

"It's Related to His Disability, You Can't Discipline Him!": Options Available to the School When the Behavior is a Manifestation

BY CYNTHIA BUECHLER, BUECHLER & ASSOCIATES



What is a Manifestation Determination?

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school, the parent, and relevant members of the child's IEP Team must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine whether the behavior is due to the disability. 34 C.F.R. Section 300.530€

When must the MDR occur?

The IEP meeting must occur within 10 school days of the decision to change the placement. It occurs only when the school is pursuing a disciplinary placement-not an educational placement.

The two questions that must be addressed in the MDR:

Question 1 –
Relationship to
Disability

Was the behavior caused by, or did it have a direct and substantial relationship to the disability?

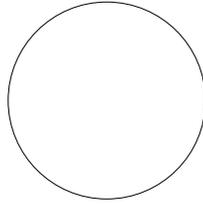
In other words, did the disability significantly influence, impair, or impact the student's ability to control their behavior?

Question 2 –
Failure to
Implement the
IEP

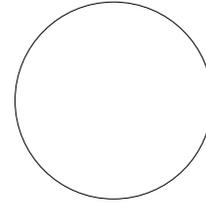
Was the behavior the direct result of the school's failure to implement the IEP?

Failure to implement does not necessarily equate to the behavior occurring because of the failure to implement. The failure to implement had to cause the behavior to occur.

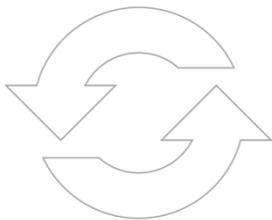
How do these questions determine if it's a manifestation?



IF EITHER QUESTION IS ANSWERED YES, THE BEHAVIOR IS A MANIFESTATION.



IF BOTH QUESTIONS ARE NO, THE BEHAVIOR IS NOT A MANIFESTATION.



How To Determine a Direct and Substantial Relationship:

<p>A “direct and substantial relationship” requires:</p>	<ol style="list-style-type: none"><li data-bbox="669 306 1382 495">1. A clear causal connection<li data-bbox="669 506 1382 695">2. Not just a correlation, and<li data-bbox="669 705 1382 894">3. Not a “slight, attenuated, or speculative” connection.
--	--

<p>Courts Look For:</p>	<ol style="list-style-type: none"><li data-bbox="669 1220 1382 1409">1. Documented behavior patterns<li data-bbox="669 1419 1382 1608">2. Predictable connections to the disability<li data-bbox="669 1619 1382 1808">3. Evidence from evaluations, FBA, teacher documentation
-------------------------	--

	<p>Intentional or goal-directed behavior weighs against manifestation.</p>
--	--

	<p>Case Law</p>
--	-----------------

Alvin Indep.
Sch. Dist. v. A.D.,
503 F.3d 378
(5th Cir. 2007)

The court held that “direct and substantial relationship” requires more than a loose or speculative connection:

- There must be a significant causal link between the disability and the behavior.
- Mere impulsivity from ADHD is insufficient unless directly tied to the conduct.

S.F. v. McKinney
ISD, 980 F.3d
1213 (5th Cir.
2020)

The Fifth Circuit upheld an MDR decision where conduct was not a manifestation because the behavior was goal-directed and intentional, suggesting the disability did not drive it.

R.B. v. Navasota
ISD, 2011 WL
2634096 (S.D.
Tex. 2011)

The court emphasized that a disability must substantially influence the behavior; minor influence is not enough.

When the behavior is a
manifestation:

The IEP team must:

1

Conduct a Functional Behavioral Assessment

2

Create or revise a Behavior Intervention Plan

3

Return the student to the prior placement, unless:

- Parent & LEA agree to a change, or
- Special Circumstances Exist

Under the Individuals with Disabilities Education Act (IDEA), special circumstances refers to the three situations in which a school may remove a student with a disability to a disciplinary setting for up to 45 school days, even if the behavior is a manifestation of the student's disability.

	<p>This is the exception to the usual manifestation determination rule.</p>
--	---

<p>Special Circumstances</p>	<hr/> <p>Weapons</p> <hr/> <p>Drugs</p> <hr/> <p>Serious Bodily Injury</p>
----------------------------------	--

<p>Weapons</p>	<p>Possessed a weapon at school, on school premises, or at a school function.</p> <ul style="list-style-type: none">•A “weapon” means a dangerous weapon as defined in 18 U.S.C. §930(g)(2):•“A dangerous weapon is a weapon, device, instrument, material, or substance... that is used for, or is readily capable of, causing death or serious bodily injury.”
----------------	---

<p>Drugs</p>	<ul style="list-style-type: none">•Knowingly possessed or used illegal drugs,•Sold, or•Solicited the sale of a controlled substance on school grounds or at a school event.•“Controlled substance” is defined by the federal Controlled Substances Act. It includes marijuana and prescribed drugs given to someone else.
--------------	--

Serious Bodily Injury

Inflicted serious bodily injury on another person at school or a school function.

- “Serious bodily injury” is defined in 18 U.S.C. §1365(h)(3) as an injury involving:
- substantial risk of death,
- extreme physical pain,
- protracted and obvious disfigurement, or
- protracted loss or impairment of a bodily function.

Key Points About Special Circumstances

They apply even if the behavior is a manifestation of the disability.

The placement can last up to 45 school days.

The school must continue to provide FAPE (IEP must continue to be implemented).

The school must conduct a functional behavioral assessment (FBA) and implement or revise a behavior intervention plan (BIP).

If the FBA is over a year old, a new FBA must be conducted.

<p>CASE LAW</p>	<p>Serious Bodily Injury</p>
-----------------	------------------------------

<p>A.P. v. Pasadena ISD, 2016 WL 10842236 (S.D. Tex. 2016)</p>	<p>Facts: Student with emotional disturbance broke a staff member's arm. MDR determined the behavior was related to the disability.</p>
--	---

Holding:	<p>The court found that the conduct met the statutory definition of “serious bodily injury.” The school was authorized to impose a 45-day disciplinary placement even though the behavior was a manifestation of the disability.</p>
----------	--

	<h1>Weapons</h1>
--	------------------

<p>J.H. v. Fort Bend ISD, 2017 WL 2713418 (S.D. Tex. 2017)</p>	<p>Facts:</p> <p>A Student with autism carried a pocketknife at school. The Committee found behavior was connected to disability.</p>
--	---

<p>Holding:</p>	<p>The Court held that the weapons exception in §1415(k)(1)(G)(i) permitted the district to remove the student for 45 school days even though the behavior was a manifestation. This decision reinforces that the statutory language “without regard to whether the behavior is determined to be a manifestation” is absolute.</p>
-----------------	--

	<h1>Drugs</h1>
--	----------------

<p>N.M. v. Northwest ISD, 2018 WL 2441558 (N.D. Tex. 2018)</p>	<p>Facts: A student with emotional disability was found possessing marijuana. The parent claimed the behavior was tied to disability.</p>
--	---

Holding:

The Court found that the drug exception (§1415(k)(1)(G)(ii)) applied and that the district was entitled to place the student at a disciplinary placement for 45-day regardless of the manifestation.

Student Poses
a Substantial
Risk of Harm
to Themselves
or Others

<p>Honig v. Doe, 484 U.S. 305 (1988)</p>	<p>Facts: Two students with emotional disturbance (ED), John Doe and Jack Smith exhibited significant behavioral challenges directly related to their disabilities.</p>
--	---

<p>John Doe</p>	<p>During an emotional outburst, Doe choked another student, kicked out a window, and made verbal threats. The district suspended him indefinitely and refused to allow him back without assurances of no further misbehavior.</p>
-----------------	--

<p>Jack Smith</p>	<p>Smith had been suspended repeatedly for disruptive, disability-related behavior. The school district recommended expulsion for behavior conceded to be caused by his disability.</p> <p>Parents filed suit, arguing the indefinite suspension/expulsion violated the “stay-put” provision of the federal special education law. The California Department of Education agreed and ordered the district to readmit the students. The district court and Ninth Circuit held for the students.</p>
-------------------	--

<p>Issue</p>	<p>Whether a school district may unilaterally suspend or expel a child with a disability for dangerous or disruptive behavior that is a manifestation of the child’s disability, without violating the stay-put rule in the IDEA.</p>
--------------	---

Holding:

The Supreme Court held that schools may NOT unilaterally exclude a student with a disability from school for behavior that is a manifestation of the disability. Long-term or indefinite suspensions or expulsions constitute a change of placement and violate stay-put.

The stay-put provision is absolute unless the parent and school agree to a different placement, or a court orders a change.

Schools can impose short-term suspensions (up to 10 days) for disciplinary reasons, even if the behavior is disability-related, as long as it does not constitute a change of placement.

If a child is dangerous, the school must seek a court injunction to order removal. Schools cannot act unilaterally just because a child is dangerous.

<p>St. Tammany Parish Sch. Bd. v. Louisiana, 142 F.3d 776 (5th Cir. 1998)</p>	<ul style="list-style-type: none">•This case explains the structure of § 1415(k) and applies the principle that removal may occur even when the behavior is a manifestation, so long as the removal fits (1) a statutory exception or (2) a court-ordered dangerousness removal.•These cases involve violence that does not meet “serious bodily injury,” but still creates dangerousness under § 1415(k)(3).
---	--

<p>K.T. v. Katy ISD, 2018 WL 11223156 (S.D. Tex. 2018)</p>	<p>Court affirmed that the district can seek a dangerousness removal when a disability-related behavior poses serious safety risks.</p>
--	---

NELI NATIONAL
EDUCATORS
LAW INSTITUTE

