

Discipline

MANIFESTATION DETERMINATION

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Model operating procedures created by



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MANIFESTATION DETERMINATION

What is Required

Within 10 school days of any decision to make a disciplinary change of placement of a student with a disability due to a violation of the student code of conduct, the ARD Committee must conduct a Manifestation Determination Review (“MDR”) to determine if the student’s conduct is a manifestation of his/her disability. See [DISCIPLINARY CHANGE OF PLACEMENT]. Specifically, this will take place during an MDR ARD meeting.

Campus Special Education Personnel must provide the parent with written notice of the MDR ARD meeting at least 5 school days before the meeting unless the parent agrees to a shorter timeframe. The notice must indicate the purpose, time, and location of the meeting and inform the parents of the provisions relating to the participation of other individuals who have knowledge or special expertise about the student. See [PARENT PARTICIPATION]. For students who are homeless or in substitute care, Campus Special Education Personnel must also provide this notice to the student’s educational decision-maker and case worker.

During the MDR ARD meeting, the ARD Committee must review all relevant information in the student’s file, including the student’s IEP, any teacher observations, and any relevant information provided by the parent. This does not replace the ARD Committee’s responsibility to conduct an annual review of the IEP, including the student’s Behavior Intervention Plan (“BIP”), where applicable.

Determination

The ARD Committee will determine whether or not the student’s conduct is a manifestation of the student’s disability. See [WHEN BEHAVIOR IS A MANIFESTATION] and [WHEN BEHAVIOR IS NOT A MANIFESTATION]. The ARD Committee must find that the conduct is a manifestation of the student’s disability if:

- (1) the ARD Committee determines that the conduct was caused by, or had a direct and substantial relationship to, the student’s disability, OR
- (2) the conduct in question was the direct result of the District’s failure to implement the student’s IEP.

If the district takes disciplinary action that constitutes a change of placement 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 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

A student’s ARD Committee will conduct an MDR following the disciplinary hearing in which a special education student has been recommended for a disciplinary change of placement in an IAES. See [DISCIPLINARY CHANGE OF PLACEMENT]. In addition, if the removal is due to conduct related to bullying, harassment, or making a hit list, regardless of whether or not the removal constitutes a change in placement, the MDR must be conducted prior to the student’s removal. Campus Special Education Personnel must provide the parent notice of the MDR ARD meeting and a copy of the *Notice of Procedural Safeguards* at least 5 school days prior to the meeting unless the parent agrees otherwise in writing.

Campus Special Education Personnel will document all efforts to provide notice to the parent regarding the MDR ARD meeting, including phone calls, emails, written communications, and visits to the parent at the parent’s home or place of employment. If the parent fails to respond or refuses to attend the MDR ARD meeting, the ARD Committee may convene the meeting without the parent, so long as Campus Special Education Personnel has properly documented the communication attempts. See [PARENT PARTICIPATION]

Prior to the MDR ARD meeting, Campus Administration will schedule a staffing with the Campus Special Education Personnel and the District Assessment Personnel who will attend the MDR ARD meeting to review the evaluation and provide input in the manifestation determination. District Assessment Personnel are responsible for determining if any evaluations are pending or needed prior to the MDR. The MDR ARD meeting cannot take place unless District Assessment Personnel are present.

At the staffing, the team will also ensure that proper documentation is in place showing that the IEP, and the BIP where applicable, has been followed. Where appropriate, Campus Special Education Personnel should consult with the Campus Principal to determine whether District Special Education Administration or District Legal Services should also be involved in the MDR process. If it is decided at the staffing that placement in an IAES is not appropriate, the MDR ARD meeting will not need to be held.

During the MDR ARD meeting, the two key questions that the ARD Committee will

consider are (1) whether the student's conduct was caused by or had a direct and substantial relationship to the student's disability **and** (2) whether the conduct in question was the direct result of the District's failure to implement the student's IEP. If **either** question is answered in the affirmative, then the misconduct **must** be determined to be a manifestation of the student's disability. See [WHEN BEHAVIOR IS A MANIFESTATION]

At a minimum, the ARD Committee will make the following considerations as part of the analysis:

- Does the student have a history of misconduct that violates school policies or procedures? Specifically, is this an isolated instance of misconduct or a recurring pattern?
- Is there reason to believe that the student's disability or disabling condition may have changed since the most recent evaluation?
- Is the student's conduct a known feature of the disability? And has the student exhibited misbehavior tied to features of the disability in the past?
- Would similarly situated students without the disability react similarly?
- Is the student able to control behavior? Was the behavior premeditated or impulsive?
- Does the student have an impaired ability to understand consequences due to the disability?

During this analysis, the ARD Committee will review all relevant information in the student's special education file, including but not limited to the student's IEP, any assessments and evaluations, medical information, teacher observations, previous discipline reports, and relevant information provided by the parent. The ARD Committee should pay attention to any patterns relating to attendance, discipline, and grades, as well as other behavioral data, to determine if there was a developing pattern of conduct that should have been detected and addressed. In reviewing the student's IEP, the ARD Committee will determine if it was legally and appropriately developed based on the student's unique needs. The ARD Committee will also discuss how the student's IEP has been implemented to determine whether the District failed to implement the IEP. This analysis will require a review of the student's educational progress and schedule of services to determine if the services have been provided consistent with the IEP within a reasonable time. If the ARD Committee determines that the IEP was not consistently implemented, the ARD Committee will decide whether the inconsistencies had a direct impact on the student's behavior in question.

Because this is a case-by-case analysis, the ARD Committee will also consider the circumstances surrounding the incident. This includes looking at whether there were any antecedents, the individuals involved in the incident, any history surrounding specifics with the incident, and the environment the student was in when the incident occurred.

To ensure that all areas are discussed, the ARD Committee will follow an agenda. The

ARD Committee will document this decision-making through a Manifestation Determination form and/or in the ARD minutes, but the ARD Committee's final determination and reasons for the determination must be noted in the ARD minutes. If a Manifestation Determination form is utilized, it shall be attached to the IEP as part of the ARD documentation. If the ARD Committee has determined that the student should be placed in an alternative setting, the number of days for the placement should also be indicated in the ARD minutes.

While a student removed for weapons, drugs, or other serious bodily injury may remain in an interim alternative educational setting ("IAES") for not more than 45 school days regardless of whether the violation was a manifestation of the disability, the ARD Committee must still conduct an MDR within 10 school days of any decision regarding the change of placement. See [DISCIPLINARY CHANGE OF PLACEMENT].

Where the Student Poses a Threat or Serious Behavioral Concern

If the student poses a significant threat or serious behavioral concern where safety is an issue, Campus Special Education Personnel should contact District Special Education Administration regarding the incident immediately. District Assessment Personnel or Campus Personnel will work in conjunction to conduct a threat assessment and schedule an MDR ARD meeting where appropriate. Campus Special Education Personnel may need to develop an interim plan for the student to return to Campus safely until the MDR ARD can be conducted.

Expulsion

A student with a disability receiving special education or related services cannot be expelled for more than 10 consecutive or cumulative school days without conducting an MDR. During an MDR ARD meeting related to possible expulsion, the ARD Committee will review the student's special education file, including current IEP documentation and evaluation data. The ARD Committee will also determine whether a new evaluation is warranted and should temporarily return the student to the student's current placement after 10 days if additional assessments will be conducted. Following the MDR, a student with a disability can only be expelled for engaging in severe conduct that would warrant expulsion for students without disabilities, if the ARD Committee determines that the behavior is not a manifestation of the student's disability or the parent agrees to the expulsion.

If the student is expelled, the ARD Committee must also determine instructional and related services that will be provided to the student during the time of expulsion and to implement appropriate IEP goals and objectives. If the student is expelled to a Juvenile Justice Alternative Education Program ("JJAEP"), Campus Administration must invite a JJAEP Administration to the ARD meeting where placement and services are discussed. See [ARD COMMITTEE MEMBERSHIP]. In addition, such expulsion is a change of

placement and as such the procedures regarding a change of placement shall be followed. See [DISCIPLINARY CHANGE OF PLACEMENT].

Disagreement and Appeal

If a parent disagrees with the decision of the ARD Committee for an MDR, a 10-day recess does not have to be offered in most cases. Specifically, if the student's presence on the campus presents a danger of physical harm to the student or others or if the student has committed an expellable offense or an offense which may lead to a placement in a disciplinary alternative education program ("DAEP"), the ARD Committee does not have to offer the 10-day recess even if the parent disagrees with the decisions of the ARD Committee. Instead, the ARD Committee must make the determination and provide the parent with Prior Written Notice regarding the decision. See [PRIOR WRITTEN NOTICE].

The parent of a student with a disability may appeal a manifestation determination by requesting mediation and/or filing a due process hearing complaint. The District may also request a due process hearing if it believes that the student's current placement is substantially likely to result in injury to the student or others. If a due process hearing is requested by either the parent or the District, such hearing will be expedited, which means that it must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must then make a determination within 10 school days of the hearing. The hearing officer cannot extend these deadlines, even if the District and parent agree to an extension. Unless the parent and District agree otherwise, when an appeal of the manifestation determination has been made, the student will remain in the disciplinary placement pending the decision of the hearing officer or until the time period of the placement has expired, whichever occurs first.

The procedural safeguards relating to an appeal of a manifestation determination apply equally to a student not yet identified as a student with a disability if the District knew or should have known that the student had a disability. See [PROTECTIONS FOR CHILDREN NOT YET DETERMINED ELIGIBLE].

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.

[ADD ADDITIONAL DISTRICT PROCEDURES AS APPROPRIATE]

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
- Documentation for the state in TSDS, PEIMS, and SPP
- **[DISTRICT FORMS]**

Resources

[The Legal Framework for the Child-Centered Special Education Process: Manifestation Determination - Region 18](#)

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

[OSEP Letter to Snyder \(Dec. 13, 2015\) - U.S. Department of Education](#)

["Exclusionary" Discipline in Texas Schools: Legal Questions and Concerns - Texas Association of School Boards](#)

[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](#)

[Chapter 37 Discipline Chart - Texas Association of School Boards](#)

[ADDITIONAL DISTRICT RESOURCES]

CITATIONS

Board Policy FO and FOF; 34 CFR 300.530(e)(1)–(2), 300.532; Texas Education Code 25.007(b)(10)(C), 37.004(b)(4), 37.0022