

# Manifestation Determination Review



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# Manifestation Determination Review

### Definitions

The 'Definitions' section contains four colored boxes with icons and text: a yellow box with a student at a desk labeled 'Student with a Disability'; a blue box with a calendar labeled 'Day of Removal'; a green box with a sign that says 'Expulsion Suspension DAEP ISS' labeled 'Change of Placement'; and an orange box with a hand holding a gun and pills labeled 'Special Circumstance'.

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### Section 504

The 'Section 504' section features a flowchart. A yellow box 'Under the influence of illegal drugs or alcohol at school' points to a red hexagon labeled 'NO'. Another yellow box 'Change of placement Weapons Serious bodily injury' points to a green arrow labeled 'YES'. The text 'MDR?' is positioned above the hexagon and arrow.

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### Day of Removal

Any full or partial day that a student is removed from his current placement for disciplinary reasons

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# Manifestation Determination Review

**1** **Change of Placement**

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

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**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.

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# Manifestation Determination Review

## Serious Bodily Injury

**Bodily Injury** which involves:

- a substantial risk of death,
- extreme physical pain,
- protracted and obvious disfigurement, or
- protracted loss or impairment of the function of a bodily member, organ or mental faculty



18 USC 1365(h)(3)

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## Manifestation: Review

What?

Why?

When?

How?

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What is a  
*Manifestation*  
*Determination?*

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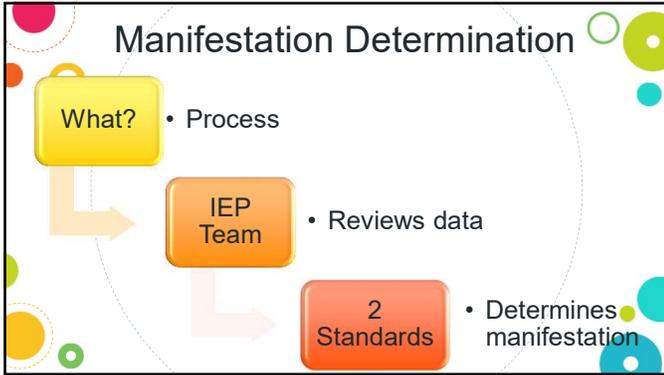
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# Manifestation Determination Review



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## Standard #1

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

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## Standard #2

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

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# Manifestation Determination Review



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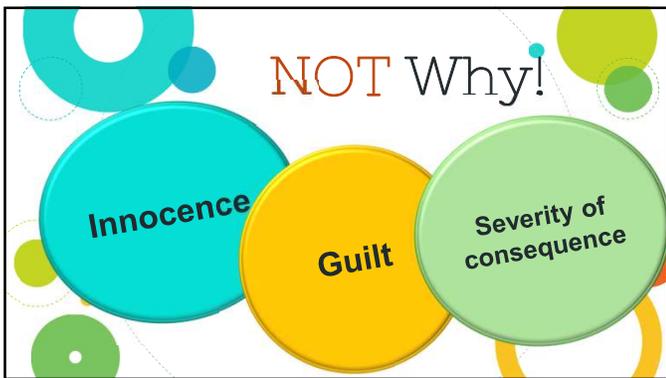
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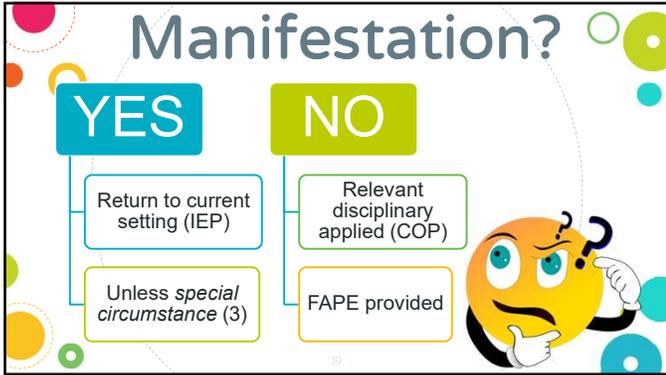
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# Manifestation Determination Review



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When do we conduct a *Manifestation Determination*?

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# Manifestation Determination Review



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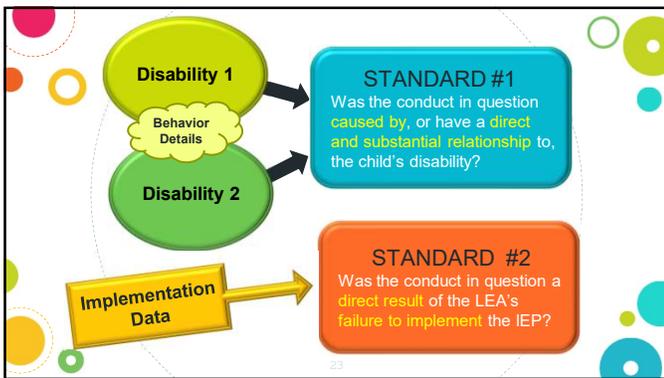
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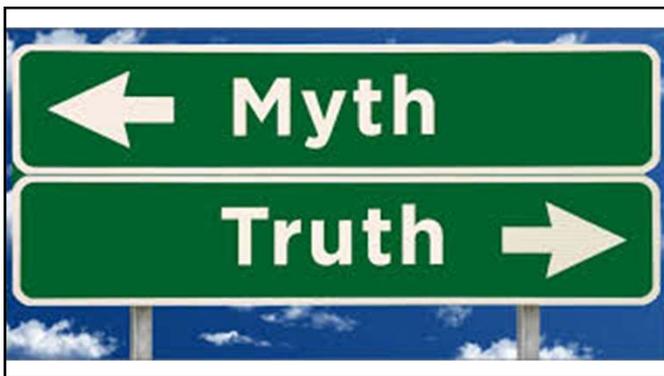
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# Manifestation Determination Review

A slide with a white background and a large orange circle on the left containing the text "Truth or Myth?". To the right of the circle, the text "#1 Code of Conduct rules!" is displayed. The slide is decorated with several smaller circles in shades of blue, green, and yellow. A small "BY" logo is visible in the bottom right corner of the slide frame.

Truth  
or  
Myth?

#1  
*Code of Conduct*  
rules!

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A slide with a white background and a central image of a blue stick figure with arms raised against a green background of small circles. The title "Case by Case Decision" is at the top. Below the image, text explains that school personnel may consider unique circumstances on a case-by-case basis. The slide is decorated with colorful circles.

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

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A slide with a white background and a grid of six colored boxes, each containing a strategy. The title "Strategies That Do Not Lead to MDRs" is at the top. The strategies are: Restitution, School/Community Service, After school/Saturday detention, Loss of privileges, Restorative practices, Non-removal consequences, and Behavior contracting/problem-solving/mini courses. The slide is decorated with colorful circles.

Strategies That *Do Not* Lead to MDRs

Restitution	School/ Community Service	After school/ Saturday detention
Loss of privileges	Restorative practices	Non-removal consequences
Behavior contracting/ problem-solving/ mini courses		

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# Manifestation Determination Review

**Truth or Myth?**

#2  
A student's evaluation should **list** the behaviors that are a **manifestation** of the disability.

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MDR Critical Components

Disability Behavior

- Specific disability (ALL)
- Individualistic

- Specific behavior
- Circumstances matter!

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“  
**Circumstances Matter!**”

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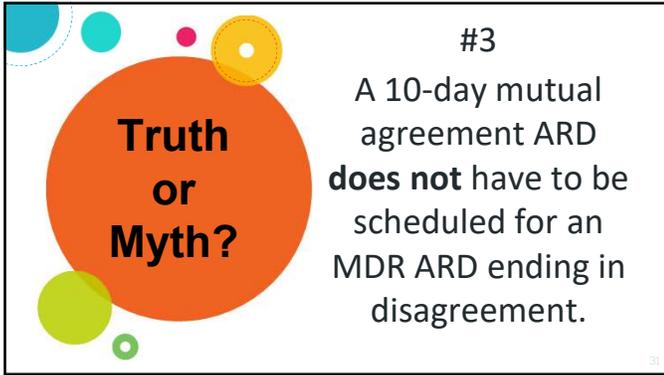
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# Manifestation Determination Review



**Truth  
or  
Myth?**

**#3**  
A 10-day mutual agreement ARD **does not** have to be scheduled for an MDR ARD ending in disagreement.

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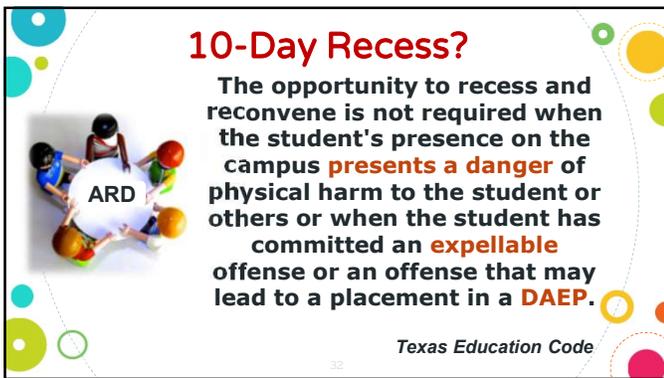
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**10-Day Recess?**

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**.

*Texas Education Code*

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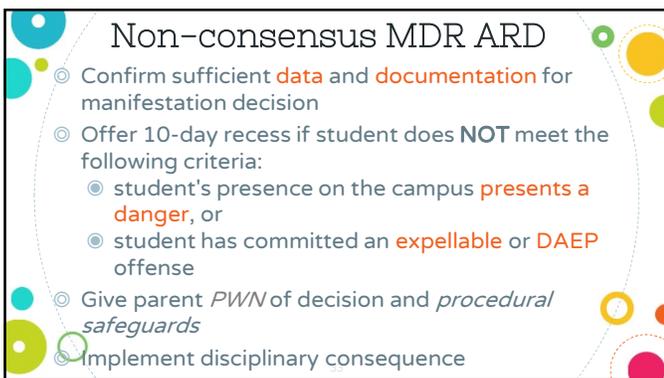
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**Non-consensus MDR ARD**

- ◎ Confirm sufficient **data** and **documentation** for manifestation decision
- ◎ Offer 10-day recess if student does **NOT** meet the following criteria:
  - ◎ student's presence on the campus **presents a danger**, or
  - ◎ student has committed an **expellable** or **DAEP** offense
- ◎ Give parent *PWN* of decision and *procedural safeguards*
- ◎ Implement disciplinary consequence

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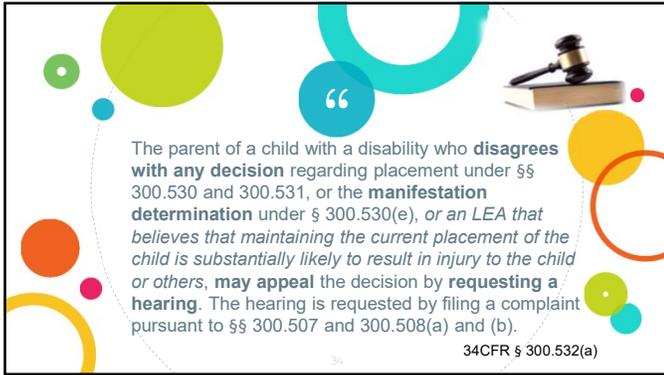
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# Manifestation Determination Review



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The parent of a child with a disability who **disagrees with any decision** regarding placement under §§ 300.530 and 300.531, or the **manifestation determination** under § 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, **may appeal** the decision by **requesting a hearing**. The hearing is requested by filing a complaint pursuant to §§ 300.507 and 300.508(a) and (b).

34CFR § 300.532(a)

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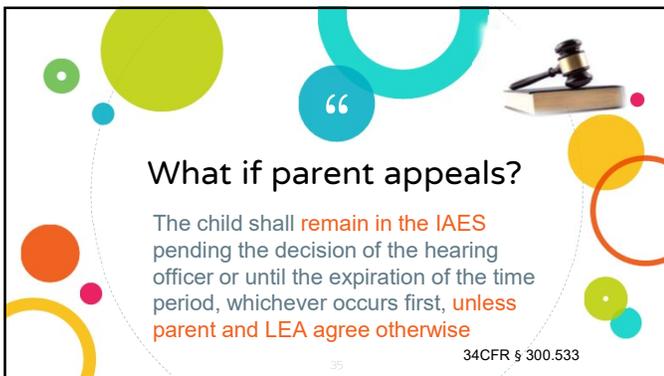
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“

### What if parent appeals?

The child shall **remain in the IAES** pending the decision of the hearing officer or until the expiration of the time period, whichever occurs first, **unless parent and LEA agree otherwise**.

34CFR § 300.533

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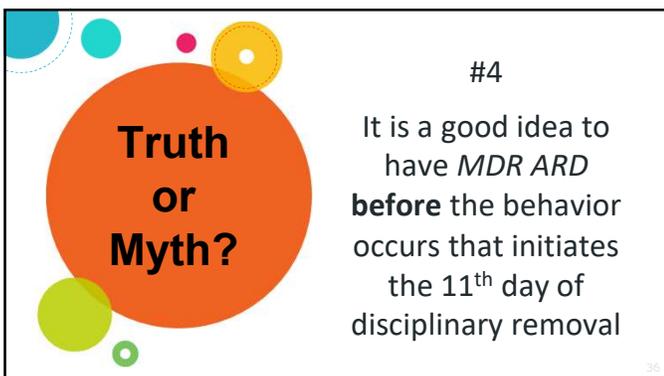
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## Truth or Myth?

#4

It is a good idea to have **MDR ARD before** the behavior occurs that initiates the 11<sup>th</sup> day of disciplinary removal

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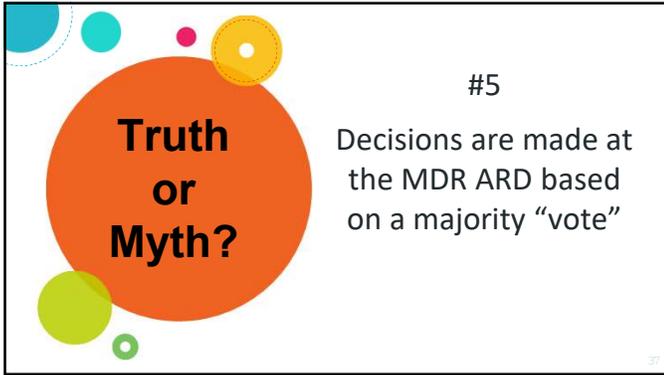
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# Manifestation Determination Review



**Truth or Myth?**

#5

Decisions are made at the MDR ARD based on a majority "vote"

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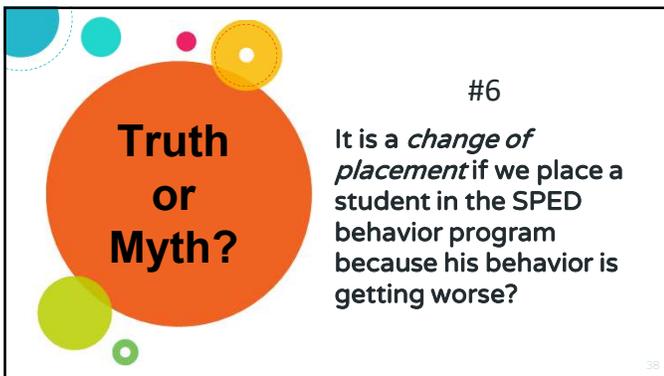
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**Truth or Myth?**

#6

It is a *change of placement* if we place a student in the SPED behavior program because his behavior is getting worse?

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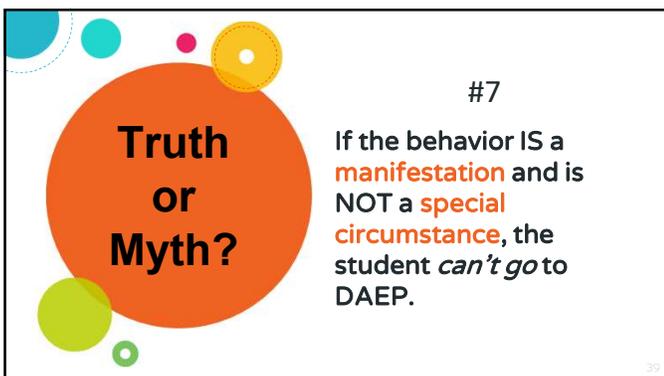
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**Truth or Myth?**

#7

If the behavior IS a **manifestation** and is NOT a **special circumstance**, the student *can't go* to DAEP.

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# Manifestation Determination Review

**Determination that behavior was a manifestation**

...Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, *unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.*

40 34CFR § 300.53(f)(2)

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**\*Disclaimer:** Though technically legal, placement of a student with a disability in a disciplinary change of placement setting when the behavior is a manifestation (but is not a *special circumstance*) is **NOT recommended**, even if the parent and campus agree to such. The parent may **revoke consent** for the placement at any time, leading to undesired consequences. An **alternative to a change of placement** consequence in such circumstances might be to administer **relevant non-removal** disciplinary interventions/consequences. Appropriate disciplinary actions that **do not change the placement** of a student with a disability are **not legally barred** when the behavior is a manifestation. In fact, disciplinary consequences that **don't** constitute a *change of placement* do **not require an MDR ARD** for implementation.

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**Truth or Myth?**

#8

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

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# Manifestation Determination Review

**Basis of Knowledge**



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

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**MDRs with Insufficient Data:  
Legal and Ethical Issues**



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[www.ed.gov](http://www.ed.gov)



**QUESTIONS AND ANSWERS:  
ADDRESSING THE NEEDS OF  
CHILDREN WITH DISABILITIES AND  
IDEA'S DISCIPLINE PROVISIONS**

OSEP Q&A 22-02

U.S. DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND  
REHABILITATIVE SERVICES

JULY 19, 2022

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# Manifestation Determination Review

**HOW DO I CONDUCT AN MDR IF I HAVE NO DISABILITY CONDITION, NO ELIGIBILITY AND NO IEP? WHAT AM I BASING THIS ON?**

- *Because the LEA has not yet developed an IEP for the child, the LEA would be unable to determine whether the child's conduct was the direct result of the LEA's failure to implement the child's IEP. 34 C.F.R. § 300.530(e)(1)(ii).*
- *Based upon its review and consideration of the available information, the group would determine whether the conduct in question was caused by, or had a direct and substantial relationship to, the child's suspected disability. 34 C.F.R. § 300.530(e).*

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## Impact for LSSPs

This is an **interesting position** for LSSPs.

We have **ethical standards** that involve being careful about **making decisions without adequate information**.

However, both **NASP** and the **TSBEP** do have some rules that are applicable in this situation.

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## NASP Principles of Professional Ethics (2020): Standard II

- ❖ Deals with various issues related to professional competency and responsibility
- ❖ Standard II.3.11 *It is permissible for school psychologists to make recommendations based solely on a review of existing records. However, they should utilize a representative sample of records and explain the basis for, and the limitations of, their recommendations.*

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# Manifestation Determination Review

**TSBEP: 465.16**

This section deals with many issues related to decision-making.

**(b) Reliability and Validity.** (1) Licensees verify, by signature and date, that every evaluation, assessment, test result, report, recommendation, or psychological diagnostic or evaluative statement produced is based on information and techniques sufficient to provide appropriate substantiation for its findings.

**(c) Limitations.** (1) Licensees include all information that provides the basis for their findings in any report in which they make findings or diagnoses about an individual. (2) Licensees identify limits to the certainty with which diagnoses, judgments, or predictions can be made about individuals. ...

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**(c) Limitations.**

(4) Licensees include any significant reservations they have about the accuracy or limitations of their interpretations or findings in any report they produce. (5) Licensees provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements or conclusions. When such an examination is not practical, licensees document the efforts they made to obtain such an examination and clarify the probable impact of their limited information to the reliability and validity of their conclusions.

TSBEP also has a rule that federal law supersedes its rules.  
Thank goodness for that!

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**Bottom Line!**

We can make this call of “suspected disability” if we document all data used and indicate the limitations that are present.



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# Manifestation Determination Review

## WHAT TYPES OF STATEMENTS SHOULD I PUT INTO THE MDR DOCUMENT?

Possible statements to include are presented below. First, we must clearly present the data that were reviewed or the procedures and tests that were conducted.

Example:

\_\_\_\_ was referred for a Full and Individual Initial Evaluation (FIIE) on \_\_\_\_ (Consent date: \_\_\_\_) due to concerns about \_\_\_\_\_. The tables below present the data reviewed and procedures and tests conducted thus far.

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## Data Reviewed/ Procedures & Tests Conducted

Sources of Data	Results
Prior Evaluations	
Academic Data	
Behavioral Data	
Referral Packet	
Interview	
Observations	
Tests	

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## STATEMENTS TO CONSIDER:

*At this time, there is insufficient data to determine the presence of a condition or the need for special education. The review and available results indicate that the suspected disability condition(s) is/are \_\_\_\_\_ . The MDR is based on the suspected disability condition(s). It should be noted that the incompleteness of the evaluation presents a limitation in the determination of a suspected disability condition and subsequent eligibility under IDEA.*

### Manifestation Determination Standard 2:

*The district has not yet developed an IEP, therefore the MDR question of whether the conduct was the direct result of failure to implement the IEP cannot be determined.*

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# Manifestation Determination Review

**The TAKEAWAY**

1. A DAY OF REMOVAL includes *partial days* and both *formal* and *informal* removals.
2. Non-COP consequences can be delivered to SPED students even if the behavior is a manifestation.
3. No MDR is required for non-COP disciplinary consequences.
4. Discipline can be individualized for SPED students.
5. 10-day mutual agreement ARD does not have to be held for MDR ARD.
6. SPED is NOT discipline!
7. Change of placement is NOT recommended when behavior IS a manifestation, even if parents agree.



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## MDR Guidelines

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 ? MDR Guidelines

Data Collection + Analysis = Manifestation Decision

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# Manifestation Determination Review



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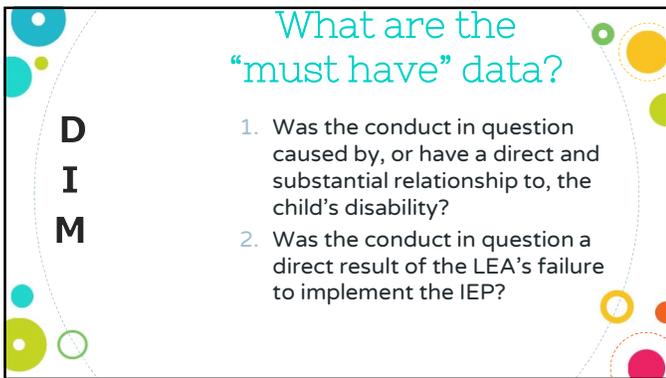
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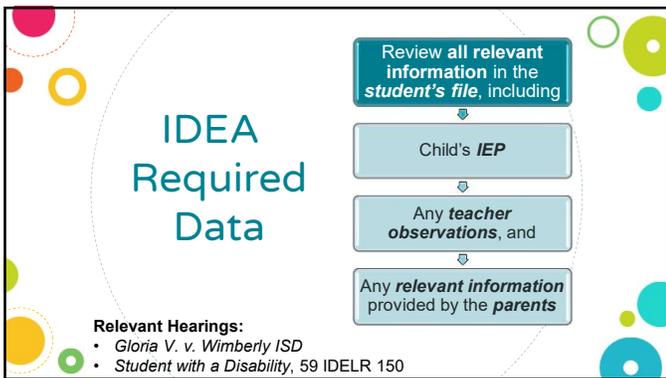
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# Manifestation Determination Review



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Data Collection: <i>Disability</i>	
Data	Questions
<ul style="list-style-type: none"><li>Current FIE/assessments (<i>including external evaluations</i>)</li><li>Parent provided evaluations and information</li><li>Discipline records</li><li>Teacher documentation</li><li>Classroom observations</li><li>Literature/ research*</li></ul>	<ul style="list-style-type: none"><li>What are the current disabilities?</li><li>What specific behaviors were identified that led to diagnosis?</li><li>Are evaluations current? Meet standards? Reflective of current behavior?</li><li>What patterns of behavior have been displayed?</li><li>Has there been a change in behavior?</li><li>What are the defining characteristics of the disability?</li></ul>

\*if applicable

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# Manifestation Determination Review

**Disability IEP Misconduct**

### Data Collection: *IEP*

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

\*if applicable

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### Student v. Ysleta ISD

134-SF-0122

- OHI:ADHD, ODD, and \*\*\*.
- IEP noted target behavior as that to lessen both verbal and physical aggression and violence against peers, with additional concerns and target behaviors including lack of respect toward authority



Ysleta-page #1

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- A sequence of events occurred which involved police or security officers and the student was taken to the counselor, special education teacher and eventually the assistant principal's office.
- When the student's mother and grandmother arrived, AP engaged them in a conversation about the incident. The Student remained in the room. Student was invited to join the conversation, and the incident continued to be discussed. During this time, argumentation among all present transpired. Everyone remained in the room discussing the incident, resulting in the Student becoming more and more agitated.

Ysleta-page #2

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# Manifestation Determination Review

- The mother and grandmother tried to calm down the student. A SRO became involved.
- The entirety of events was 3 hours, with almost one hour occurring during the presence of the mother and grandmother.
- The incident chosen was the last one in the sequence involving officers.
- Mental health experts for the student noted his reactions and escalation and reinforced the need to provide a place to calm or cool down. When agitated, he needs time and space to cool down.

Ysleta--page #3

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### HEARING OFFICER DECISION

- The Student's BIP, in place at the time of the incident, contained a provision for having Student access a quiet, nonthreatening, non-stimulating place.
- Student was not provided an opportunity for 'cool down'. As the police action was not until the end of the time period, and only for a few minutes, there was more than ample time for the Student's IEP to be implemented.
- The evidence supports a finding that Student's conduct was the direct result of the District's failure to implement the Student's BIP. Ysleta--page #4

**Similar case:**  
*Henry County School District, 120 LRP 22074 (SEA GA 7/8/2020)*

An ALJ found that the misbehavior of a sixth-grade student with ED was a direct result of the District's failure to implement his IEP requiring that the student be monitored with adult supervision during class transitions.

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## Misconduct

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# Manifestation Determination Review

**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

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**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?

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Making the Analysis

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# Manifestation Determination Review

## 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...”

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## 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.”

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## 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.”

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# Manifestation Determination Review

## 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?

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## Parents v. New Haven Unified School District

Union City, California  
2013  
OAH Case No. 2013031128

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## Disability

- 16-year-old, LD (reading and visual processing deficits) & ADHD; prescribed Adderall
- ADHD diagnosed at age 6
- How does the ADHD look in the classroom?
- Disruptive in class - talking with peers, not coming to class, and needing frequent reminders to follow class procedures
- On final day of hearing, student withdrew claim that the behavior was due to LD

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# Manifestation Determination Review

## Infraction

- Mutual fight on campus outside girl's locker room immediately prior to 1<sup>st</sup> period
- Principal saw student walking away, yelling. He told her to stop and come with him. Student failed to comply.
- After 30-45 seconds she walked toward him and tried to evade him (weaving side-by-side), still not complying. As she passed him, he reached out and grabbed her upper arm. She turned to face him, kicked him, and punched him in the chest.

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## Discipline & MDR Determination

- Due to fight, defiance of authority and assault, expulsion recommended
- Parent said in a 3-page letter that kicking and hitting the principal was due to ADHD
- It was decided that conduct was not causal based on ADHD and parent filed hearing.
- Mr. P., school psychologist, had prepared a report for the committee; Dr. B. hired by student also prepared a report.

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## Hearing

*The heart of this case involves competing expert opinions regarding the nature of Student's response to Principal B....*

- Evidence established that physical aggression is not a characteristic of ADHD.
- Parent stated Student had not taken medication the morning of the incident, and poor impulse control is what caused the altercation

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# Manifestation Determination Review

Hearing

- *Mr. P credibly established the overriding importance of history and record review in determining .. manifestation ... history of impulse control ... manifests in very specific, non-aggressive ways ...*

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Hearing

- *... witnesses acknowledged that impulsivity may have played a part, but they persuasively established that Student's ADHD had an attenuated relationship, if any, to her disciplinary conduct.*
- *Self-regulation deficits amplified, due to heightened emotion, but this supports misconduct had attenuated relationship to ADHD symptoms*

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Hearing

- *Conduct demonstrated poor judgment, but the evidence did not demonstrate that Student's poor judgment was a manifestation of her ADHD as opposed to a manifestation of her youth, or anger, or heightened emotionality, or any other non-disability related rationale for engaging in such behavior.*

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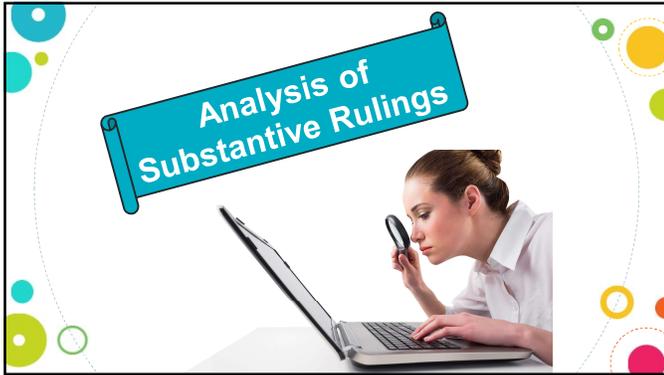
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# Manifestation Determination Review




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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

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**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*

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# Manifestation Determination Review

## 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

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## Disability Profiles




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### Disability Profile: ADHD

Disability Condition	Diagnostic Criteria	Specifics for Student
OHI-ADHD	<p><b>Inattentive Presentation:</b> Often</p> <ol style="list-style-type: none"> <li>1. fails to give close attention/makes careless mistakes;</li> <li>2. has difficulty with sustaining attention in tasks or play activities;</li> <li>3. does not seem to listen when spoken to directly;</li> <li>4. does not follow through on instructions and fails to finish schoolwork, chores, or duties in workplace;</li> <li>5. has difficulty organizing tasks and activities;</li> <li>6. avoids, dislikes, or is reluctant to engage in tasks that require sustained mental effort;</li> <li>7. loses things necessary for tasks or activities;</li> <li>8. easily distracted by extraneous stimuli;</li> <li>9. forgetful in daily activities</li> </ol>	<ul style="list-style-type: none"> <li>• Which of these does the student display?</li> <li>• How is that displayed?</li> <li>• What exactly does the student do that made you check off this symptom/behavior?</li> </ul>
	<p><b>Hyperactive-Impulsive Presentation:</b> Often</p> <ol style="list-style-type: none"> <li>1. fidgets or taps hands or feet or squirms in seat;</li> <li>2. leaves seat in situations when remaining seated is expected;</li> <li>3. runs about or climbs in situations where it is inappropriate;</li> <li>4. unable to play or engage in leisure activities quietly;</li> <li>5. "on the go," acting as if "driven by a motor;"</li> <li>6. talks excessively;</li> <li>7. blurts out an answer before a question has been completed;</li> <li>8. has difficulty waiting his or her turn;</li> <li>9. interrupts or intrudes on others</li> </ol>	<ul style="list-style-type: none"> <li>• Which of these does the student display?</li> <li>• How is that displayed?</li> <li>• What exactly does the student do that made you check off this symptom/behavior?</li> </ul>

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# Manifestation Determination Review

## Emotional Disturbance: 5 Characteristics

Disability Condition	Classification Criteria	Specifics for Student
ED	<ol style="list-style-type: none"> <li>1. An inability to learn that cannot be explained by intellectual, sensory, or health factors;</li> <li>2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;</li> <li>3. Inappropriate types of behavior or feelings under normal circumstances;</li> <li>4. A general pervasive mood of unhappiness or depression; or</li> <li>5. A tendency to develop physical symptoms or fears associated with personal or school problems.</li> </ol>	<ul style="list-style-type: none"> <li>• Which of these does the student display?</li> <li>• How is that displayed?</li> <li>• What exactly does the student do that made you check off this symptom/behavior?</li> </ul>

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## Disability Profile: ED Example

Disability Condition	Classification Criteria	Specifics for Student
ED	A general pervasive mood of unhappiness or depression	<p><b>Depressed mood</b> – student is sad, cries often</p> <p><b>Loss of interest or pleasure in all, or almost all, activities</b> – 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><b>Fatigue or loss of energy</b> – student tires easily, is lethargic</p> <p><b>Feeling of worthlessness</b> – says he is not good at things, cannot perform activities, gives up easily due to feeling he cannot accomplish the task</p> <p><b>Suicidal ideation</b> – has said he has thoughts of hurting himself</p>

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## Common MDR Behaviors – *Threats & Aggression*

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

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# Manifestation Determination Review

**Kiley:**  
**ADHD**

Student-Specific Characteristics of Disability Condition	Specific Behavior and Circumstances of the Conduct
<p><b>ADHD Hyperactive-Impulsive Presentation</b></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><b>Hit a student in the cafeteria</b></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>

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**Maggie:**  
**ED**

Student-Specific Characteristics of Disability Condition	Specific Behavior and Circumstances of the Conduct
<p><b>ED – general pervasive mood of unhappiness or depression</b></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. 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><b>Possession of alcohol at school</b></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 Maggie 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>

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## 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?

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# Manifestation Determination Review

### Important Take-Aways for DIM

- D**
  - Must be explicit about the disability
  - Must identify the specific characteristics that the student exhibits
- I**
  - Review not only goals and objectives for academics, but also for behavior, including the BIP.
  - Big issue here is progress and whether the interventions and services in the IEP/BIP were provided
- M**
  - Description of the misconduct that is the focus of the MDR must be explicit.
  - Include a list of the data on which the description of the misconduct is based.
  - Include antecedents immediately prior to the misconduct

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### Specificity!

Disability Condition	Description
ADHD, Inattentive Presentation ED due to Inappropriate Behavior or Feelings under normal circumstances	Specific characteristics for John are as follows: Specifically, John displays ...
IEP/BIP	Description
Making progress on his IEP Receiving counseling as a related service	As evidenced by ... For the following objectives:
Misconduct	Description
Assault Property Destruction	John hit Marvin with an open hand John ripped up papers on a bulletin board and threw his desk on the floor

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### Examples of Vague Terminology

Common terms	How to further explain, describe?
Low frustration tolerance	
Poor anger management	
Low self-esteem	
Poor emotional control	
Impulsivity	
Making progress	
Assault	
Aggression	

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# Manifestation Determination Review

Description of Misconduct: What do you think?

Description of behavior subject to the disciplinary action:  
According to incident report [redacted] on November 4, 2022 upon the arrival of school [redacted] left the office and walked around the school building and then walked outside around the school building making threats towards the school and the administrators.

1. Poor description
2. Sufficient description to conduct MDR
3. Good description, thorough

What else would you like to know about the incident subject to disciplinary consequence?

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MDR is being done on which behavior(s)?

- Ⓒ Threats of harm toward staff
- Ⓒ Threat to shoot up the school
- Ⓒ Verbal threats

In deliberations, the description of the behavior is as follows:

Description of behavior:  
Student made terroristic threats toward school staff and the school. Student made threats to harm individual staff and harm the school. He threatened to "shoot up the school". He made threats to two administrators. He walked around the school making verbal threats. Mother is aware of the observed behaviors.

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Description of Misconduct – B.M.

- Ⓒ **Data:** Incident Report including witness statements and photographs; school surveillance video of April 28, 2022
- Ⓒ **Behavior:** B.M. running behind a female staff member and swatting at and slapping/hitting her on the head. Principal and another male staff member responded to the situation. B.M. continued to swat at, strike, and attempt to strike the staff members. ...male staff member assisted with the restraint of B.M. while he was on the ground. The female staff member remained next to B.M. and attempted to calm him. The restraint took approximately twenty-five minutes to deescalate. During the incident, B.M. continued to hit and attempt to hit staff members. He also repeatedly kicked, head butted, and bit Principal.

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# Manifestation Determination Review

Description of Misconduct

Rate the Description of Misconduct for B.M.

1. Poor description
2. Sufficient description to conduct MDR
3. Good description, thorough

What else would you like to know about the incident subject to disciplinary consequence?

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Description of Misconduct – J.H.

On ..., J.H. assaulted another student. A different student agreed to film J.H. assault the victim and share the video online. When J.H. approached the victim during lunch to talk, the victim offered J.H. a box of raisins. Without provocation, J.H. abruptly grabbed the victim's head and smashed it into his lunch on the cafeteria tabletop. The victim became upset and struck J.H.'s chest. J.H., "still standing over the [victim], then wound up like a softball pitcher and delivered a fist punch to the left eye socket on the [victim's] face." As a result, the victim suffered a broken nose and eye socket, a collapsed nasal cavity, an air pocket behind the left ear, and a concussion.

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Description of Misconduct

Rate the Description of Misconduct for J.H.

1. Poor description
2. Sufficient description to conduct MDR
3. Good description, thorough

What else would you like to know about the incident subject to disciplinary consequence?

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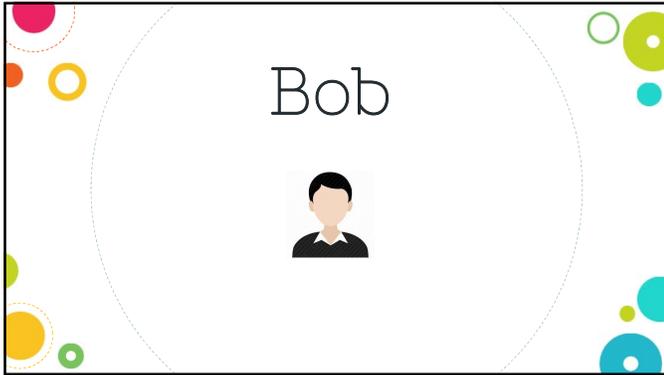
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# Manifestation Determination Review



A decorative card for Bob. The name "Bob" is written in a large, simple font at the top. Below the name is a small, stylized icon of a person with short black hair, wearing a dark suit jacket and a white shirt. The card is framed by a thin black border and decorated with colorful circles in shades of pink, yellow, green, and blue, some with dashed outlines. The background is white.

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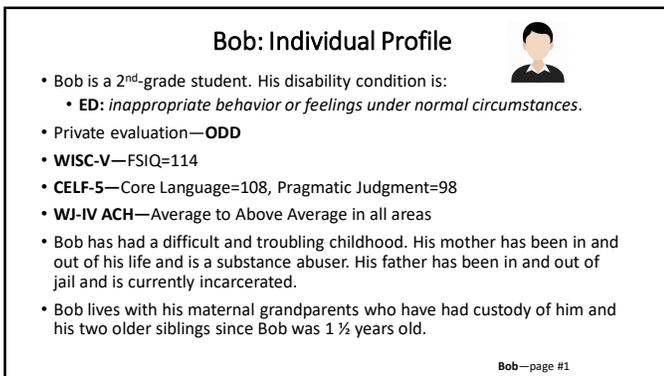
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**Bob: Individual Profile** 

- Bob is a 2<sup>nd</sup>-grade student. His disability condition is:
  - **ED:** *inappropriate behavior or feelings under normal circumstances.*
- Private evaluation—**ODD**
- **WISC-V**—FSIQ=114
- **CELF-5**—Core Language=108, Pragmatic Judgment=98
- **WJ-IV ACH**—Average to Above Average in all areas
- 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

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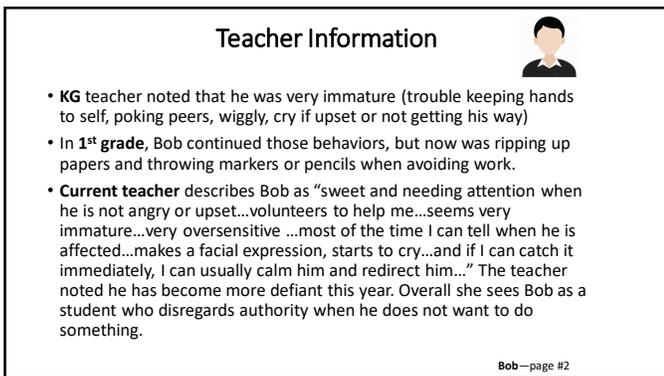
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**Teacher Information** 

- **KG teacher** noted that he was very immature (trouble keeping hands to self, poking peers, wiggly, cry if upset or not getting his way)
- In **1<sup>st</sup> grade**, Bob continued those behaviors, but now was ripping up papers and throwing markers or pencils when avoiding work.
- **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. Overall she sees Bob as a student who disregards authority when he does not want to do something.

Bob—page #2

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# Manifestation Determination Review

## Grandmother Information



- Bob sees a therapist weekly for anger issues. He admits to having a negative attitude toward school, likes his teachers when they help him one-to-one, but does not like being told what to do. He does not like school, but wants to attend to be with friends.
- 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—page #3

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## Discipline History/Services



- The FIE noted that Bob struggles in situations where there is stress, but symptomatic distress level is low.
- Bob had 7 disciplinary infractions in 1<sup>st</sup> grade (3 for insubordination, 2 profanity, 2 lunch violations).
- Currently in 2<sup>nd</sup> grade he had 8 infractions for same types of behaviors.
- Bob also receives counseling as a related service aimed at identifying triggers and learning de-escalation coping strategies.

Bob—page #4

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## Grandmother Explanation of Current Behavior



- Grandmother told the teacher and the 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 #5

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# Manifestation Determination Review

## 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 #6

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## 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 #7

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## 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 #8

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# Manifestation Determination Review

## 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 #9

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## 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 #10

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## 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 #11

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# Manifestation Determination Review

**Bob: ED**     **Analysis: Disability Characteristics and Conduct**

Student-Specific Characteristics of Disability Condition	Specific Behavior and Circumstances of the Conduct
<p><b>ED—Inappropriate behavior and feelings under normal circumstances</b></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><b>Brought pills to school</b></p> <ul style="list-style-type: none"> <li>Bob was observed by another student taking out a Ziplock bag from his pocket and putting 1 pill in his mouth.</li> <li>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.</li> <li>The teacher took Bob to the nurse first and then the principal.</li> <li>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.</li> <li>Bob's grandmother was contacted and Bob was taken to the principal's office where he continued to be monitored by the nurse.</li> </ul>

Bob—page #12

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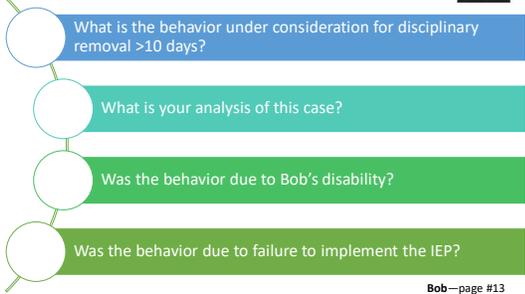
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## Making the Analysis



- What is the behavior under consideration for disciplinary removal >10 days?
- What is your analysis of this case?
- Was the behavior due to Bob's disability?
- Was the behavior due to failure to implement the IEP?

Bob—page #13

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Thank You!

Ginger E. Gates, Ph.D.  
Gail M. Chermie, Ph.D.

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