

Discipline

WHEN BEHAVIOR IS A MANIFESTATION

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Model operating procedures created by



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WHEN BEHAVIOR IS 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 either of these conditions are met, the behavior must be determined to be a manifestation of the student’s disability.

If the conduct was the direct result of the failure of the District to implement the IEP, the District must take immediate steps to remedy those deficiencies, including determining if compensatory services are warranted.

If the ARD Committee makes the determination that the conduct was a manifestation of the student’s disability, the ARD Committee must either:

- Conduct a Functional Behavioral Assessment (“FBA”), unless the District had conducted an FBA before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan (“BIP”) for the student; or
- If a BIP has already been developed, review the BIP, and modify it, if necessary, to address the behavior.

If the ARD Committee determines that the student’s conduct is a manifestation of the disability, the student must be returned to the placement from which the student was removed, unless the parent and the District agree to a change of placement as part of the modification of the BIP or the removal was made due to weapons, drugs, or other serious bodily injury. See [SPECIAL CIRCUMSTANCES].

Additional Procedures

If it is determined that the behavior is a manifestation, the ARD Committee will review the student’s IEP for implementation and any existing FBA or BIP and determine whether the current placement is appropriate for the student. The ARD Committee may need to modify an existing BIP to address the student’s conduct. If the student does not have an FBA,

the ARD Committee will conduct an FBA. As long as additional information is not needed, the ARD Committee will implement a BIP based on the FBA to address the student's misconduct. However, if additional information is needed for the FBA, the ARD Committee will need to obtain written parental consent, collect data, and reconvene an ARD meeting to discuss the results. See [EVALUATION PROCEDURES] and [CONSENT FOR REEVALUATION].

An FBA focuses on identifying the function or purpose behind a student's behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g. social, affective, environmental). Knowing why a student misbehaves is directly helpful to the ARD Committee in developing a BIP that will reduce or eliminate the misbehavior. For a student with a disability whose violation of the Student Code of Conduct is a manifestation of the student's disability, the ARD Committee must include a BIP in the child's IEP to address the behavioral needs of the student.

A student with a disability who receives special education services may not be placed in an alternative education program solely for educational purposes.

Examples of When Behavior Is 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, particularly if the student's IEP refer to the same or similar behavior. In contrast, actions resulting from a student's low self-esteem or bad judgment generally are deemed to be unrelated to the student's disability. For example:

- A significant factor of whether conduct is a manifestation of the student's disability is whether the behavior is the same type of behavior addressed in the student's IEPs, BIPs, FBAs, and evaluations. *Killeen Indep. Sch. Dist.*, 120 LRP 8224 (TEA 12/19/19).
- An MDR ARD Committee must consider the unique aspects of a student's disability in determining whether his conduct is a manifestation of that disability. One thing ARD Committees can examine is whether the emotional state that usually attends the student's misbehavior was present during the conduct. This student was typically either angry, frustrated, agitated, or impulsive when acting out. The MDR ARD Committee's review of evaluations, class work, and staff observations which showed that none of those conditions were present when the student caused a "false alarm" supported its decision that the behavior had little to do with the student's autism. *North East Indep. Sch. Dist.*, 119 LRP 45656 (TEA 10/8/19).
- A student with ED assaulting another student and putting the student in a chokehold may be directly and substantially related to the student's disability where the BIP specifically targets student's history of resorting to physical violence

when angered. *District of Columbia Pub. Schs.*, 114 LRP 34500 (SEA DC 07/08/14).

- A teenage girl's misconduct—kicking a male schoolmate in the groin—was directly related to the post-traumatic stress she suffered as the result of a sexual assault. *Manteca Unified Sch. Dist.*, 50 IDELR 298 (SEA CA 2008)
- Student leaving threatening messages may be a manifestation if the District fails to properly assess the student or to develop a BIP. *Sch Bd. of the City of Norfolk v. Brown*, 56 IDELR 18 (E.D. Va. 2010).

A student's ED may be a manifestation where it causes the student to be impulsive and combative, triggering the student to elope from class and starts a fire on school grounds. *District of Columbia Pub. Schs.*, 114 LRP 3336 (SEA DC 12/19/13).

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: When Behavior Is 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](#)

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

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

[ADDITIONAL DISTRICT RESOURCES]

CITATIONS

Board Policy FO and FOF; 34 CFR 300.530(e)–(f); Texas Education Code 29.005, 37.004(b)