



"He Was Just Self Medicating"
**How to Effectively Conduct a Manifestation
Determination Review**

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FAPE

Under both Section 504 and IDEA, a school district is required to provide a free, appropriate public education. In special education, FAPE focuses on the concept of educational benefit. In a 504 situation, the focus is on access rather than educational benefit.



MITIGATING FACTORS

Before assigning a student to OSS, DAEP, expulsion, or a JJAEP, a district *must consider* statutorily described potential mitigating factors in relation to the misconduct. The factors include:

- ❑ Self-defense
- ❑ Intent
- ❑ Disciplinary history
- ❑ A disability that “substantially impairs” the student’s capacity to appreciate the wrongfulness of the conduct
- ❑ The student’s status as homeless or in the conservatorship of DFPS



SUSPENSION

The grounds for a student’s suspension are set forth in a district’s student code of conduct (SCOC).

For out of school suspension, a student may be suspended for *up to three school days* at a time.

A student *below third grade* cannot be placed in out of school suspension except for certain serious offenses involving a weapon, violence, or drugs/alcohol. However, a district may adopt and implement a positive behavior program as an alternative to traditional discipline for students below third grade.

A homeless student may not be placed in OSS unless the conduct involves drugs/alcohol, weapon offenses, or violent offenses.

The Campus Behavior Coordinator may work with the district’s homeless liaison to identify proper alternatives to OSS.



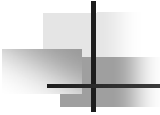
DUE PROCESS RIGHTS-REMOVALS

- A conference with the CBC, student, parent or guardian, and teacher (if applicable), must be scheduled not later than the third-class day after removal.
- "Valid attempts" must be used to require a person's attendance.
- At the conference, the student is entitled to *written or oral notice* of the reasons for removal, an *explanation* of the basis for removal, and the *opportunity to respond* to the reasons.
- The CBC must consider the following **mitigating factors**: self-defense, intent, disciplinary history, a disability that "substantially impairs" the student's capacity to appreciate the wrongfulness of the conduct, and the student's status as homeless or in the conservatorship of DFPS.
- Mitigating factors must be considered if mandatory or discretionary.



DUE PROCESS RIGHTS-EXPULSIONS

- Prior to expulsion, a student is entitled to notice and a hearing.
- The written notice should contain a statement of the specific charges and grounds that, if proven, would justify expulsion. Generally, the student should be given the names of the witnesses against him or her and an oral or written report on the facts to which each witness will testify.
- The CBC can accept hearsay evidence from school administrators who investigate disciplinary infractions.
- The student may have representation at the hearing. The school must make a "good faith" effort to inform the student and the parent of the time/place of hearing.
- Mitigating factors must be considered.
- Appeals can be taken to the board, and then to state district court.



MANDATORY VS. DISCRETIONARY

When an offense is mandatory, the district is required to place the student in the DAEP or expel the student. If the offense is discretionary, it is the *district's choice* whether to take the action. The discretionary offenses are set forth in statute or in the district's code of conduct.

The district's discipline policies can be found in the F series of the school's policy manual.

Keep in mind how the due process requirements differ between DAEP removals and expulsions.



SCHOOL ACTION

School officials may take disciplinary action regardless of whether law enforcement officials seek criminal consequences for the same misconduct.



STUDENT WHO WITHDRAWS PENDING THE DISCIPLINARY PROCEEDINGS

If a student withdraws from school before an order of expulsion or DAEP is entered, the district may complete the proceedings and enter the order. If the student reenrolls in the district during the same or the subsequent school year, the district may enforce the order, reduced for time served. If the student enrolls in another school district, the new district may honor the order, or, if the preceding district failed to enter an order, the new district may complete the proceedings and enter an order.



MANDATORY DAEP PLACEMENTS

Subject to mitigating factors, a district *must place a student in the DAEP* if the student, while on or within 300 feet of school property, or while attending a school-sponsored or school-related activity on or off school property, engages in the following:

- Conduct punishable as a **felony**
- **Assault** causing bodily injury
- **Harassment** against a district **employee**
- Selling, giving, delivering to another person or possessing, using or being under the influence of marijuana, a controlled substance, a dangerous **drug** or an **alcoholic beverage**
- Commission of a **serious act** while under the influence of **alcohol**
- Conduct containing the elements of an offense relating to an **abusable volatile chemical**
- **Public lewdness** or **indecent exposure**
- **Retaliation** against a district employee (unless it rises to the level of a mandatory expellable offense)



MANDATORY DAEP OFFENSES-OFF CAMPUS

A student *must be placed in a DAEP* if, *while off campus and not in attendance at a school sponsored or school related activity*, the student receives deferred prosecution for the felony offense of aggravated robbery or offenses listed in title 5 of the Penal Code, i.e., violent offenses against the person; a court or jury finds that the student has engaged in delinquent conduct including the felony offense of aggravated robbery or conduct defined in title 5; or the superintendent or designee has a *reasonable belief* that the student engaged in felony aggravated robbery or conduct defined as a title 5 felony offense



DISCRETIONARY DAEP OFFENSES-OFF CAMPUS

A student *may be placed in a DAEP* if the superintendent or designee has a “reasonable belief” that the student, *while off campus and not in attendance at a school sponsored or school related activity*, has engaged in conduct *other than* aggravated robbery, or those offenses listed in title 5 of the Penal Code, i.e., violent offenses against the person; and the continued presence of the student in the regular classroom threatens the safety of other students or teachers or will be detrimental to the educational process.



MANDATORY EXPELLABLE OFFENSES

A student *must* be expelled for committing any of the following offenses while on school property or while attending a school-sponsored or school-related activity:

- Uses, exhibits, or possesses a firearm, illegal knife, club, or other prohibited weapon; or

- Commits the elements of any of the following offenses: aggravated assault, sexual assault, aggravated sexual assault, arson, murder, capital murder, criminal intent to commit murder or capital murder, indecency with a child, aggravated kidnapping, aggravated robbery, manslaughter, criminally negligent homicide, continuous sexual abuse of a young child or children, or drug or alcohol related offenses punishable as a felony. *(If any of these offenses are committed within 300 feet of school property, it becomes a discretionary expulsion. Also, if any of these offenses are committed against another student, and the conduct occurs outside of school property or a school sponsored or related activity, it becomes a discretionary expulsion.)*

- If any of these offenses are committed against an employee or volunteer, it is an expellable offense whether or not the conduct occurred on school property or while attending a school-sponsored or school-related activity.



DISCRETIONARY EXPELLABLE OFFENSES (CON'T)

A student *may* be expelled if, while on or within 300 feet of school property or while attending a school-sponsored or school-related event, the student:

- Sells/gives/delivers/possesses or is under the influence of marijuana, a controlled substance, a dangerous drug or an alcoholic beverage
- Engages in conduct relating to an abusable volatile chemical
- Engages in conduct containing the elements of deadly conduct

Additionally, a student *may* be expelled if the student:

- Engages in conduct containing the elements of felonious criminal mischief
- Engages in school-related conduct involving false alarms, reports or terroristic threats; or
- Engages in breach of computer security involving a computer, computer network or computer system owned by the district



BULLYING AND EXPULSION

A student *may* be expelled if the student:

- Engages in bullying that encourages a student to commit or attempt to commit suicide
- Incites violence against a student through group bullying; or
- Releases or threatens to release intimate visual material of a minor or student who is 18 years or older without the student's consent.



SERIOUS MISBEHAVIOR IN DAEP

A student placed in a DAEP who engages in "documented" serious misbehavior while on the DAEP campus despite "documented" behavioral interventions may be expelled.

"Serious misbehavior" means deliberate violent behavior that poses a direct threat to others, extortion (gaining of money or property through force or threat), coercion, public lewdness, indecent exposure, criminal mischief, personal hazing, criminal harassment of a student or employee.



REMOVALS FOR LESS THAN 10 DAYS

A student with a disability may be placed in an alternative placement for up to ten days as long as nothing in the student's § 504 plan or IEP plan would preclude such a placement.



10-DAY RULE

A student with a disability may be removed from his/her placement who violates the Student Code of Conduct for not more than 10 consecutive school days, or a series of removals that does not constitute a change in placement. Any removals that would constitute a change in placement can only occur after the committee conducts a manifestation determination review. A change in placement occurs if the student is:

10 DAY RULE (Cont'd)

1. Removed from the student's current placement for more than 10 consecutive days; or
2. The student is:
 - A. Subjected to a series of removals totaling more than 10 school days;
 - B. The student's behavior is substantially similar to the student's behavior in the previous incidents that resulted in a series of removals; and
 - C. Additional factors exist, such as the length of each removal, the total amount of the time the student is removed, and the proximity of the removals to one another.

MANIFESTATION DETERMINATION REVIEW

An MDR must be held whenever a change in placement has occurred. The "10 day" rule for change of placement applies. A MDR should occur within 10 days of a decision to change a student's placement because of a student code of conduct violation.



MANIFESTATION DETERMINATION REVIEW

Written Notice

Under *Section 504*, the parent is not even required to be a member. Therefore, there is no requirement that written notice be provided 5 school days prior to the meeting. However, it is recommended that the district provide written notice of the meeting to verify that notice was provided to the parent. Additionally, a copy of the MDR should be provided.

Under *IDEA*, a five school day notice of the MDR must be provided, unless the parent waived the 5-day notice.



MANIFESTATION DETERMINATION REVIEW

The Administrator's Responsibility

The administrator is responsible for (1) investigating and determining whether a student has committed a disciplinary infraction; and (2) assessing an appropriate disciplinary sanction. The imposition of the sanction is contingent upon whether the behavior is a manifestation of the student's disability under § 504 or IDEA.



MANIFESTATION DETERMINATION REVIEW

The 504 Committee Responsibility

The 504 Committee is responsible for conducting the manifestation determination. The 504 Committee does not determine guilt or innocence nor does the 504 committee determine the sanction for the behavior.

The ARD Committee Responsibility

The ARD committee is responsible for determining whether the IEP was followed and whether the misbehavior was directly or substantially caused by the disability. Like the 504 committee, the ARD committee does not determine guilt or innocence or the sanction.



MANIFESTATION DETERMINATION REVIEW

Record Review

With a student receiving 504 services, the 504 committee needs to consider all relevant information including evaluation data and disciplinary history.

With a student receiving special education services, the ARD committee also needs to consider all relevant information, including evaluation data and disciplinary history.

MANIFESTATION DETERMINATION REVIEW



Question(s) for MDR

1. Whether the student's plan was implemented.
2. Whether the conduct in question was caused by or had a direct and substantial relationship to the student's disability. If it does, the behavior is a manifestation of the disability.

MANIFESTATION DETERMINATION REVIEW



Conduct Involving Drugs and Alcohol

Under Section 504, a school may take any disciplinary measures that a non-disabled student receives, and no manifestation determination or due process procedures are required.



MANIFESTATION DETERMINATION REVIEW

Factors to Consider When Making an MDR

1. Analyze the child's behavior across settings and across time to determine if the conduct is a direct result of the student's disability.
2. The child's diagnosis or "eligibility" does not categorically determine a manifestation.
3. Misconduct must bear more than a weak relationship to the disability.
4. Consider the circumstances surrounding the behavior.
5. Determine whether the action was purposeful and intentional.



MANIFESTATION DETERMINATION REVIEW

When the Behavior is Not a Manifestation

The student is treated the same as his nondisabled peers, and the administration's recommendation is implemented. The district must ensure that the student's plan will be implemented at the alternative placement.

MANIFESTATION DETERMINATION REVIEW

When the Behavior is a Manifestation

Generally, the district must return the student to the placement, unless the parent and the school agree to change the placement, or there is a determination that maintaining the student's placement would pose a substantial risk of harm to the student or others. Consequences may be implemented, if appropriate. The committee must consider developing a BIP for the student, or modifying an existing BIP.

BEHAVIORS THAT ALLOW FOR REMOVAL REGARDLESS OF THE MDR DETERMINATION

A district may remove a student to the DAEP for not more than *45 school days* without regard to whether the behavior was a manifestation if the child:

1. Carries or possesses a weapon on school premises or to or at a school function;
2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function;
or
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function. ("Serious bodily injury" includes causing extreme physical pain)



A few words on BIPS . . .

A BIP should describe the problem behavior, the reasons for the behavior, and the intervention strategies that will address the behavior.

It must include positive behavioral interventions, strategies and supports.

The BIP should contain the strategies used to teach replacement behaviors that meet the student's needs in a more acceptable way.

The strategies may include making instructional and environmental changes, providing reinforcement, reactive strategies, and effective communication.



INVOLVEMENT OF POLICE

School districts may call the police to intervene in matters involving students with disabilities, even when the intervention may result in the student's arrest. The district must demonstrate that it called the police pursuant to a policy equally applicable to disabled and nondisabled students.