IDEA, a student is still entitled to educational services if they are suspended or expelled. Under Section 504, a student who is suspended or expelled is not necessarily entitled to receive services during that time.

However, remember that if the misconduct *is* because of a student's disability, the student *may not* be disciplined. Instead, the school should reconsider discipline and placement decisions.

### **Does a student stay in school if a parent/guardian or school files a due process complaint challenging the outcome of a manifestation determination?**

Under the IDEA, yes. The IDEA has a stay-put requirement, which guarantees that the student stay in their current placement pending the resolution of a manifestation determination. This may be in an interim alternative educational setting as determined by the student's IEP team. The Supreme Court in *Honig v. Doe* has further stated that a student cannot be indefinitely suspended until the conclusion of the determination. Under Section 504, there is no similar guarantee, but the Office of Civil Rights has indicated that fair due process would include waiting for results before making any change in placement.

### **What can I do my rights have been violated?**

If you need help or have questions about your rights, you can contact [Disability Law Colorado](#).

For Section 504 violations, you have a right to file a complaint with the [U.S. Department of Education's Office for Civil Rights](#) (within 180 days of the alleged discrimination) or the [U.S. Department of Justice](#). For IDEA violations, you can pursue dispute resolution through the [Colorado Department of Education](#) (CDE).

### **Where can I go for more information?**

- 34 Code of Federal Regulations (C.F.R.) Sections 105.35-36 and 300.530 (e)
- OCR's [Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools](#)
- OCR's [Policy Guidance Portal](#)
- OCR's [Dear Colleague Letter](#)
- Colorado Department of Education's [Special Education Guidance Documents](#)