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**It Happened on St. Patrick's Day**

- ❑ There was "an incident" in the hallway between teacher and student.
- ❑ School investigation concluded that student committed an assault and failed to comply with a directive. Suspension until a hearing can be held. This is OK under Pennsylvania law.
- ❑ Incident was 3-17. School scheduled hearing for 3-25, with MDR right after, if needed.

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**Problems**

- ❑ Written notice to the parents was dated 3-18, but not mailed until 3-23. Parents were informed of hearing by telephone and showed up for it on 3-25.
- ❑ But parents were not expecting MDR, had not yet received letter, and were not ready.
- ❑ Everything gets postponed. MDR will be 3-31, with hearing on 4-8. Kid is still suspended.

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## Prepping for the MDR

- In advance of the MDR, the special ed supervisor reviewed the boy's records and filled out the Preliminary MDR Worksheet.
- The form left room for a detailed description of "setting events, antecedents, details....immediate consequences....witnesses and all relevant details."
- Supervisor typed in: "assault" "refused directive" and teacher "sustained injuries."



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## The Two Big Questions

- Prior to the meeting, the supervisor answered the MDR's two critical questions.
- Was the behavior a direct result of the school's failure to implement the IEP?
  - NO.
- Did the behavior have a direct and substantial relationship to the disability?
  - NO.
- But this was just "preliminary."



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## At the Meeting....

- The supervisor told the group how she had checked the boxes and then asked: "Does anyone have any concerns with that? Does anyone have anything they'd like me to add or subtract at this point?"
- The court did.
- SEE NEXT SLIDE.



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## What's Not OK

"[The supervisor] protested during the hearing that she included the parents in the conversation at the MDR, read her findings aloud, and gave the team an opportunity to object. But, ultimately, [she] convened the MD with a prefabricated document that encompassed solely her views and conclusions and then asked if anyone objected...."



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## What Is OK

This procedure is "materially different than, say, for efficiency, filling in background information gathered ahead of time to facilitate meaningful discussion about the appropriate answers at the heart of the MD, questions that [the supervisor] had already answered 'no' to."



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## Another Problem

- The supervisor said "to be quite honest, we looked at it more from a global picture. We didn't [dive] into the specifics. We weren't looking at what occurred during that specific incident."
- The court: "This failure to consider the specific circumstances renders the MD deficient because it precluded any meaningful discussion."



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## So What Happened?

- ❑ The court ordered the district to do it again, and do it right. The court expressed no opinion about the outcome of the MDR—but held that the process was seriously flawed.
- ❑ Parents were awarded compensatory education because the student missed more than 10 consecutive days of school without a proper hearing or MDR.
- ❑ Parents also entitled to attorneys' fees.



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## Lesson One

- ❖ Don't answer the questions in advance.
- ❖ If you want to get a head start on the paperwork, fill out names, dates, people in attendance, etc.



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## Lesson Two

- ❖ Hold the general ed due process hearing prior to the ARD. How else can you have enough specific information to conduct the MDR?
- ❖ Suggestion: have the campus administrator conduct the due process hearing; then have that administrator attend the ARD to provide the detailed information the ARD needs about the incident.



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## Let's Remember

- ❑ The ARDC does not second-guess decisions made by the campus administrator. But the ARDC needs detailed information in order to have a meaningful discussion and conduct a proper MDR.
- ❑ So if the A.P. concludes that the student committed an assault, the ARDC should not second guess that. But just saying it was an assault is not enough information for the MDR.

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## Lesson Three

- ❖ Parents are entitled to five school days written notice of ARDC. Get the notice out promptly and schedule the ARDC late enough to provide the five days.
- ❖ The Procedural Safeguards document must be given to the parent in advance of the ARD. Do this at the general ed due process hearing, if not before.

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## Lesson Four

- ❖ When testifying under oath, never begin a sentence with "To be quite honest...."

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## The Case

- Bristol Township School District v. Z.B.
- Decided by the federal court for the Eastern District of Pennsylvania on January 14, 2016.
- 67 IDELR 9.



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*The information in this handout was prepared by Walsh Gallegos Trevino Russo & Kyle P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.*



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