

Manifestation Determination



Manifestation
Determination

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**Truth
or
Myth?**

#1
Students with
disabilities **can't**
have **disciplinary**
consequences.

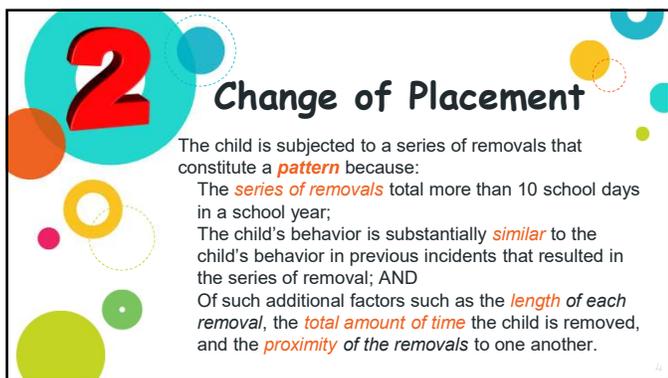


1 **Change of Placement**

The removal is for **more than**
10 consecutive school days

or

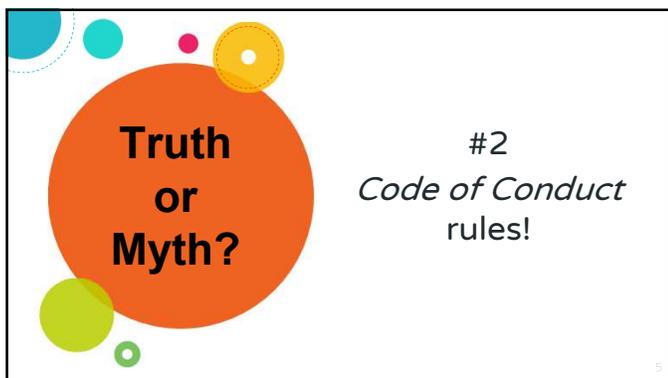
Manifestation Determination



2 **Change of Placement**

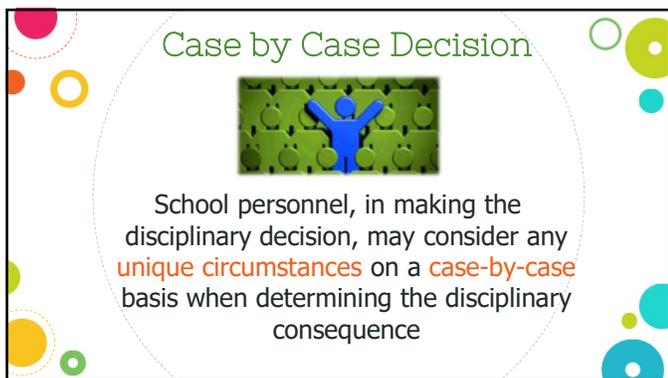
The child is subjected to a series of removals that constitute a **pattern** because:

- The **series of removals** total more than 10 school days in a school year;
- The child's behavior is substantially **similar** to the child's behavior in previous incidents that resulted in the series of removal; AND
- Of such additional factors such as the **length of each removal**, the **total amount of time** the child is removed, and the **proximity of the removals** to one another.



Truth or Myth?

#2
Code of Conduct
rules!



Case by Case Decision



School personnel, in making the disciplinary decision, may consider any **unique circumstances** on a **case-by-case** basis when determining the disciplinary consequence

Manifestation Determination

**Truth
or
Myth?**

#3

Even if only 1 of the 2 **manifestation standards** is met the behavior must be considered a manifestation.

Standard #1

Was the conduct in question **caused by**, or have a **direct and substantial relationship** to, the child's disability?

Standard #2

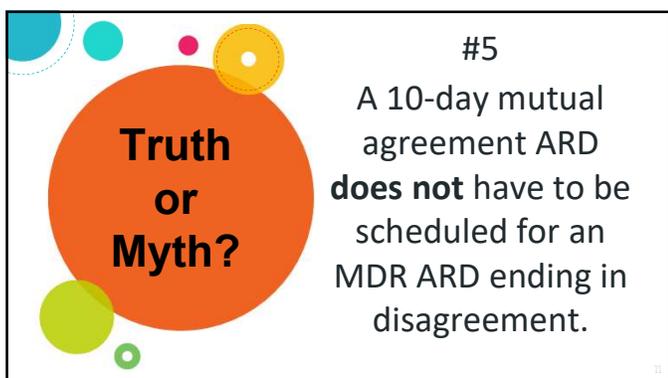
Was the conduct in question a **direct result** of the LEA's **failure to implement** the IEP?

Manifestation Determination



Truth or Myth?

#4
A student's evaluation should **list** the behaviors that are a manifestation of the disability.



Truth or Myth?

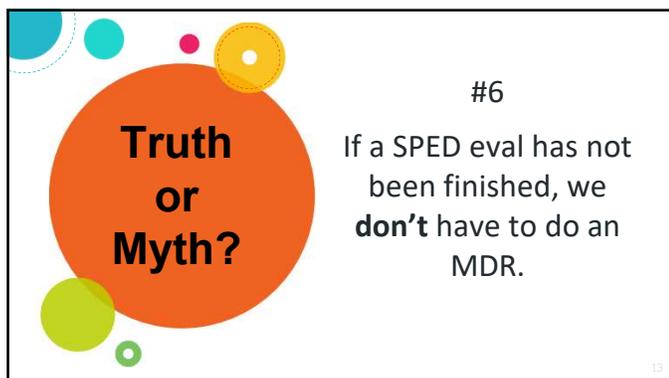
#5
A 10-day mutual agreement ARD **does not** have to be scheduled for an MDR ARD ending in disagreement.



10-Day Recess?

The opportunity to recess and reconvene is not required when the student's presence on the campus **presents a danger** of physical harm to the student or others or when the student has committed an **expellable** offense or an offense that may lead to a placement in a **DAEP**.

Manifestation Determination

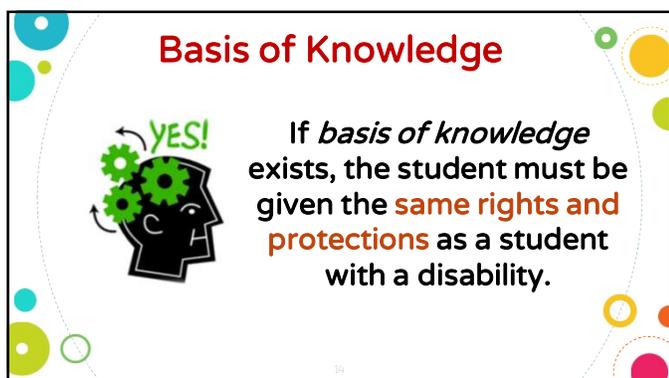


Truth or Myth?

#6

If a SPED eval has not been finished, we **don't** have to do an MDR.

11

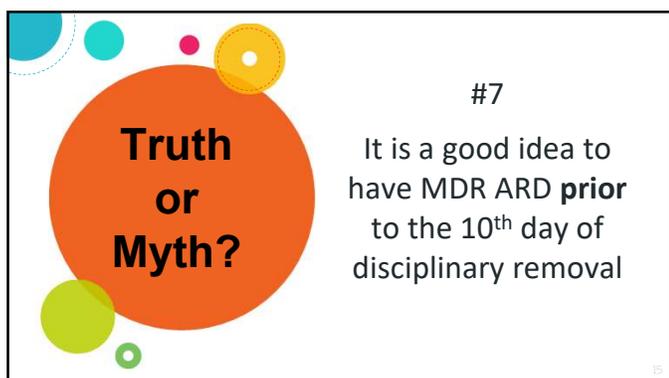


Basis of Knowledge

YES!

If *basis of knowledge* exists, the student must be given the **same rights and protections** as a student with a disability.

12



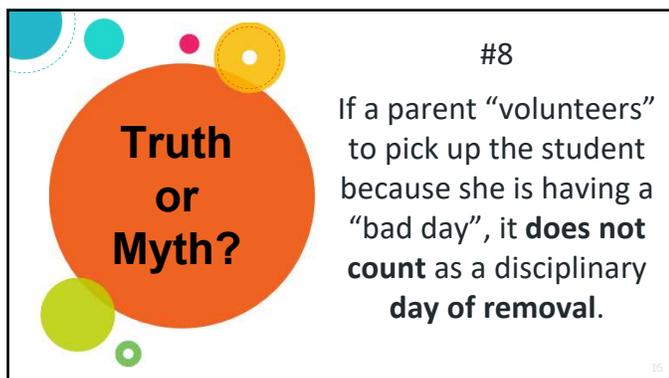
Truth or Myth?

#7

It is a good idea to have MDR ARD **prior** to the 10th day of disciplinary removal

13

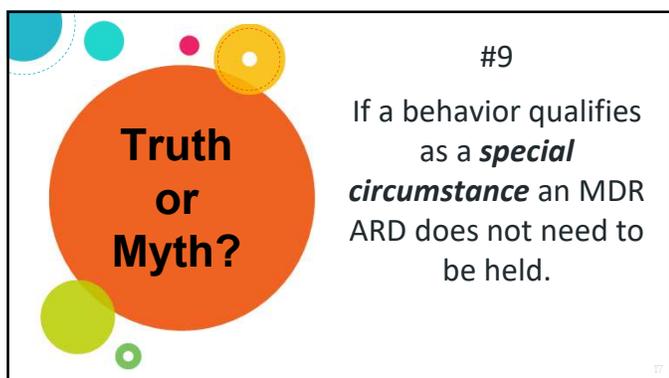
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#8

Truth or Myth?

If a parent “volunteers” to pick up the student because she is having a “bad day”, it **does not count** as a disciplinary day of removal.



#9

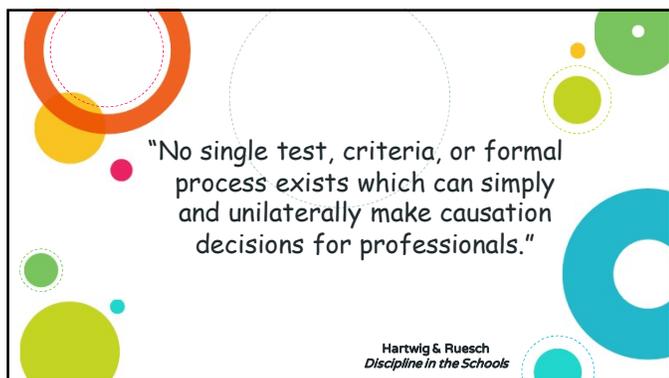
Truth or Myth?

If a behavior qualifies as a *special circumstance* an MDR ARD does not need to be held.

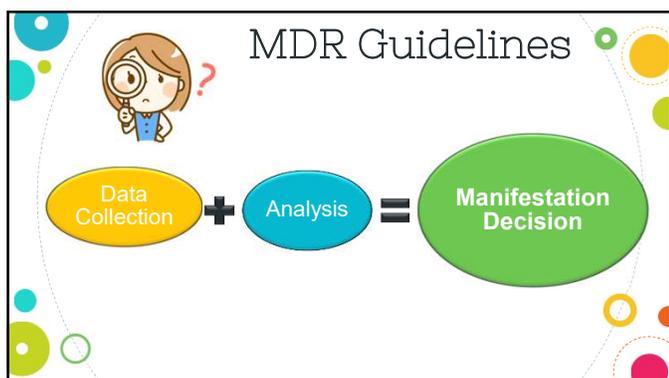


Data Collection

Manifestation Determination







Manifestation Determination

**D
I
M**

What are the “must have” data?

1. Was the conduct in question caused by, or have a direct and substantial relationship to, the child’s disability?
2. Was the conduct in question a direct result of the LEA’s failure to implement the IEP?

Disability

Disability IEP Misconduct

Data Collection: *Disability*

Data	Questions
• Current FIE	❖ What are the current disabilities?
• Parent provided evaluations and information	❖ What specific behaviors were identified that led to diagnosis?
• Discipline records	❖ Are evaluations current? Meet standards? Reflective of current behavior?
• Teacher documentation	❖ What patterns of behavior have been displayed?
• Literature/research*	❖ Has there been a change in behavior?
	❖ What are the defining characteristics of the disability?

*if available

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Update assessment or conduct new assessment if necessary

- ❖ Involve qualified personnel
- ❖ Use instruments/techniques that are reliable and valid for the manner in which they are used
 - objective measures
 - multiple informants
 - follow "best practices"
- ❖ Follow standardized procedures
- ❖ Consider other current evaluative information

Disability IEP Misconduct

Data Collection: *IEP*

Data	Questions
<ul style="list-style-type: none">● Current IEP● BIP and/or FBA*● Documentation of IEP implementation● Teacher/service provider statement regarding IEP implementation and progress	<ul style="list-style-type: none">❖ What are the current services, interventions, etc.?❖ What do the documentation/statements indicate regarding IEP implementation?❖ Is the student making adequate progress?❖ What behaviors do the BIP* and/or FBA* target?

*if available

Disability IEP Misconduct

Data Collection: *Misconduct*

Data

- Administrator incident report & statement
- GenEd Hearing documentation*
- Student/parent statement
- Witness statement*
- Police report*
- Video documentation (school, witness, social media, etc.)*

*if available

Manifestation Determination

Disability IEP Misconduct

Data Collection: *Misconduct*

Questions

- ❖ What specific behavior(s) did the student engage in that prompted the disciplinary consequence?
- ❖ What were the specific circumstances of the behavior, including antecedents and consequences?
- ❖ What was the student's explanation of the behavior?
- ❖ Is there evidence of premeditation?
- ❖ How closely does this behavior align with the defining characteristics of the student's individual disability profile?
- ❖ Are there other factors to explain the misconduct?

Bristol Township School District v. Z.B.



- ✓ Assault
- ✓ Failed to comply with directive

To be quite honest, we looked at it more from a global picture. We didn't dive into the specifics.

Bristol Township School District v. Z.B.

The failure to consider the specific circumstances of the incident and the alleged conduct renders the manifestation determination deficient because it precludes any meaningful discussion of whether Z.B.'s behavior was a manifestation of his disability.



Manifestation Determination

DOE V. MAHER

“Put another way, a handicapped child’s conduct is covered by this definition only if the handicap significantly impairs the child’s behavior controls. Although this definition may, depending on the circumstances, include the conduct of handicapped children who possess the raw capacity to conform their behavior to prescribed standards, it does not embrace conduct that bears only an *attenuated relationship* to the child’s handicap...”

DOE V. MAHER

“...An example of such attenuated conduct would be a case where a child’s physical handicap results in his loss of self-esteem, and the child consciously misbehaves in order to gain the attention, or win the approval, of his peers. Although such a scenario may be common among handicapped children, it is no less common among children suffering from low self-esteem for other, equally tragic reasons.”

DOE V. MAHER

“When a child’s misbehavior does not result from his handicapping condition, there is simply no justification for exempting him [or her] from the rules, including those regarding expulsion, applicable to other children...To do otherwise would amount to asserting that all acts of a handicapped child, both good and bad, are fairly attributable to his handicap. We know that this is not so.”

Manifestation Determination

Causal Considerations

- Is the behavior direct/causal or attenuated?
- Is the behavior a defining characteristic of the disability?
- Would a non-disabled peer react in a similar manner in a similar circumstance?
- Are there other factors to explain the misconduct?
- Did a failure to implement the IEP cause the behavior?

Zirkel, P. (2020) NASP Communiqué
*The Substantive “Yes” and “No” Manifestation Determinations Under the IDEA:
 An updated case law analysis*

Zirkel divides his case law analyses into **procedural** versus **substantive** issues.

- **Procedural** refers to how the MDR is conducted, who is present, and when does it occur.
- **Substantive** refers to the two standards and the ultimate issue of whether or not the conduct is a manifestation.

The two substantive questions, therefore, are whether the conduct was *caused by the disability* (conduct-disability connection) and/or whether the conduct was the result of *failure to implement the IEP*.

Communiqué

Trends in Zirkel’s Analyses of Substantive Rulings

Time Period	Total Cases included	% for District	Disability Conditions and Conduct Areas
1980-1997	16	63% in favor of district	SLD most common disability; ED (due to ADHD) Drugs/Alcohol and Violence
1997-2004	37	78% in favor of district	OHI-ADHD (most frequent), ED, SLD Actual or threatened violence, Drugs/Alcohol
2004-2009	14	65% in favor of district	OHI-ADHD Actual or threatened violence
2009 - 2014	20	75% in favor of district	OHI-ADHD, SLD, and ED Actual or threatened violence
2014-2019	65	54% in favor of district	OHI-ADHD and ED Actual or threatened violence including weapons

Predominance of ADHD-based classifications

Manifestation Determination

Zirkel's Recommendations

Assemble **comprehensive information sources**; conduct a *careful consideration of the causality criteria in light of the individual disability profile ... and specific nature of the conduct in question.*

- We need to **avoid an overly narrow interpretation** of causal, overreliance on stereotypic or general assumptions as opposed to *individualistic specificity of classifications such as ED and ... ADHD and knee-jerk zero-tolerance reactions to any form of actual or threatened violence.*

Communique

Disability Profile: ADHD

Disability Condition	Diagnostic Criteria	Specifics for Student
OHI-ADHD	<p>Inattentive Presentation: Often</p> <ol style="list-style-type: none"> fails to give close attention/makes careless mistakes; has difficulty with sustaining attention in tasks or play activities; does not seem to listen when spoken to directly; does not follow through on instructions and fails to finish schoolwork, chores, or duties in workplace; has difficulty organizing tasks and activities; avoids, dislikes, or is reluctant to engage in tasks that require sustained mental effort; loses things necessary for tasks or activities; easily distracted by extraneous stimuli; forgetful in daily activities <p>Hyperactive-Impulsive Presentation: Often</p> <ol style="list-style-type: none"> fidgets or taps hands or feet or squirms in seat; leaves seat in situations when remaining seated is expected; runs about or climbs in situations where it is inappropriate; unable to play or engage in leisure activities quietly; "on the go," acting as if "driven by a motor;" talks excessively; blurts out an answer before a question has been completed; has difficulty waiting his or her turn; interrupts or intrudes on others 	<ul style="list-style-type: none"> Which of these does the student display? How is that displayed? What exactly does the student do that made you check off this symptom/behavior?

Emotional Disturbance: 5 Characteristics

Disability Condition	Classification Criteria	Specifics for Student
ED	<ol style="list-style-type: none"> An inability to learn that cannot be explained by intellectual, sensory, or health factors; An inability to build or maintain satisfactory interpersonal relationships with peers and teachers; Inappropriate types of behavior or feelings under normal circumstances; A general pervasive mood of unhappiness or depression; or A tendency to develop physical symptoms or fears associated with personal or school problems. 	<ul style="list-style-type: none"> Which of these does the student display? How is that displayed? What exactly does the student do that made you check off this symptom/behavior?

Manifestation Determination

Disability Profile: *ED Example*

Disability Condition	Classification Criteria	Specifics for Student
ED	A general pervasive mood of unhappiness or depression	<p>Depressed mood – student is sad, cries often</p> <p>Loss of interest or pleasure in all, or almost all, activities – no longer wants to play with friends, does not enjoy family outings, used to like to draw and does not want to do this anymore</p> <p>Fatigue or loss of energy – student tires easily, is lethargic</p> <p>Feeling of worthlessness – says he is not good at things, cannot perform activities, gives up easily due to feeling he cannot accomplish the task</p> <p>Suicidal ideation – has said he has thoughts of hurting himself</p>

Common MDR Behaviors – *Threats & Aggression*

Disorders that do not include aggression	Disorders that do include potential aggressive actions
ADHD	Disruptive Mood Dysregulation Disorder (DMDD)
Autism	Oppositional Defiant Disorder (ODD)
Depression	Intermittent Explosive Disorder (IED)
Anxiety Disorders	Conduct Disorder

Disability Characteristics and Conduct

Student Specific Characteristics of Disability Condition	Specific Behavior and Circumstances of the Conduct
<p>ADHD Hyperactive-Impulsive Presentation</p> <p>Kiley is very fidgety – he fidgets in his seat, taps his hands and fingers on the desk, taps his feet on the floor, and squirms in his seat. He is in constant motion but remains in his seat. On the playground, he runs around without purpose and in the classroom, he dodges from one area to another, hops, and dances as he turns in his work. Kiley talks excessively to peers and comments on all things in a very demonstrative way. He often blurts out an answer or comments in class, has difficulty waiting his turn, and interrupts others. He will also intrude in a conversation that the teacher is having with another student or adult.</p>	<p>Hit a student in the cafeteria</p> <p>At lunch, Kiley was seated next to B. He and B. were "horsing around" and B. took Kiley's juice box. Kiley told him to give it back, but B. held it up away from Kiley's reach. Kiley told him once again to give him the box and simultaneously punched him in the stomach.</p> <p>The teacher saw the altercation and both boys were taken to the principal. Each provided the same story of what happened, and Kiley admitted to hitting B. because he would not give him the juice box.</p>

Manifestation Determination

Disability Characteristics and Conduct

Student Specific Characteristics of Disability Condition	Specific Behavior and Circumstances of the Conduct
<p>ED – general pervasive mood of unhappiness or depression</p> <p>Maggie's depression is evidenced by several characteristics. Affectively, she is sad and often tearful, especially if she perceives her peers or teachers are disapproving of her. She says that other students do not like her.</p> <p>Maggie does not display anger or irritability, rather, she is withdrawn when frustrated and lacks engagement with friends. Maggie's motivation is poor; she states that she is not able to perform tasks well and does not try, especially if a task is difficult. As a result, she is not completing work at school, has lower grades, and is isolated to some degree from peers which further contributes to her feelings of sadness and reinforces her negative self-image.</p>	<p>Possession of alcohol at school</p> <p>On October 5, Maggie brought alcohol to school. Her parents had been on a trip and brought home several small bottles of alcohol from their hotel room. Maggie took 3 small bottles to school and showed them to classmates at lunch. She offered to give them to her peers, but they refused. One of her peers told the teacher, and Mary was sent to the office. Due to alcohol possession on school property, Maggie's disciplinary consequence was determined to be 15 days at the DAEP.</p>

Decision for Maggie?

Both parents and school personnel agree that Maggie's IEP, including counseling, was implemented and is not an issue in this case.

The school personnel concluded that alcohol possession was not a direct cause of her depression characteristics. Maggie's parents stated that Maggie was trying to engage with friends, and that the alcohol possession was due to her emotional disturbance (depression).

- WHAT DO YOU THINK?
- IS THE MISCONDUCT DUE TO DEPRESSION? DID DEPRESSION CAUSE MAGGIE TO BRING ALCOHOL TO SCHOOL?
- COULD IT BE AN ATTENUATED RELATIONSHIP?

Bob: Individual Profile

- Bob is a 2nd-grade student. His disability condition is:
 - ED due to inappropriate behavior or feelings under normal circumstances. His FIE was completed in Nov. and the infraction occurred in April of the same school year.
- He has been diagnosed clinically as having ODD
- **WISC-V FSIQ=114**
- **WJ-IV ACH:** All reading areas average; Writing Samples=103 (administered in 2 sessions with teacher present), Sentence Writing Fluency=(did not comply, said he was done with writing), Calculation=94, Applied Problems=113
- Bob has had a difficult and troubling childhood. His mother has been in and out of his life and is a substance abuser. His father has been in and out of jail and is currently incarcerated. Bob lives with his maternal grandparents who have had custody of him and his two older siblings since Bob was 1 ½ years old.

Bob—page #1

Manifestation Determination

Individual Profile



- Current teacher describes Bob as "sweet and needing attention when he is not angry or upset...volunteers to help me...seems very immature...very oversensitive ...most of the time I can tell when he is affected...makes a facial expression, starts to cry...and if I can catch it immediately, I can usually calm him and redirect him..." The teacher noted he has become more defiant this year.
- Bob distracts others, tries to be funny, is "very" work avoidant, leaves the classroom on occasion, has hit a student with a ruler "playfully," and uses profanity. Overall she sees Bob as a student who disregards authority when he does not want to do something. He challenges rules, accuses others and is disrespectful.
- FIE noted marked oppositional tendencies due to anger and resentment, externalizing behaviors, no internalizing issues, argumentative, disruptive and elopement behaviors when under stress. FIE noted that Bob struggles in situations where there is stress.

Bob—page #2

Individual Profile



- ⊙ Grandmother reported that Bob had friends in the neighborhood and can make friends; he is "very social...wants friends...likes to play games...but when he gets frustrated or feels too challenged, he will have a tantrum and then his friends do not want to play with him."
- ⊙ Bob had 7 disciplinary infractions in 1st grade (3 for insubordination, 2 profanity, 2 lunch violations) and at the time of the FIE in 2nd grade, he had 4 infractions (same types of behaviors). At the time of the MDR, he had 8 infractions.
- ⊙ Grandmother told the teacher and evaluator that Bob was acting out due to stressful situations at home. His older brother had been arrested and his mother had reappeared for about 2 weeks at home. The grandmother said Bob is "going through some heavy emotional stuff."

Bob—page #4

Individual Profile

Do we have enough data to describe the Profile?

Domain	Assets	Challenges
History		
Speech-Language		
Physical		
Intellectual		
Academic Achievement		
Emotional-Behavioral		
Social		
Adaptive		

Bob—page #7

Manifestation Determination

Conduct/Misbehavior 

- Bob was observed by another student taking out a Ziplock bag from his pocket and putting 1 pill in his mouth.
- The girl who observed this went up to the teacher immediately to tell her what Bob had done. The teacher went over to Bob's desk and had him hand over the Ziplock bag, which he did without resistance.
- The teacher took Bob to the nurse first and then the principal.
- Bob told the nurse he had brought his grandmother's "anxiety pill" to school because he was under stress and having headaches. The nurse confirmed that the drug was Lexapro, 5 mg.
- Bob's grandmother was contacted and Bob was taken to the principal's office where he continued to be monitored by the nurse.

Bob—page #8

Conduct/Misbehavior 

- During the MDR ARD, it was agreed that all services had been provided consistent with the IEP, including the BIP and Counseling. The LSSP reported that Bob was making some progress on learning a coping sequence to deescalate. The in-class support teacher confirmed the use of that sequence in the classroom.
- Bob's grandmother was upset that he had taken her pills and did not know he had done so. She reiterated how stressful her home is and hoped that the committee would not treat Bob as a "criminal...He really is a good kid just trying to get by."

Bob—page #9

Bob: ED Disability Condition 

Emotional Disturbance (ED)
According to the IDEA (34 CFR §300.08) and TAC (§89.1040), *Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:*

___ An inability to learn that cannot be explained by intellectual, sensory, or health factors
Bob does not exhibit this characteristic. Intellectual functioning is above average and academic abilities are average to above average.

Bob—page #10

Manifestation Determination

Bob: ED Disability Condition 

___ An inability to build or maintain satisfactory interpersonal relationships with peers and teachers

Bob does not exhibit this characteristic. His teacher has a good relationship with Bob and describes him as helpful. While he annoys others, Bob has friends in the neighborhood and appropriately engages in social interactions with peers when he is not upset or angry. He does not have an inability to form relationships and is social and outgoing. The Social Skills scale on the BASC-3 completed by both the grandparent and teacher fell in the average range. Bob will offer assistance to peers, give compliments, and is cooperative in group activities.

Bob—page #11

Bob: ED Disability Condition 

___ A general pervasive mood of unhappiness or depression

Bob does not display this characteristic. There are no scale elevations on the BASC-3 from both the grandparent and teacher in the area of depression. Bob does cry when frustrated, but is not generally sad or unhappy.

___ A tendency to develop physical symptoms or fears associated with personal or school problems

Bob does not display this characteristic. There is no evidence of somatization or anxiety symptoms in his BASC-3 profile and no reports of physical symptoms or fears.

Bob—page #12

Bob: ED Disability Condition 

✓ Inappropriate types of behavior or feelings under normal circumstances

Bob does display this characteristic. The primary features of this characteristic are behaviors that occur when Bob becomes angry. Specifically, Bob engages in property destruction (will tear up paper, throw materials or swipe them off of his desk) and elopement (tries to leave the designated area) when angry and trying to avoid or escape demands. Bob is verbally noncompliant, but this does not escalate to significant behaviors if caught early, prior to the escalation in his emotionality. Bob's pattern is one of externalizing behaviors that are out of proportion to the situation when angry. He is not described as generally angry or irritable (his teacher describes him as sweet, needing attention and immature). It is the escalation of behavior under conditions of anger that is inappropriate.

Bob—page #13

Manifestation Determination

Analysis: <i>Disability Characteristics and Conduct</i>	
Student Specific Characteristics of Disability Condition	Specific Behavior and Circumstances of the Conduct
<p>ED—Inappropriate behavior and feelings under normal circumstances</p> <p>The primary features of this characteristic are behaviors that occur when Bob becomes angry. Specifically, Bob engages in property destruction (will tear up paper, throw materials or swipe them off of his desk) and elopement (tries to leave the designated area) when angry and trying to avoid or escape demands. Bob is verbally noncompliant, but this does not escalate to significant behaviors if caught early, prior to the escalation in his emotionality. Bob's pattern is one of externalizing behaviors that are out of proportion to the situation when angry. He is not described as generally angry or irritable (his teacher describes him as sweet, needing attention and immature). It is the escalation of behavior under conditions of anger that is inappropriate.</p>	<p>Brought pills to school</p> <ul style="list-style-type: none"> Bob was observed by another student taking out a Ziplock bag from his pocket and putting 1 pill in his mouth. The girl who observed this went up to the teacher immediately to tell her what Bob had done. The teacher went over to Bob's desk and had him hand over the Ziplock bag, which he did without resistance. The teacher took Bob to the nurse first and then the principal. Bob told the nurse he had brought his grandmother's "anxiety pill" to school because he was under stress and having headaches. The nurse confirmed that the drug was Lexapro, 5 mg. Bob's grandmother was contacted and Bob was taken to the principal's office where he continued to be monitored by the nurse. <p style="text-align: right;">Bob—page #14</p>

