



**"Is it Related or Not Related?  
Only the ARD Committee Knows for Sure":  
Making Airtight Manifestation  
Determinations**

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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.



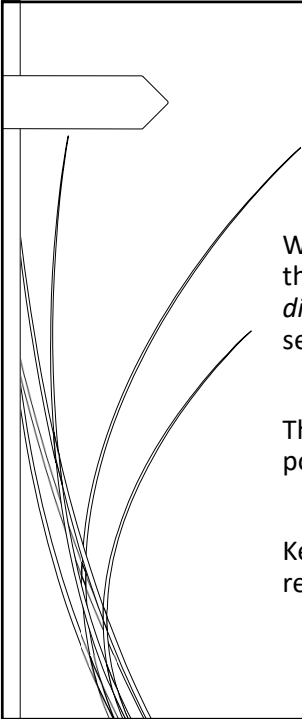
## DUE PROCESS RIGHTS-REMOVALS

- 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.



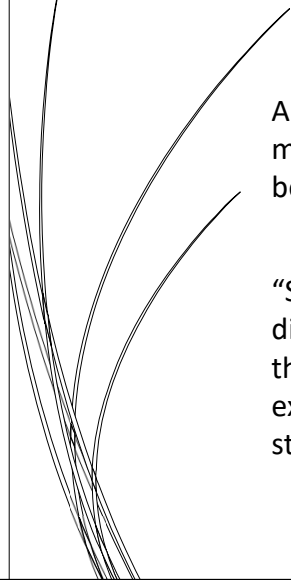
## BULLYING AND EXPULSION

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

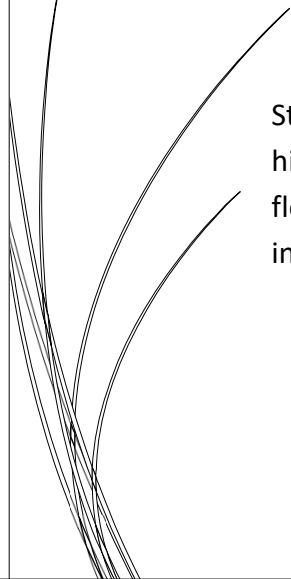


A student placed in a DAEP who engages in “documented” serious misbehavior while on the DAEP campus despite “documented” behavioral interventions may be expelled.

“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.



## Scenario



Student that is ID and Autistic has severe behaviors. He kicks, bites, hits, pinches, scratches, defecates and urinates on the people and the floor. The behaviors are related to his disability. He has already injured five staff members. What can the school do?



## SCENARIO RESPONSE

The district is required to provide a continuum of placements. If the student cannot be safely educated at the school, the district would need to look for private day programs or residential placements.



## 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:



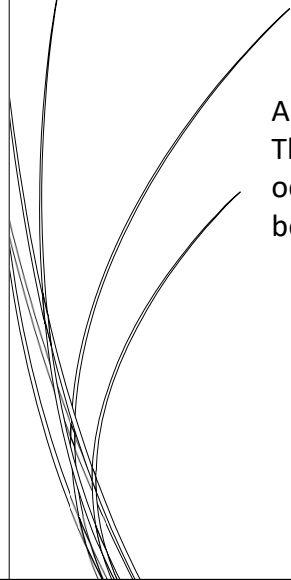
## 10 DAY RULE (Cont'd)

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' 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.



## SCENARIO

Sally Bob, the sister of Billy Bob and Jim Bob, qualifies for services under the eligibility of ID and speech. She receives services in the functional life skills classroom. Sally Bob is caught in the act of carnal knowledge in the bathroom. The principal wants to send her to the DAEP. The DAEP does not have comparable services of the functional life skills classroom. Can she be sent to the DAEP?



## SCENARIO RESPONSE

In addition to determining whether the behavior is a manifestation of the disability, the ARD committee must determine whether the disciplinary placement can implement the student's IEP. If it cannot, it is not an appropriate placement.



## 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.

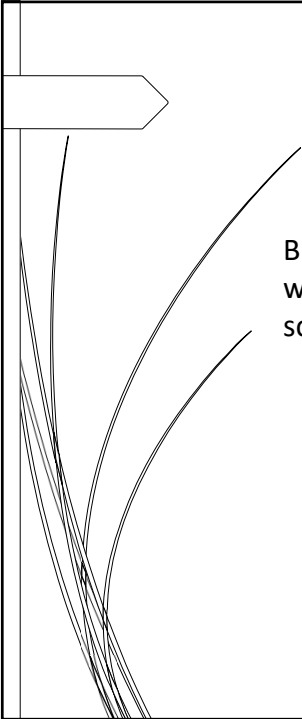


## MANIFESTATION DETERMINATION REVIEW

### **When the Behavior is a Manifestation**

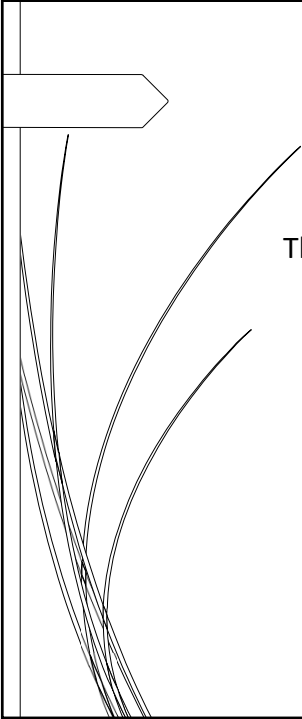
Generally, the district must return the student to the placement, unless the parent and the school agree to change the placement, or there is a determination that maintaining the student's placement would pose a substantial risk of harm to the student or others. Consequences may be implemented, if appropriate.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

## SCENARIO



Billy Bob's parent, Lori May Belle, disagreed that Billy Bob's behavior was not a manifestation and wants to reconvene. What should the school do?

## SCENARIO RESPONSE



The 10 day reconvene does not apply to disciplinary ARD meetings.



## 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.