

# Discipline

## WHEN BEHAVIOR IS NOT A MANIFESTATION

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Model operating procedures created by



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## When Behavior Is Not a Manifestation

### What is Required

Within 10 school days of any decision to change the placement of a student with a disability because of a violation of the Student Code of Conduct, the ARD Committee must conduct a Manifestation Determination Review (“MDR”) to determine if:

- The conduct in question was caused by, or had a direct or substantial relationship to, the student’s disability; OR
- The conduct in question was the direct result of the District’s failure to implement the student’s IEP.

See [MANIFESTATION DETERMINATION]. If the ARD Committee determines that neither of these conditions are met, the behavior is not a manifestation of the student’s disability, and Campus Personnel may apply the relevant disciplinary procedures to the student in the same manner and for the same duration as the procedures would be applied to a student without disabilities.

However, the District is still responsible for providing special education and related services during the period of removal. See [SERVICES DURING PERIODS OF REMOVAL].

If disciplinary action that constitutes a change of placement is taken for a student with a disability (i.e., removal for 10 or more days or a series of removals that constitute a “pattern” of removals), the district must, no later than 10 school days after the change in placement is made:

1. Seek consent from the parent to conduct a Functional Behavioral Assessment (“FBA”) if the student has never had an FBA or the existing FBA is more than one year old;
2. Review any previously conducted FBAs and any Behavior Intervention Plans (“BIPs”) developed for the student based on that FBA; and
3. As necessary, develop a BIP, if the student does not have a plan, or revise the existing BIP.

### Additional Procedures

If the ARD Committee determines that the student’s conduct is not a manifestation of the



disability, Campus Administration may implement any disciplinary procedures that could be used for students without a disability. See [MANIFESTATION DETERMINATION]. However, the District cannot remove the student from more than 10 consecutive or cumulative school days in a school year without providing special education and related services. If the student is removed from the school placement, the student will continue to receive educational services to the extent necessary to enable the student to participate in the general education curriculum and to progress toward meeting the goals set out in the student's IEP, as determined necessary by the ARD Committee. As such, the ARD Committee must ensure that the disciplinary placement is appropriate for the student to allow the student to continue to receive his or her special education and related services. See [SERVICES DURING PERIODS OF REMOVAL].

Campus Special Education Personnel will provide the parent a copy of the *Notice of Procedural Safeguards*, informing the parent of their rights to appeal the determination. Specifically, if the parent disagrees with the determination that the student's behavior was not a manifestation of the student's disability, the parent may appeal the decision by requesting a due process hearing. See [MANIFESTATION DETERMINATION].

### Examples of When Behavior Is Not a Manifestation

Evidence of a direct connection between the student's misconduct and the student's disability will often result in a finding that the student's misconduct was a manifestation of his/her disability. In contrast, actions resulting from a student's low self-esteem, premeditated actions, or bad judgment generally are deemed to be unrelated to the student's disability. For example:

- Evaluation reports, discipline records, school records, and teacher comments all indicated that impulsivity was the key characteristic of the teen's ADHD. Because the parties agreed that the student's decision to purchase the stun guns and bring them to school was premeditated, the judge concluded that the MDR team did not err in determining the student's misconduct was unrelated to his disability. *M.C. v. Conroe Indep. Sch. Dist.*, 75 IDELR 134 (S.D. Tex. 2019).
- A decision of a student with ADHD that is pre-meditated and deliberate, rather than impulsive and thoughtless, will likely be deemed not a manifestation of the student's disability. *Plano Indep. Sch. Dist.*, 113 LRP 48594 (SEA TX 08/09/13).
- A middle-school student's decision to assault an Assistant Principal may not be a manifestation of the student's ADHD or Asperger syndrome when the student's 25-minute tirade ends once the student is told the police were being called. This demonstrates that the student has control over the behavior. *In re: Student with a Disability*, 115 LRP 6203 (SEA VA 09/18/14).



- Physical assault where a student with ED deliberately sets out to hit a student as a result of comments the student made earlier in the week, rather than as a sudden uncontrolled response to teasing, and the student understands the consequences of the behavior is likely not a manifestation of the disability. *Lakeshore Sch. Dist.*, 114 LRP 4249 (SEA MI 11/13/12).
- A student's behavior of arguing, defiance, instigation, and obscene language is like not a manifestation of the disability where the behavior is not related to impulsivity or ADHD symptoms but instead is related to the student choosing to be defiant and disrespectful. *In re: Student with a Disability*, 114 LRP 2925 (SEA VA 10/14/13).
- An 11th-grader's anxiety issues were unrelated to his decision to conduct a weekend paintball raid on his high school. *See Fitzgerald v. Fairfax County Sch. Bd.*, 50 IDELR 165 (E.D. Va. 2008)
- A student's decision to bring marijuana and tobacco to school was unrelated to his SLD. *Lancaster Elem. Sch. Dist.*, 49 IDELR 53 (SEA CA 2007).

The District will maintain documentation requirements of compliance associated with Texas Student Data System (TSDS), Public Education Information Management System (PEIMS), and State Performance Plan (SPP). District staff will provide training, with follow up, to ensure the documentation required is in place and compliant.

### **Evidence of Implementation**

- Notice of MDR Meeting
- *Notice of Procedural Safeguards*
- *Parents' Guide to the Admission, Review, and Dismissal Process*
- Documentation of Efforts to Ensure Parent Participation at MDR ARD
- Prior Written Notice
- MDR Agenda
- Manifestation Determination Form
- ARD/IEP
- MDR ARD
- Behavior Documentation
- Disciplinary Hearing Documentation
- Teacher Observations
- Documentation/Information Provided by Parent
- Documentation of Implementation of IEP/BIP
- FBA Consent Form

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- Documentation for the state in TSDS, PEIMS, and SPP

## **Resources**

[The Legal Framework for the Child-Centered Special Education Process: When Behavior Is Not A Manifestation - Region 18](#)

[Questions and Answers on Discipline Procedures \(Revised June 2009\) - U.S. Department of Education](#)

[Parent's Guide to the Admission, Review, and Dismissal \(ARD\) Process - Texas Education Agency](#)

[Notice of Procedural Safeguards - Texas Education Agency](#)

[Special Education Discipline Q&A - Region 13](#)

[Discipline Flow Chart - Region 7](#)

[House Bill \(HB\) 785: Frequently Asked Questions - Texas Education Agency](#)

## **CITATIONS**

Board Policy FO and FOF; 34 CFR 300.530(c); Texas Education Code 37.004