

New Directions

DISABILITY RIGHTS
NORTH CAROLINA

Champions for Equality and Justice



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Keeping Kids in School and Safe

Understanding Manifestation Determination Reviews (MDR)

If a child with a disability receives specialized instruction under the Individuals with Disabilities Education Act (IDEA) and commits an offense that violates the school district's code of conduct resulting in an exclusion from school longer than ten (10) school days, relevant members of the individualized education program (IEP) team must conduct a manifestation determination review (MDR) to decide if the conduct was a manifestation of the child's disability. In carrying out a manifestation determination review, the parent, the local educational agency (LEA), and relevant members of the IEP team meet to review all relevant information in the student's file, including the child's IEP, teacher observations, assessments, and reports. It is very important for parents to understand the process, know what is at stake, and know how to advocate effectively for their child.

The American Civil Liberties Union and Human Rights Watch released a report, Impairing Education: Corporal Punishment of Students with Disabilities in U.S. Public Schools. Among other findings: "School districts across the U.S. have implemented [Positive Behavior Supports] and have seen substantial declines in disciplinary referrals and improvements in school-wide safety."

Director's Message

Communication is an exchange of information between people, and includes speaking, writing, signing and even behavior. For effective communication to take place, there must be rapport, some sense of understanding and empathy. The way students with special needs act — including the way they behave in school — can be a form of communication. So-called "bad" behavior could mean many things, including: "This is not working." "I'm frustrated." "I don't understand." "I need something different." "I'm scared." Educators need to listen very carefully.

This newsletter focuses on protections that help keep students with different and sometimes challenging behaviors in school. It provides strategies for ensuring

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MDR Roadmap: A Step-by-step Guide

A student with a disability eligible for special education services under the Individuals with Disabilities Education Act (IDEA) violates the school district's code of conduct.¹



School officials can suspend an IDEA-eligible student for up to ten (10) school days as long as the suspension(s) do not constitute a “change of placement” under 34 C.F.R. 300.536. When a child is suspended for more than ten (10) consecutive days, the suspension is always a change of placement. When a child is suspended for more than (10) ten non-consecutive days for separate incidents, the school system must determine whether the suspensions constitute a pattern, which is a change of placement.



However, if the school district decides to discipline the student, parent(s) must receive immediate notice of the discipline and applicable procedural safeguards. 20 U.S.C. 1415(k)(1)(H).



If the discipline results in a “change of placement,” the school must conduct a Manifestation Determination Review (MDR) within ten (10) school days of the date of the discipline decision. Only relevant members of the IEP team are needed for MDR. Example: A psychologist should be considered a relevant team member if he/she is needed to assist in making the MDR decision.



For students with disabilities, school personnel may first consider on a case-by-case basis whether any unique circumstances warrant not pursuing the disciplinary process for a student who violates the school code of conduct. 20 U.S.C. 1415(k)(1)(A); 34 C.F.R. 300.530(a).

¹If a student's access to public education will be restricted, school districts must follow specific procedures when disciplining all public school students. Legal standard for disciplining any student is found in *Goss v. Lopez*, 419 US 565 (1975).

Exceptions:

Yes, there are exceptions to decisions made at MDR team meetings. The district has more flexibility and can simply remove the student to an **interim alternative educational setting (IAES)** when:

(1) The child carries a weapon to or possesses a weapon at school or to a school function (does not include a pocket knife with a blade less than 2 ½ inches in length), or

(2) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of controlled substance while at school or a school function (not cigarettes or alcohol), or

At this meeting, the MDR Team must review all relevant information about the student, including observations of the student, the student's IEP, and any relevant information from the parent.

The MDR Team must decide two important questions:

(1) Was the conduct caused by, or did it have a direct and substantial relationship to, the child's disability;
or

(2) Was the conduct a direct result of the school district's failure to implement the IEP? 20 U.S.C. 1415(k)(1)(E).

Yes, the conduct is a manifestation of student's disability. If the conduct was deemed a manifestation of the disability and the district has not already conducted a functional behavioral assessment (FBA) and implemented a behavioral intervention plan (BIP) for the student, it must convene an IEP meeting to develop an assessment plan.

If a BIP is already in place, the school district must convene the IEP team to review and modify the plan as necessary to address the behavior that led to the removal. The child must be returned to the placement from which he was removed unless the parent and school agree otherwise.

No, conduct is not a manifestation of child's disability. If the MDR Team determines that the conduct was not a manifestation of the student's disability and the school district followed through with implementing the IEP, the student can be disciplined in the same manner as non-disabled students.

If the suspension is for more than ten consecutive school days and the child's behavior was not related to his or her disability, some level of special education services must still be provided during the suspension period. 34 C.F.R. 300.530(c).

Child's behavior was a direct result of the IEP not implemented. If the IEP team determines that the child's behavior was a direct result of the school district's failure to implement the IEP, the LEA must take immediate steps to remedy the deficiencies in the IEP. 34 C.F.R. 300.530(e).

(3) The child has inflicted serious bodily injury (injury that involves substantial risk of death; extreme physical pain, protracted loss or impairment of the function of a bodily member, organ, or mental faculty) upon another person while at school or a school function.

An IAES must be selected by the student's IEP team and must enable the student to continue to participate in the general curriculum and to receive the services and modifications in the current IEP so that he or she can make progress toward meeting goals in the IEP.

The IAES must address behavior issues and create a transition plan. Placement in an IAES can last for no more than forty-five (45) days (if the IAES is result of removal because of drugs, weapons or serious bodily injury), unless the extension is reviewed and renewed by a hearing officer.

What it means...

What Is a Functional Behavioral Assessment (FBA)?

When a student has been suspended for more than ten (10) school days in the same school year, or there has otherwise been a change in placement, the IEP Team must meet to develop a plan to address the student's behavior. Development of the plan involves two steps: completing a Functional Behavioral Assessment (FBA) and developing a Behavior Intervention Plan (BIP). The Team must meet within ten (10) school days of the date that the suspension began. Because this is the same timeline used for the Manifestation Determination Review, the IEP Team will often conduct the MDR and develop the FBA and BIP all in the same meeting.

A Functional Behavioral Assessment is a procedure where the IEP Team analyzes the particular behavior in order to understand the behavior and what purpose it serves for that child. For example, a child may use inappropriate humor in class. Through discussion, the IEP Team might discover that the child is not trying to get attention from his/her peers, but is instead trying to distract the teacher from the struggles he/she is having with an assignment. The Team then uses this information to develop appropriate interventions for the student.

Because the FBA helps the IEP Team understand why the child behaves a certain way, it can be a

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MDR Checklist

1. Has the student been suspended for more than ten (10) school days during the current school year?
 - a. Yes—The IEP Team must meet within ten (10) school days to develop an FBA and BIP. Go to question 2.
 - b. No—the student may be suspended the same way as student without disabilities would be. The school must continue to provide FAPE to the student.
2. Has the student been suspended for more than ten (10) consecutive school days during the current school year?
 - a. Yes—this is a change of placement. Go to question 5.
 - b. No—this may or may not be a change of placement. Go to question 3.
3. Has the student been suspended for a series of days that make up a pattern? A pattern is when the series of removals total more than ten (10) school days in a school year; the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and other factors such as the length of the removals, the total amount of time the child has been removed and whether the proximity of the removals are close to one another.
 - a. Yes—this is a change of placement. Go to question 5.
 - b. No—this is not a change of placement. Go to question 4.
4. There has not been a change of placement. The school system must talk to the student's teacher to decide what services must be provided so the student can make educational progress and work towards his/her IEP goals.
5. There has been a change of placement. The IEP Team must conduct a manifestation determination review within ten (10) school days of the suspension. Was the behavior a manifestation of the student's disability?
 - a. Yes—the suspension must end and the student must return to school unless the exceptions apply.
 - b. No—the suspension may stand and the student must be provided FAPE during the suspension.

What happens if the parent disagrees with the team's decision?

The IEP/MDR team makes many important decisions about your child's education. Your goals should always be to work with school personnel to develop the best program possible for your child. There may be times when you feel the school's recommendations, suggestions, or refusals of your requests are not what your child needs. Below is an outline of the individual steps you can use to disagree with a decision and, hopefully, bring about an amicable resolution.

North Carolina General Statutes establish a one-year statute of limitation for challenging a school district's decision in court (see #6, on page 7). This time limit applies to both a formal DPI complaint and a request for Due Process Hearing. The one-year limitation is not applicable when the school district misleads or withholds information from the parent.

1. Ask for another meeting.

- ◆ Bring any new or additional information you have.
- ◆ Explain your position and the reasons for it.
- ◆ Ask for Prior Written Notice, or a DEC 5. This form will let you know that the IEP Team has made an "official" decision that you disagree with.

2. Contact the school principal and the Exceptional Children's Director in writing.

- ◆ In some situations, contacting the principal is helpful. In some cases, it is not. We recommend that you write to the principal and send a courtesy copy to the EC Director.
- ◆ List what you understand about the IEP Team's decision.
- ◆ Explain why you disagree with the decision.
- ◆ Tell the principal that you plan to appeal the decision.
- ◆ You might ask the principal to meet with you to discuss this before you go further. If you do, give the principal a deadline. For example, say "I would like to meet with you before taking further action. Please call me within one week from the date of this letter."
- ◆ You might ask for another meeting to be held with the EC Director present.

3. Request a Facilitated IEP meeting.

Facilitation is a process of using a neutral facilitator (he/she will not take sides between the parent and the school) who helps guide the meeting and helps everyone on the IEP Team (parents too) communicate effectively. The neutral facilitator does not

What it means...

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very important tool in the behavior intervention process. Therefore, the IEP Team may decide to do a FBA at any time that the Team believes it might be helpful. As a member of the IEP Team, a parent may request that the Team perform an FBA for his/her child experiencing behavior problems at school. The Team is only required to do the FBA when the child is suspended for more than ten (10) days within a school year.

What is a Behavior Intervention Plan (BIP)?

A Behavior Intervention Plan is a written plan that addresses a particular behavior. The goal of the BIP is to put positive behavioral interventions and supports in place in order to address the undesirable behaviors. The BIP must have goals and objectives that address the student's behavior. The BIP becomes part of the IEP, and must therefore be reviewed annually by the IEP Team. A BIP must be developed as soon as possible after the FBA is completed.

In the previous example, our student used inappropriate humor to distract from his/her academic struggles. The BIP might have a goal such as: "When the student does not understand an assignment, he/she will request teacher assistance." The BIP should include a positive reward for using the desirable behavior. A BIP is more likely to be successful if the student helps the Team determine

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What it means...

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how he/she will be rewarded. A student will work for a reward that is meaningful to him/her!

If the student already has a BIP, the IEP Team must meet within ten (10) school days of the date he/she was suspended to review the BIP and consider whether the plan needs to be changed.

For more information, take a look at our *Parents' Together* manual on our website: www.disabilityrightsn.org. More specifically, see Chapter 20, page 187 for a sample letter requesting an FBA and BIP.

For IEP rights information and training, contact:

ecac
exceptional
children's
assistance
center

ECAC's Main Office
907 Barra Row, Suites 102/103
Davidson, NC 28036

704-892-1321
704-892-5028 fax
800-962-6817 Parent Info Line
ecac@ecacmail.org

suggest anything to be included in the IEP, but he/she does help everyone stay focused on your child and on problem solving. The facilitator can make sure that your voice is heard as an important member of the IEP Team.

Facilitation is not required by law; it is a service provided by the North Carolina Department of Public Instruction (DPI). It is a wonderful tool that you can use, and it is free to you and to the schools.

To request facilitation you can go online to www.dpi.state.nc.us/ec to access and complete a Facilitation Request Form. The completed form should be sent to:

Facilitation Coordinator
Exceptional Children Division
Department of Public Instruction
6356 Mail Service Center
Raleigh, NC 27699-6356
Fax: 919-807-3755

The *signed* form can also be sent as a PDF file by emailing it to Pollye Pruitt at ppruitt@dpi.state.nc.us

4. Request mediation.

You may resolve your dispute in **mediation** through the Department of Public Instruction. Mediation is an informal voluntary meeting between you and school system personnel to discuss and try to resolve your differences about your child's identification, evaluation, placement, or special education services.

A mediator will lead the meeting and try to help both you and the school personnel reach an agreement. The mediator is a neutral person (meaning he/she does not work for the school system) who has been trained in ways to resolve disputes. Normally, the person has some knowledge about special education. The mediator is not a judge, and he/she will not make any decisions during the meeting. The mediator is there only to help define the issues, and encourage and empower the parties to reach a resolution.

Either a parent or the school system can request mediation. To do so, you must complete a mediation request form and mail or fax it to:

Director, Exceptional Children Division
Department of Public Instruction
6356 Mail Service Center
Raleigh, NC 27699-6356
Fax: (919) 807-3243

5. File a formal complaint with DPI.

A DPI Complaint is a formal written complaint that a parent may file with the NC Department of Public Instruction (DPI). It is your written statement, signed by you, that the school system is not following a particular law. A DPI Complaint can be brought by any agency, organization, or person.

Your DPI Complaint must be about a violation of IDEA or state law and procedure. Examples include:

- ◆ Improper identification or evaluation procedures,
- ◆ Failure to provide related services,
- ◆ Failure to give you access to your child's records,
- ◆ Failure to provide the services in your child's IEP, or
- ◆ Failure to follow IDEA disciplinary procedures.

Writing a DPI Complaint is as simple as writing a letter. Your complaint must include:

- ◆ The name of the student involved (if there is a particular student),
- ◆ The name of the local school system and the specific school,
- ◆ A description of how you believe the law has been violated,
- ◆ The facts that form the basis for your opinion (what, when, where, etc.),
- ◆ What you would like the NC Department of Public Instruction to do to resolve the problem, and
- ◆ Your signature.

You should attach documents, such as your child's evaluations or letters from school personnel, to help explain your complaint. You may send your complaint by mail to:

Director, Exceptional Children Division
Department of Public Instruction
6356 Mail Service Center
Raleigh, NC 27699-3656

You may also deliver the complaint by hand to:

Director, Exceptional Children Division
Department of Public Instruction
301 N. Wilmington Street
Raleigh, NC 27601-2825

6. File for Due Process Petition.

The IDEA guarantees parents the right to an “impartial due process hearing” when they disagree with the school system or want to challenge the school's failure to provide the student with services or educational programs they believe the child needs.

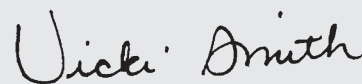
Each state is allowed to establish its own procedures for giving parents their Due Process rights. In North Carolina, you do not have the right to go directly to state or federal court with your complaint. Instead, you must first request a hearing with the Office of Administrative Hearings (OAH). OAH is a special part of our state court system that hears cases involving administrative law, which includes special education.

Director's Message

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interventions and supports that take into account both individual behavior and environmental factors. Putting Positive Behavioral Supports (PBS) in place for students has proven more effective than punishments like suspension, expulsion, or restraint.

DRNC believes that the ultimate goal of education is to create and maintain a safe, supportive learning environment. We believe that such an environment encourages positive life skills and reduces negative behaviors so that all students, including those with special needs, will succeed. We believe that an appropriate education creates a strong foundation for a productive life.



Vicki Smith
Executive Director

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All that is valuable in human society depends upon the opportunity for development accorded the individual.

Albert Einstein

It is very important to understand that Due Process is a real lawsuit in court. All of the rules about how to file paperwork, how to present evidence, and how to appeal a decision apply to a Due Process hearing. It is a true legal fight that has many drawbacks as well as benefits. It is a last resort, and should only be used if other means of settling differences are unsuccessful.

A Due Process hearing takes place in front of a judge from OAH. This person is called an Administrative Law Judge, or ALJ. The school system will **always** be represented by an attorney in a Due Process hearing. The U.S. Supreme Court has stated that a parent can go through Due Process without hiring a lawyer, because parents have rights under IDEA and can represent themselves in regard to those rights. However, because Due Process is a formal legal proceeding, you should think long and hard about getting an attorney to help you.

The most important thing to remember when you disagree with the IEP Team is that **it is okay to ask for help**. It is natural to get frustrated or emotional during a disagreement about your child. Asking for help will allow you to understand the MDR/ IEP process and your rights. It can also help to keep you focused on doing what is best for your child. Find other parents of students with disabilities in your school or town and form a support group. Contact an advocacy group. Bring someone to the IEP meeting with you. You do not have to do it alone!

www.disabilityrightsnc.org

Advocacy System

North Carolina's Protection and

is available in alternate formats.

Upon request, information

919-856-2244 fax

888-268-5535 TTY

877-235-4210

919-856-2195

Raleigh, North Carolina 27608

Suite 550

2626 Glenwood Avenue



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