

# To Manifest or Not to Manifest, That is the Question": Conducting a Bulletproof MDR

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Does the district have to conduct a hearing before removing a student to the DAEP?

If the DAEP is the possible sanction, a conference must be held. It is not a hearing. The language of the statute specifically states "conference".

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When must the conference be held?

The conference must be held no later than the third class day after the day on which the student is being removed from the class. The teacher, school principal, or other appropriate administrator shall schedule a conference.

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Who must be invited to the conference?

The principal or other appropriate administrator, a parent or guardian of the student, the teacher removing the student from class, if any, and the student.

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What kind of notice is the student entitled to receive?

At the conference, the student is entitled to receive:

- Written or oral notice of the reasons for the removal;
- An explanation of the basis for the removal; and
- An opportunity to respond to the reasons for the removal.

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Does the student go back to the classroom pending the conference?

No. The student may not be returned to the regular classroom pending the conference.

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How long can the student be sent to the DAEP?

The amount of time is set forth in the district's student code of conduct and is contingent upon the infraction committed. A student who receives special education services must be treated in the same manner as the nondisabled student in the process.

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In this process, what does the administrator do?

The administrator determines guilt or innocence and the length of the DAEP removal.

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Does that change when a student who receives special education services is involved?

When a student with special needs is involved, the administrator still determines guilt or innocence and the length of the removal. However, the removal is contingent upon the ARD committee's manifestation determination. No action can be taken before the ARD makes its determination.

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What is the standard of review for a DAEP conference?

Essentially, if the principal reasonably believes the offense was committed and makes that determination in good faith, then the decision will be upheld. The most important consideration for the administrator is to ensure he/she is consistent in the way the process is applied to all students.

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Can the parent or student present witnesses?

No. The parents or student may make a presentation and provide documentation, but it is not an evidentiary hearing.

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Can the parent or student cross-examine the administrator or teacher?

No. The parents and student are limited to the opportunity to explain, which is simply a presentation.

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Can the principal's decision be appealed ?

If the school district's policy allows a student to appeal a principal's decision to the board of trustees or a board's designee, then the decision of the board or its designee is final.

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Does the law require that the DAEP conference occur before the manifestation determination ARD?

No. However it is a good practice to have the DAEP conference before the ARD meeting so that the question of whether the student has committed the offense can be determined prior to the ARD. If the administrator determines that the student committed the offense, it assists the ARD committee because the misbehavior has been deemed to have occurred and the committee can make a separate determination of whether the misbehavior is a manifestation of the disability. The ARD committee does not and should not make the determination of whether the student committed the offense. Remember, however, that the administrator's decision is contingent upon the determination of the ARD committee.

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## Can an expulsion hearing happen before the MDR?

Nothing in the law requires that the expulsion hearing happen before the ARD, but as with the DAEP conference, the administrator's expulsion decision is contingent on the ARD committee's decision as to whether the behavior is a manifestation of the student's disability.

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## What does the committee determine at the MDR?

The committee must decide two questions:

- Whether the conduct was caused by or had a direct and substantial relationship to the disability; and
- Whether the conduct was a direct result of the district's failure to implement the IEP.

If either answer is yes, the committee must determine that the conduct is a manifestation of the disability.

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When is the manifestation ARD held?

The manifestation ARD must be held within 10 school days of a decision to remove a student for more than 10 school days.

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What information is considered?

All relevant information, including the IEP, teacher observations, new and/or updated evaluations, disciplinary history, and any relevant information provided by the parents.

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## The MDR Determination

1. FBA
2. When a manifestation is found
3. When there is no manifestation
4. The 45-day rule
5. Parent agreement
6. The expedited hearing

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Should school personnel hold a MDR when the parent has been properly notified of the meeting, but fails to appear?

A meeting may be conducted without the parents in attendance if the district is unable to convince the parents that they should attend. The district must have a record of its attempts to arrange a mutually agreed on time and place to hold the ARD. Forward the ARD documentation to the parent with an explanation of the attempts to include the parents in the meeting. Additionally, the correspondence may indicate to the parents their right to call another ARD meeting at a mutually convenient time.

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Can the ARD meeting be held without the full 5 day written notice if the parent agrees?

Before the ARD meeting occurs, have the parent sign that he/she has waived the 5-day notice.

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After reading the minutes at the end of the MDR ARD meeting, the parent insists that the minutes include some additional statements demonstrating the "innocence" of the student. What should the district do in this situation?

It is important to keep in mind that the IEP, including any ARD deliberations, is a school record. The minutes are merely a summary. While minor changes are not problematic, extensive changes to a summary is another matter. If the parent is insistent that specific language be included in the minutes, district personnel can inform the parent that he or she can write out any disagreements or additional comments. The document is then attached to the completed IEP package.

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The parent refuses to sign the ARD document at the end of the meeting. Should this fact be noted?

Designate on the signature page that the parent refused to sign and initial it as well as noting the parent's refusal in the minutes of the ARD report. The parent's refusal to sign is generally viewed as a disagreement, putting into place the ten-day recess provisions. However, the ten-day recess provisions do not apply to DAEP placements, expulsions, or when the child's presence on the campus presents a danger of physical harm to the student or others.

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Written Notice

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

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## 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. The ARD committee does not determine guilt or innocence or the sanction.

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## Record Review

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

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## When the behavior is a manifestation of the disability:

- The committee must conduct an FBA and implement a BIP if the district had not conducted such an assessment before the behavior;
- If a BIP has been developed, review the BIP and modify it, as necessary, to address the behavior; and
- If the FBS is over a year old, conduct a new FBA
- Return the child to the placement from which he/she was removed, unless the parent and district agree to change the placement as part of the modification of the BIP

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## Behavior Intervention Plans

- The BIP contains the strategies that should be used to teach replacement behaviors. The BIP describes the problem behavior, the reasons the behavior occurs and the intervention strategies that will address the behavior.
- Normally, the BIP serves as a supplement to the student code of conduct. When the SCOC and the BIP conflict, the BIP overrides the student code of conduct.

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## Behavior Intervention Plans

- The systematic use of reinforcement is the most powerful tool in strengthening or teaching new behavior. The BIP should identify what is potentially reinforcing to the student. The reinforcers must be individualized and age appropriate.
- The possible use of restraint should not be excluded since it can only be used in emergency circumstances, including situations where the student poses an imminent threat of serious harm to himself or others or an imminent threat of serious property destruction. Schools are entitled to use restraints in these limited circumstances, regardless of whether it is included in the BIP.

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## 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)

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The parent brings an outside evaluation to the MDR ARD meeting. What should the school's documentation reflect?

- The district must consider, but is not required to accept, the findings or recommendations.
- The ARD deliberations must reflect any outside evaluation report considered by the committee.

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