Disciplinary Change in Placement & MDR

Colorado Parent IEP Training Resource Document

COLORADO
Department of Education

What is a disciplinary change in placement?

A disciplinary change in placement may occur when a child with a disability is removed from their current education placement for violating a student code of conduct. Under the Individuals with Disabilities Education Act (IDEA), a disciplinary change of placement occurs if:

1. The removal is for more than 10 consecutive school days; or
2. The child has been subjected to a series of removals that constitute a pattern. Factors considered in determining a pattern include removal for more than 10 days in a school year, behavior that is substantially similar, and additional factors such as length of each removal, total amount of removal, and proximity of removals to one another.

34 CFR § 300.536.

If a removal is for fewer than 10 days, it is **not** a disciplinary change in placement.

What happens if there is a disciplinary change in placement?

Within 10 days of a decision to make a disciplinary change in placement, the Administrative Unit (AU) (for example, school district, BOCES, etc.) must hold a Manifestation Determination Review (MDR) to determine if the child's behavior was caused by the child's disability or a failure to implement the IEP. 34 CFR § 300.530(e).

The AU must give the parents notice of the MDR meeting with sufficient time to prepare and invite others to the meeting.

What is a manifestation determination review (MDR)?

School officials, through the discipline process, determine what the child did to violate the student code of conduct. The MDR determines if that behavior was a manifestation of their disability or the result of a failure to implement the IEP, not whether it occurred or if the child knows it was wrong.

Important notes:

- A child with a disability with an IEP is subject to the same rules and discipline as any student at the school.
- If a child is removed from their current educational placement for violating school rules *for fewer than 10 consecutive school days*, the AU does not have to provide special education services to the student during that removal unless it provides services to all students in this situation.
- If a child is removed from school *for more than 10 school days*, the school must continue to provide the child with special education services, even if it is in another educational setting.

When a child's educational placement is changed because the child did not follow school rules, the AU, parent and appropriate members of the IEP team must participate in a manifestation determination review (MDR) meeting.

The purpose of the MDR is to determine if the child's behavior in question: (i) was caused by, or had a direct and substantial relationship to, the child's disability; or (ii) was the direct result of the AU's failure to implement the IEP.

What happens if the behavior was a manifestation of the child's disability?

If the behavior is found to have been a manifestation of the child's disability:

1. The child will be returned to the placement from which they were removed, unless the parent and AU agree to a change of placement as part of the modification of a behavioral intervention plan (BIP).
2. The IEP team must conduct a functional behavioral assessment (FBA) as soon as possible, unless one has recently been done.
3. The IEP must develop a behavioral intervention plan (BIP) based on the FBA. If a BIP already exists, the IEP team must review the plan and make any needed changes.

34 CFR § 300.530(f). See pages 28 – 29 of Colorado's Procedural Safeguards Notice, April 2024 (PSN).

What happens if the behavior was the result of a failure to implement the IEP?

If the child's behavior is found to have been a direct result of the AU's failure to implement the IEP, the AU must take immediate steps to remedy those deficiencies. 34 CFR § 300.530(e)(3).

What happens if the behavior was not a manifestation of the child's disability?

If the child's behavior is not found to be a manifestation of the child's disability, the AU may impose the same disciplinary consequences that it would for a child without a disability.

If the child is removed from their current setting for more than 10 days and the removal**:**

- i**s not** a disciplinary change of placement, school personnel in consultation with at least one of the child's teachers, determine the extent to which services are needed to allow the child to participate in the general education curriculum and make progress towards their IEP goals.
- **is** a disciplinary change of placement, the IEP team must decide what educational services are appropriate to allow the child to participate in the general education curriculum and make progress towards their IEP goals. The AU must also provide appropriate behavioral intervention services and modifications that are designed to address the challenging behavior so that it does not continue to happen.

34 CFR § 300.530(d)(4), (5).

What if a child who violates school rules does not have an IEP but has a suspected disability?

A child who does not have an IEP may assert IDEA's discipline protections if any of these things happened before the child violated a school rule: (1) the parent expressed in writing to school leaders or the child's teacher that they think the child may need special education services; or (2) the parent requested an evaluation for the child; or (3) the child's teacher or other AU staff member told the director of special education or other management that they had specific concerns about the child's pattern of behavior. 34 CFR § 300.534. See page 30 of the PSN.

What if a parent disagrees with the findings of the MDR determination?

A parent can request an expedited due process hearing to challenge a decision to change their child's current educational setting due to discipline or to challenge the findings of a manifestation determination review. 34 CFR § 300.532. See page 30 of the PSN.

Are there any exceptions to the MDR requirement?

Schools may remove children with disabilities without an MDR for up to 45 days in special circumstances. These circumstances apply in situations related to weapons, illegal drugs, or inflicting serious bodily injury. 34 CFR § 300.530(g). See page 29 of the PSN.

Where can I learn more about disciplinary changes in placement and MDR?

- See pages 27 – 30 of Colorado's Procedural Safeguards Notice (April 2024).
- Learn more from the Colorado Department of Education's Parent IEP Training.
- Contact CDE's Office of Special Education.
    - **Phone:** 720-926-1453
    - **Email:** Parents_ESSUquestions@cde.state.co.us
- CDE, Functional Behavior Assessment (FBA) and Behavior Intervention Plans (BIP)
- Placement and School Discipline (Center for Parent Information & Resources (CPIR))
- Manifestation Determination in School Discipline (CPIR)

This CDE resource document is meant for informational purposes only, is not legally binding, and is not to be confused with legal advice. If you are seeking legal advice, please contact your legal counsel.