



Manifestation Determination Tips

PRACTICAL TIPS WHEN CONDUCTING MDR

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What I am NOT teaching today

- ▶ How to properly conduct an MDR
 - ▶ Who is on the Team
 - ▶ Scope of relevant information to review
 - ▶ Specific process
 - ▶ Notice/invitation
 - ▶ 10 days
 - ▶ What to do if it is or is not a manifestation
 - ▶ Bla, bla, bla BORING!

Learning Objectives

- ▶ Confidently determine the result of an MDR
- ▶ Understand the legal interpretation of “conduct that is caused by or had a direct and substantial relationship”
- ▶ Apply your knowledge

Summary of Tips



1. Don't argue the facts
2. Identify the conduct/behavior(s) subject to disciplinary action.
3. Identify the disability that may be related to the conduct/behavior.

Manifestation Determination

- ▶ When are you required to do an MDR?
- ▶ When should you do an MDR?
 - ▶ What is the purpose of an MDR?
 - ▶ 504/IEP Meeting vs. MDR

Manifestation Determination

- ▶ PURPOSE: Required when student conducts a code of conduct violation and recommended sanction is a change in placement; 10 consecutive or cumulative days of suspension in a school year
- ▶ Manifestation of student disability if:
 - ▶ conduct in question ***caused by or had a direct and substantial relationship*** to the student's disability; or
 - ▶ conduct in question a direct result of the school's failure to implement the Section 504 Plan

RECOMMENDED FORM(S)

- ▶ Notice of Meeting
- ▶ Parental Rights
- ▶ Consent for Release of Confidential Information
- ▶ 504 Plan / IEP
- ▶ MDR Form

Manifestation Determination

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
 2. If the conduct in question was the direct result of the school district's failure to implement the child's IEP.
- ▶ 34 CFR 300.530(e)

Slippery Slope Argument

- ▶ DirectTV Commercial

<https://www.youtube.com/watch?v=vfwftofKWgs>

- ▶ Avoid/Reject Slippery Slope Arguments

Previous Guidance

- ▶ OSERS: look at the appropriateness of the IEP and determine whether the student understood and could control their behavior.
- ▶ That's an impossible standard, especially to provide in an administrative hearing or court

“direct and substantial relationship”

Doe v. Maher, 793 F.2d 1470 (9th Cir. 1986)

- ▶ All phrases intended to mean same thing
 - ▶ “conduct that arises from the handicap”
 - ▶ “conduct that is caused by the handicap”
 - ▶ “handi-cap related misconduct”
- ▶ Covered by this definition only if the handicap significantly impairs the child’s behavioral controls

“direct and substantial relationship”

Doe v. Maher, 793 F.2d 1470 (9th Cir. 1986)

- ▶ This definition does not embrace conduct that bears only an attenuated relationship to the child’s handicap
- ▶ EXAMPLE: A child’s physical handicap results in 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 nondisabled children suffering from low self-esteem for other, equally tragic reasons.

Practical Guidance

- ▶ Consider the child's history
- ▶ Consider how the child manifests his/her disability on a day-to-day basis
- ▶ Consider whether the behavior that is being disciplined has been previously observed in this student
- ▶ Using that information, decide whether the behavior was caused by or directly related to the student's disability
- ▶ If it was caused by or directly related, was it substantially related (or only "attenuated")

Don't argue the facts

- ▶ Whose facts do you use?
 - ▶ School District Team?
 - ▶ Parents?
- ▶ NEITHER
 - ▶ Use facts from independent investigation report
 - ▶ Don't waste time arguing facts in MDR

Result of MDR

- ▶ Not a manifestation of student's disability
 - ▶ Proceed with discipline
- ▶ Manifestation of student's disability
 - ▶ Conduct FBA or review
 - ▶ Create BIP
 - ▶ Return student to original placement, unless IEP Team agrees to modify placement

Consequences of Unsupported Arguments

- ▶ https://www.wrightslaw.com/info/discipl.mdr.strategy.htm#google_vignette
- ▶ What does parent want to argue?
- ▶ Why does the parent make this argument?
- ▶ What are the consequences of this argument?

Criminal Example

- ▶ Why does a person plead insanity?
- ▶ What happens when a person pleads insanity in a criminal case?
- ▶ Does criminal get to resume normal life with society?
- ▶ What are the consequences?

Tips/Tricks Summary

1. Don't argue the facts
 - ▶ Use facts from investigation report
 - ▶ Pointless to argue facts, nobody in MDR meeting was a witness
2. Identify the conduct/behavior(s) subject to disciplinary action.
 - ▶ There are often multiple behaviors that can be disciplined
 - ▶ Focus on behavior that is subject to discipline
3. Identify the disability that may be related to the conduct/behavior.
 - ▶ It must be BOTH direct and substantial

Hypothetical Scenario

- ▶ SCENARIO 1: Student with ADHD, Tourette's, and other nonspecific related disorders.
 - ▶ Tennis team
 - ▶ Gets frustrated:
 1. Starts cursing
 2. Throws chairs and punches other players
- ▶ QUESTION: Is it a manifestation of student's disability?

Hypothetical Scenario

- ▶ SCENARIO 2: Student with ADHD, Tourette's, and other nonspecific related disorders.
 - ▶ Track team, daily track run
 - ▶ Deviates from assigned run to play at local park
 - ▶ Students get carried away and harass other students on playground
- ▶ QUESTION: Is it a manifestation of student's disability?

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