

# Manifestation Determination Review in Texas



Special Education is NOT a Get Out of Jail Free Card  
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Please note that I am NOT an attorney. The information provided in this presentation does not, and is not intended to, constitute legal advice; all information, content, and materials available in this presentation are for general informational purposes only. School districts are advised to contact their attorney if they have specific questions about Manifestation Determination Reviews.

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## Misconception: Students with Disabilities Can't Be Disciplined at School - Federal

Students with a disability under IDEA are:

- Subject to the same rules of behavior at school as other students.
- Subject to Chapter 37 of the Texas Education Code (TEC).

Unless the student's Individualized Education Program (IEP) specifically indicates otherwise (see their BIP).

<https://statutes.capitol.texas.gov/Docs/ED/htm/ED.37.htm>

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## Misconception: Students with Disabilities Can't Be Disciplined at School - Texas



All the discipline techniques in Texas' Chapter 37 apply to an IDEA student including:

- Removal from class by a teacher (TEC § 37.002);
- Suspension for three days or less (TEC § 37.005);
- Mandatory placement in the disciplinary alternative educational placement ("DAEP") (TEC § 37.006);
- Permissive DAEP placement (TEC § 37.001(a)(2));
- Expulsion (TEC § 37.007);
- Emergency placement or expulsion (TEC § 37.019).

<https://statutes.capitol.texas.gov/Docs/ED/htm/ED.37.htm>

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## However...



Students identified as having a disability under IDEA may be subject to **additional IDEA procedural protections and requirements** if the discipline results in a change of placement.

The procedural protections for students with a disability provided by the IDEA **must be considered prior** to implementation of the discipline.

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## What is a Manifestation Determination Review?



At specific times, and for certain violations of the student code of conduct, IDEA's discipline procedures require school systems to conduct what is known as a **"Manifestation Determination Review"**

The purpose of this review is to determine whether the **child's behavior** that led to the disciplinary infraction **is linked to his or her disability**.

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## Where did the Manifestation Determination Review Process Come From?



### **Honig v. Doe (1988) Summary:**

- The Supreme Court ruled 6-2 that schools cannot indefinitely suspend students with disabilities for behavior caused by their disabilities without due process.
- This upheld the "stay-put" provision of the Education of the Handicapped Act, which required students to remain in their current placement during legal disputes.
- This case reinforced strong legal protections for students with disabilities facing disciplinary actions.

Honig v. Doe, 484 U.S. 305 (1988).  
<https://www.oyez.org/cases/1987/86-728>

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## Manifestation Determination Review Under IDEA 2004

KEEP IT  
SIMPLE  
STUPID

Manifestation determinations were first introduced into IDEA with the 1997 amendments.

The process has been *“simplified”* under IDEA 2004.

The Senate HELP committee observed, what is now required is *“a more simplified, common-sense procedure for schools to use.”*

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## Systemic Barriers to Equitable MDRs

NOT  
EQUITABLE

### Barriers include:

1. Inconsistent Training and Preparation
2. Ambiguity in Policy Language
3. Disproportionality and Biased Decision-Making
4. Administrative Pressure
5. Limited Family Engagement
6. Legal Risk Aversion

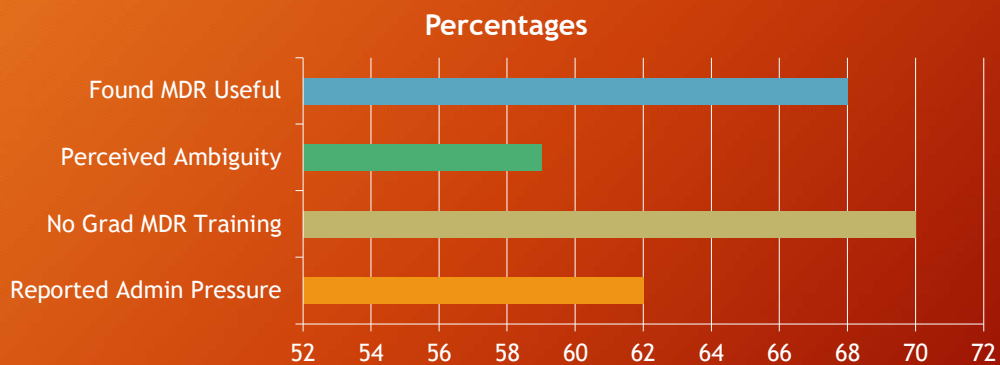
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## Impact on Students



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## MDR Perceptions (Allen & Roberts, 2024)



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## Systemic Barriers to Equitable MDRs



### Inconsistent Training and Preparation

The training requirements and content of **school psychology programs** can vary significantly, leading to differences in expertise.

School psychologists may not receive adequate opportunities for ongoing **professional development** in areas like MDRs and special education law.

Despite lacking formalized training, **school psychologists are viewed as holding relative expertise in the MDR process.**

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## Systemic Barriers to Equitable MDRs



### Inconsistent Training and Preparation

While principal certification programs cover various aspects of school leadership, they often **lack in-depth instruction on special education law and procedures, including MDRs.**

A study found that principals in their preparation programs learned about special education law through 1-3 classes in a school law course (Crockett, 2002).

**Leaves professionals navigating high-stakes decisions with limited legal and procedural understanding, increasing variability in decision-making.**

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## Systemic Barriers to Equitable MDRs



### Ambiguity in Policy Language

- The standards for determining if the behavior is a manifestation of the disability are described as **vague**, leading to potential inconsistencies in decision-making.
- The law **does not** provide a clear, definitive definition of what constitutes a manifestation of a disability.
- This ambiguity can be further exacerbated by **a lack of a clear framework** for school psychologists and other team members, potentially leading to subjective or biased interpretations.

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## Systemic Barriers to Equitable MDRs



### Ambiguity in Policy Language

#### (E) Manifestation determination

##### (i) In general

Except as provided in subparagraph (B), 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 local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall 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—

(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

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## IDEA 2004 and MDR



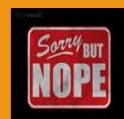
- Limits the requirement to perform a Manifestation Determination Review to removals that constitute a **change of placement** under IDEA's disciplinary procedures;

AND

- Does not require a Manifestation Determination Review for **removals for less than 10 consecutive school days that do not constitute a change in placement.**

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## When Do You NOT Need an MDR?



Regular Education students... **EXCEPT!**

- (see who is a student with a disability slide)

Discipline placement is for less than 10 days... **KINDA!**

- (see change of placement slides)

Discipline infractions that include weapons, illegal drugs, controlled substances, or serious bodily injury, and the discipline placement is for less than 45 days... **SORTA!**

- (see special circumstances slides)

20 USC 1415(K)(1)(B) & (G)

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## Who is a Student with a Disability?



Identified as **Special Ed** or **504**

General education students if the school has a “basis of knowledge” that a disability exists:

- Parent requested evaluation
- Parent expressed the need for SPED in writing
- School staff expressed concern to supervising personnel
- Unless the parent previously refused consent

[34 CFR 300.534](#)

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## Special Circumstances



There are different IDEA rules that apply if the student's conduct involves weapons, drugs, or the infliction of serious bodily injury.

The LEA may remove a student to an interim alternative educational setting, *without regard to whether the behavior is determined to be a manifestation of the student's disability* when the student:

- (1) carries or possesses a weapon (a firearm, as defined by [Section 46.01\(3\)](#), Penal Code; a knife, as defined by [Section 46.01\(7\)](#), Penal Code; or any other object to be used with intent to cause bodily harm);
- (2) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance; or
- (3) inflicts serious bodily injury upon another person, as defined by [Section 1.07 \(46\)](#).

[20 USC 1415\(K\)\(1\)\(G\)](#); [34 C.F.R. § 300.530\(g\)](#)

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## Special Circumstances - NEWISH



### House Bill 114 (Effective date 9/1/2023)

A student shall be removed from class and placed in a disciplinary alternative education if the student:

- possesses, uses, or is under the influence of, or sells, gives, or delivers to another person **marihuana or tetrahydrocannabinol**;
- possesses, uses, sells, gives, or delivers to another person an **e-cigarette**.

<https://txssc.txstate.edu/tools/law-toolkit/updates/house-bill/114>

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## Special Circumstances - NEWISH



### House Bill 114 (Effective date 9/1/2023)

- Data indicates a significant rise in mandatory Disciplinary Alternative Education Program (DAEP) placements since HB114 was put in place.
- This increase is specifically attributed to the bill's requirements for placing students with vaping devices or certain substance violations in DAEP.

Roddy, D., & Carter, D. (2024, April 30). Fort Worth, Houston ISD send more students to alternative education following vaping bill. Texas Standard.  
<https://www.texasstandard.org/stories/fort-worth-houston-isd-send-more-students-to-alternative-education-following-vaping-bill/>

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## HB 114



More than half of the students that Houston and Fort Worth ISDs sent to DAEP for substance violations after the implementation of HB 114 were punished for vaping-related offenses.

Fort Worth and Houston ISD saw sharp increases in the number of students sent to alternative education programs for substance-related offenses following the implementation of HB 114.

Chart shows the projected percent change in the number of students sent to disciplinary alternative education programs (DAEP) in the first half of the 2023-2024 school year, compared to data from the previous year. Houston ISD now includes a provision in its District of Innovation Plans exempting the district from HB 114's mandatory punishments.



Projected change does not take into account students sent to DAEP during the summer of the 2022-2023 school year.

Source: Texas Education Agency

> TEXAS COMMUNITY HEALTH NEWS

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## Special Circumstances but...



Under the special circumstances, the student may be removed for up to 45 school days, but...

the requirement for the LEA to provide **FAPE** in the discipline setting applies to these removals (see FAPE slide).

20 U.S.C. §1415(k)(1)(G) ; 34 C.F.R. § 300.530(d)(1)(i)

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## What is "FAPE" in the Discipline Setting?



The student must be able to continue to **participate** in the general education curriculum, although in a different setting, and **progress toward meeting the goals** set out in the student's IEP. (20 U.S.C. § 415(k)(1)(D)(i); 34 C.F.R. § 300.530(d)(i))

However, the student does not have to receive the same services in the same setting as before the discipline.

The U.S. Department of Education has said that it **does not interpret the term "participate"** to mean that a school or district must replicate every aspect of the services that a child would receive in his or her current placement. (71 Fed. Reg. 46716 (2006))

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## Systemic Barriers to Equitable MDRs: Disproportionality (Trussell, 2025)



In-school  
suspensions  
down 42%

Out-of-  
school  
suspensions  
down 30%

Expulsions  
down 48%

DAEP  
removals  
down 32%

JJAEP  
removals  
down 58%

However, students with disabilities remained overrepresented in all categories.

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## Systemic Barriers to Equitable MDRs: Biased Decision-Making (NAACP, 2017)



- Black students face disproportionate and often excessive disciplinary measures in schools.
- They are more likely to be suspended, expelled, or arrested—even for minor infractions.
- What Drives Disparities?
  - Implicit Bias
  - Racial Anxiety
  - Stereotype Threat
- These biases are often unconscious but have powerful effects on school-student interactions.

NAACP Legal Defense and Educational Fund, Inc. (2017). *Locked out of the classroom: How implicit bias contributes to disparities in school discipline*. Thurgood Marshall Institute. <https://www.naacpldf.org>

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## What is a “Change of Placement”? EASY!



**REMEMBER:** Placement does not mean the room the student is in, but the *program and services* deemed most appropriate for the student as per the IEP.

If the discipline removes the student from their programming and services for **more than 10 consecutive school days**, it is a “change of placement”

20 USC 1415(k)(1)(E); 34 CFR 300.536

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## What is a “Change of Placement”? NOT SO EASY!



However, if the student is removed from their programs and service **cumulatively** for more than 10 days and this subjects the student “to a **series of removals that constitute a pattern,**” this is also a “**change of placement.**”

The LEA must consider if the child’s behavior is **substantially similar** to the child’s **behavior in previous incidents** that resulted in the series of removals. If it is substantially similar, this is also a change of placement.

The LEA must consider **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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## TEC Sec. 37.004.(a) Placement of Students with Disabilities.



(a) The **placement** of a student with a disability who receives special education services **may be made only by a duly constituted admission, review, and dismissal committee.**

The admission, review, and dismissal (ARD) committee, must include members as described in the **RULE OF CONSTRUCTION** framework.

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## TEC Sec. 37.004.(b) Placement of Students with Disabilities.



(b) Any **disciplinary action** regarding a student with a disability who receives special education services that would **constitute a change in placement** under federal law may be taken **only after** the student's admission, review, and dismissal committee conducts a **Manifestation Determination Review** under 20 U.S.C. Section 1415(k)(4) and its subsequent amendments. Any disciplinary action regarding the student shall be determined in accordance with federal law and regulations, including laws or regulations **requiring the provision of:**

- (1) functional behavioral assessments;
- (2) positive behavioral interventions, strategies, and supports;
- (3) behavioral intervention plans; and
- (4) the manifestation determination review.

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## TEC Sec. 37.004.(c) and (d) Placement of Students with Disabilities.



(c) A student with a disability who receives special education services **may not be placed in alternative education programs solely for educational purposes.**

(d) A **teacher** in an alternative education program under Section 37.008 who has a special education assignment must hold an appropriate certificate or permit for that assignment.

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## Change of Placement - In Practice



In practice, most LEAs view “change of placement” as if they get 10 “free” days during which they can discipline students with a disability as if they are non-disabled, and...

during these 10 days, the school does not have to provide the student with regular education or special education and related services unless it would provide those services to a non-disabled child in the same situation, but...

upon the 10<sup>th</sup> day of discipline, an MDR is held.

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## What Constitutes a Violation of a Code of Student Conduct? Good News!



### Good News...

Administrators, not the IEPc members or the school psychologist, determine whether the behavior violates a code of conduct!

Administrators should investigate to determine whether the student committed the conduct as alleged and, if so, what the appropriate consequence is under the student code of conduct.

**GUILT OR INNOCENCE IS NOT AN IEPc DECISION!!!!**

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## What Constitutes a Violation of a Code of Student Conduct? Bad News!



The conclusions from the investigation are presented to the IEPc conducting the MDR along with details sufficient for the ARDc to answer the two questions required in the MDR.

### Bad News...

- Issues about the details of the incident and the fairness of the discipline and punishment often spill over into the MDR meeting.

[Texas Compilation of School Discipline Laws and Regulations](#)

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## Who Must be Part of an MDR Meeting?



The LEA, the parent, and **relevant IEP team members** (as determined by the parent and the LEA) are involved in conducting the review.

**Guess who is almost always a “relevant member of the IEP team”???**

In MDRs for children who are identified as ED, OHI for ADHD, and AU, the committee often **looks to the school psychologist for guidance** through this process.

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## Legal Case Review Overview (Zirkel, 2024)



Zirkel analyzed 52 MDR-related cases from 2019-2024, including both procedural and substantive rulings and found:

1. Substantive Decisions: 63% favored school districts, mostly relying on criterion #1 (disability-behavior link).
2. Procedural Errors: Common issues included insufficient parent participation and incomplete data consideration.
3. Disabilities: ADHD, ED, and OHI were the most litigated classifications.

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## Legal Case Review Overview (Zirkel, 2024)



“The most frequent decisional factors included the school psychologist’s testimony...”

“The hearing officer relied in notable part on the expert testimony of the school psychologist...”

“...the school psychologist plays a pivotal role in the collection and evaluation of evidence for relatively objective application to each of the two specified criteria.”

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## Parent Participation

**PARENT**

The IEP committee meeting to conduct an MDR must be properly noticed like any other IEP committee meeting.

To have the meeting without the parent present, the LEA must keep a record of its attempts to arrange a mutually agreeable time and place.

Those attempts should include such things as telephone calls, written communications, visits with the parent, and the results of those efforts.

If these steps are taken, then the IEP committee meeting can be held even though the parent refuses to attend.

[34 C.F.R. § 300.322\(d\)](#)

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## Legal Case Review Overview (Zirkel, 2024)

**PARENT**

Zirkel analyzed 52 MDR-related cases from 2019-2024, including both procedural and substantive rulings and found:

The most frequent **parental claims** concerned:

- (a) team membership
- (b) information sources used

The claims for which **districts were most vulnerable to unfavorable rulings** were

- (a) failure to provide parents, as mandated members, with sufficient opportunity for meaningful participation in the MDR
- (b) lack of consideration for the full scope of reasonably available information sources for the determination.

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## Parent Notification



The LEA must notify the parent of the recommended discipline **on the date** on which the decision is made to make a discipline removal that constitutes a change in placement and must provide the parents with **the procedural safeguards notice**. (34 C.F.R. § 300.530(h))

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## Parent Notification



**When must the parent be notified that an IEP meeting needs to be convened to conduct an MDR?**

Proper notice of the IEP committee meeting must be sent to the parent within a reasonable time prior to the meeting. (34 C.F.R. § 300.503(a)).

Texas regulations define "reasonable time" as 5 school days. (19 TAC §89.1015. Time Line for All Notices) The notice should be clear, complete, and list MDR as a task of the meeting.

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## Systemic Barriers to Equitable MDRs


 A red speech bubble with the text "JOIN US" in white.

### Limited Family Engagement

Parents possess invaluable insights into their child's unique strengths, challenges, and the specific ways their disability manifests in their behavior. This knowledge is crucial for determining if a disciplinary incident is indeed a manifestation of the disability.

Parents, particularly from non-dominant cultural backgrounds, may feel intimidated or underinformed during MDR meetings. If communication is not accessible (e.g., through translators or advocates), families may not effectively participate in the process (National Center for Education Statistics [NCES], 1998).

This lack of input can prevent the team from understanding the full context of the student's behavior.

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## Break Time - 15 minutes

Community Chest

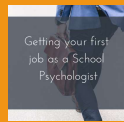
GET OUT  
OF JAIL FREE



©2008, 2009, 2010  
THIS CARD MAY BE KEPT UNTIL NEEDED, OR SOLD

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## Early Career School Psychologists?



### The following scenario may sound familiar:

Sarah, a first-year school psychologist, nervously sat in the conference room waiting for the manifestation determination review (MDR) to begin. Although she had observed, and even led, a few MDRs throughout her practicum and internship, this case weighed heavily on her. The student in question, a Black seventh grader with a history of emotional and behavioral problems, was facing expulsion for damaging school property. Sarah knew this decision could significantly impact his future. She once read a research article about the school-to-prison pipeline and feared the student might become another statistic. To prepare for the MDR, she interviewed the student and his teacher about the incident, reviewed his psychoeducational evaluation, and determined that his current services were being consistently implemented; however, she still felt uncertain about whether the misconduct was related to his disability. He had exhibited verbal outbursts before, but had never physically expressed his frustrations, let alone in a destructive manner. As the student's parents, educators, and principal walked into the room, Sarah's mind raced through several potential outcomes for the student. She felt uneasy about voicing her professional opinion to the MDR team, given that the principal had stopped by Sarah's office earlier that morning to state that the student's conduct was clearly not a manifestation of his disability and wanted to make sure they were on the same page. If Sarah disagreed with the principal now, would it lead to a soured working environment? She was just getting started in her career. It would mean that the student remains in school, but would the student's behaviors escalate to hurting others? If she agreed with the principal, would it lead to litigation from the student's parents? What would this mean for the student's future? While the principal opened the meeting with a recap of the incident, Sarah reflected on her limited academic training and experiences, wishing she had more knowledge and skills, especially related to multicultural considerations and school personnel biases, to effectively navigate MDR decisions.

National Association of School Psychologists. (2024). Navigating manifestation determination reviews. *Communique*, 53(4). <https://www.nasponline.org/publications/periodicals/communique/issues/volume-53-issue-4/navigating-manifestation-determination-reviews>

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## Systemic Barriers to Equitable MDRs



### Administrative Pressure

#### Pair and Share:

- How do you handle conflicts between your professional opinion and administrative expectations during an MDR?
- What helps you stay objective and legally compliant under pressure?
- How can school psychologists collectively advocate for stronger MDR practices?

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## Purpose of the MDR Meeting

Why?

The **purpose** of a Manifestation Determination Review meeting is to determine:

- (i) If the conduct in question was **caused by, or had a direct and substantial relationship to**, the child's disability; or
- (ii) If the conduct in question was **the direct result of the LEA's failure to implement the IEP...**

34 CFR 300.530(e)(1)-(2)

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## Standard I: *Caused by, or had a Direct and Substantial Relationship to...*



The link between the child's conduct violation and his or her disability is important.

As the Department of Education notes:

*"We believe the Act recognizes that a child with a disability may display disruptive behaviors characteristic of the child's disability and the child should not be punished for behaviors that are a result of the child's disability." (71 Fed. Reg. 46720)*

**CAUSE AND EFFECT IS AN ARDc DECISION!!!!**

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## Is it Caused By (Causal)?



The conduct in question must have more than just an attenuated association to the disability.

“Assuming that all of the student’s unacceptable behavior is related to the disability is no more logical or reasonable than assuming that everything that a student does that is acceptable is related to the disability. In short, the broad range of behaviors manifested by a particular student may or may not be attributable to the disability.”

Hartwig & Ruesch, Discipline in the Schools, 1994

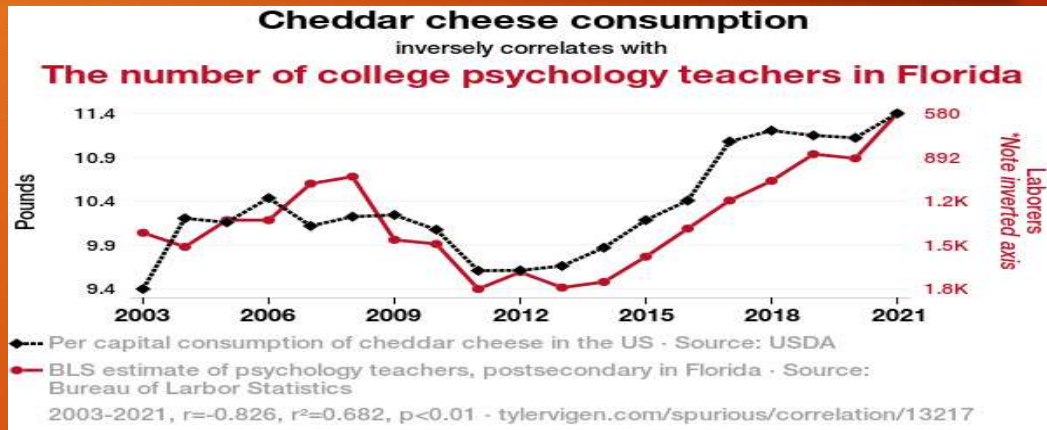
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Remember, Correlation **DOES NOT** Equal Causation!



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Remember, Correlation **DOES NOT** Equal Causation!



Spurious Correlations

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## Breakout Group Activity 1



### GROUP 1:

#### Sleeping and Emotional Disability

16-year-old high school student who is identified as having an Emotional Disability *due to a general pervasive mood of unhappiness or depression.*

Student sleeps in class most days.

The administrator wants to send the student to the DAEP for 30 days for sleeping in class.

### GROUP 2:

#### Drug Usage and Emotional Disability

16-year-old high school student who is identified as having an Emotional Disability *due to a general pervasive mood of unhappiness or depression.*

The student is caught smoking marihuana in the restroom at school.

The administrator wants to send the student to the DAEP for 30 days for smoking marihuana at school.

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## Breakout Group Activity



### Discuss the following questions in the Breakout Groups:

1. What are the DSM-5-TR criteria for Major Depressive Disorder?
2. What are the eligibility criteria for Emotional Disability Under IDEA, 2004, and Texas State law?
3. Does the behavior in question (SLEEPING IN CLASS or DRUG USAGE) have a DIRECT and SUBSTANTIAL RELATIONSHIP to the DISABILITY CONDITION (EMOTIONAL DISABILITY)?

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## DSM-5-TR Major Depressive Disorder Criteria



A. Five (or more) of the following symptoms have been present during the same two-week period and represent a change from previous functioning; at least one of the symptoms is either (1) depressed mood or (2) loss of interest or pleasure.

- 1) Depressed mood most of the day, nearly every day, as indicated by either subjective report (eg, feels sad, empty, hopeless) or observations made by others (eg, appears tearful). (NOTE: In children and adolescents, can be irritable mood.)
- 2) Markedly diminished interest or pleasure in all, or almost all, activities most of the day, nearly every day (as indicated by either subjective account or observation).
- 3) Significant weight loss when not dieting or weight gain (eg, a change of more than 5% of body weight in a month), or decrease or increase in appetite nearly every day. (NOTE: In children, consider failure to make expected weight gain.)
- 4) **Insomnia or hypersomnia nearly every day.**
- 5) Psychomotor agitation or retardation nearly every day (observable by others, not merely subjective feelings of restlessness or being slowed down).
- 6) Fatigue or loss of energy nearly every day.
- 7) Feelings of worthlessness or excessive or inappropriate guilt (which may be delusional) nearly every day (not merely self-reproach or guilt about being sick).
- 8) Diminished ability to think or concentrate, or indecisiveness, nearly every day (either by their subjective account or as observed by others).
- 9) Recurrent thoughts of death (not just fear of dying), recurrent suicidal ideation without a specific plan, or a suicide attempt or a specific plan for committing suicide.

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## Federal Emotional Disturbance Criteria Under IDEA



(4)(i) 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:

- (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- (C) Inappropriate types of behavior or feelings under normal circumstances.
- (D) A general pervasive mood of unhappiness or depression.
- (E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

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## Texas Emotional Disability Criteria



A child with an emotional disability is one who has been determined to meet the criteria for emotional disability.

Emotional disability 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 the child's educational performance:

- An inability to learn that cannot be explained by intellectual, sensory, or health factors;
- An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- Inappropriate types of behavior or feelings under normal circumstances;
- A general pervasive mood of unhappiness or depression; or
- A tendency to develop physical symptoms or fears associated with personal or school problems.

Emotional disability does not apply to a child who is socially maladjusted, unless the child also meets the criteria for having an emotional disability.

Emotional disability includes schizophrenia.

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**GROUP 1: Does the behavior in question, SLEEPING IN CLASS, have a DIRECT and SUBSTANTIAL RELATIONSHIP to the DISABILITY CONDITION of EMOTIONAL DISTURBANCE?**



16-year-old high school student who is identified as having an Emotional Disturbance *due to a general pervasive mood of unhappiness or depression.*

Sleep disturbances, including insomnia or sleeping too much are criteria, characteristics, or symptoms of Major Depressive Disorder.

Student sleeps in class most days.

Is sleeping too much caused by, or does it have a direct and substantial relationship to, depression? YES!

The administrator wants to send the student to the DAEP for 30 days for sleeping in class.

**Causation: Depression => Excessive Sleepiness**

**OUTCOME:** MDR SHOULD DECIDE THAT THE BEHAVIOR IN QUESTION (SLEEPING IN CLASS) HAS A DIRECT AND SUBSTANTIAL RELATIONSHIP TO THE DISABILITY CONDITION (EMOTIONAL DISTURBANCE) AND THEREFORE IS A MANIFESTATION OF THE DISABILITY AND THE STUDENT CANNOT BE DISCIPLINED.

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**GROUP 2: Does the behavior in question, DRUG USAGE, have a DIRECT and SUBSTANTIAL RELATIONSHIP to the DISABILITY CONDITION of EMOTIONAL DISTURBANCE?**



16-year-old high school student who is identified as having an Emotional Disturbance *due to a general pervasive mood of unhappiness or depression.*

Is smoking marihuana caused by, or does it have a direct and substantial relationship to, depression? NO!

The student is caught smoking marihuana in the restroom at school.

While experiencing a Major Depressive Disorder might lead some people to engage in substance use, it is not a feature or characteristic of depression.

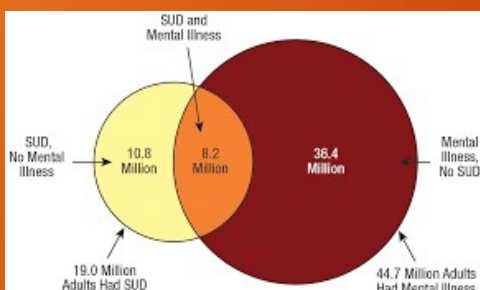
The administrator wants to send the student to the DAEP for 30 days for smoking marihuana.

**Correlation: Depression -> Markedly diminished interest or pleasure in all, or almost all, activities -> Smoking marihuana**

**OUTCOME:** MDR SHOULD DECIDE THAT THE BEHAVIOR IN QUESTION (SMOKING MARIHUANA) DOES NOT HAVE A DIRECT AND SUBSTANTIAL RELATIONSHIP TO THE DISABILITY CONDITION (EMOTIONAL DISTURBANCE) AND THEREFORE IS NOT A MANIFESTATION OF THE DISABILITY AND THE STUDENT CAN BE DISCIPLINED.

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## Remember, Correlation DOES NOT Equal Causation!



Example: Mental Illness and Substance Use Disorders.

Does mental illness cause substance usage, or are they correlated?

Refer to the DSM Diagnostic criteria... does the diagnostic criteria include the behavior(s) in question?

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## Is Drug Usage an “inappropriate type of behavior or feeling under normal circumstances”?



**P.C. and M.C. ex rel. K.C. v. Oceanside Union Free Sch. Dist.**, 56 IDELR 252 (E.D.N.Y. 2011). The parents of a teenager who smoked marihuana on a daily basis throughout seventh and eighth grade could not convince a District Court that their son's anger, anxiety, and poor academic performance was the result of an emotional disturbance that his district failed to address.

**Nguyen v. District of Columbia**, 54 IDELR 18 (D.D.C. 2010). Finding that the student's truancy and drug use were at least partially responsible for his educational difficulties, the District Court held that he was not a "child with a disability." The court rejected the parent's argument that the student had an emotional disturbance.

**Eschenasy ex rel. Eschenasy v. New York City Dept. of Educ.**, 52 IDELR 66, 604 F. Supp. 2d 639 (S.D.N.Y. 2009). The court acknowledged that the student had been asked to leave her private schools for behavior that included drug use, cutting classes and stealing. Those behaviors suggested that the student was socially maladjusted, and therefore ineligible for special education and related services under 34 CFR 300.8(c)(4)(ii).

**Mr. and Mrs. N.C. v. Bedford Central Sch. Dist.**, 51 IDELR 149 (2nd Cir. 2008). The student's behavioral problems at school stemmed from drug use rather than an emotional disturbance. "As the District Court points out, this conclusion is 'more consistent with social maladjustment than with emotional disturbance,'" the 2d Circuit wrote in an unpublished opinion.

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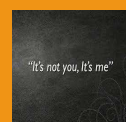
## Standard I: Questions to Consider



- What are the features or characteristics of the disability?
- How has the student displayed the features or characteristics of the disability in the past?
- Is the current behavior similar to the behavior the student has displayed in the past?
- Is this an isolated instance of this behavior or is it recurrent?
- Has the student followed school rules in the past?
- In what situations can the student control their behavior?
- Was the behavior premeditated?
- Are there any new data available that sheds doubt on the accuracy of the disability condition(s)?
- Would similarly situated students without disabilities react in a similar manner in a similar circumstance?

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## Standard II: *The Direct Result of the LEA's Failure to Implement the IEP*



- The relationship between the child's behavior and disability is not the only factor to be considered in a manifestation determination.
- A manifestation determination must also consider if the child's conduct was the direct result of the LEA's failure to implement the IEP [\[34 CFR 300.530\(e\)\(1\(ii\)\)\]](#).
- If such a finding is made, the regulations require the LEA to take immediate steps to remedy those deficiencies [\[34 CFR 300.530\(e\)\(3\)\]](#).

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## Breakout Group Activity



### GROUP 1:

#### Sleeping and Emotional Disturbance

16-year-old high school student who is identified as having an Emotional Disturbance *due to a general pervasive mood of unhappiness or depression.*

Student sleeps in class most days.

The administrator wants to send the student to the DAEP for 30 days for sleeping in class.

The student has a BIP for sleeping in class which is not being followed.

### GROUP 2:

#### Drug Usage and Emotional Disturbance

16-year-old high school student who is identified as having an Emotional Disturbance *due to a general pervasive mood of unhappiness or depression.*

The student is caught smoking marihuana in the restroom at school.

The administrator wants to send the student to the DAEP for 30 days for smoking marihuana at school.

The student has a BIP for wandering the hallways unescorted, which is not being followed.

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## Breakout Group Activity



### Discuss the following questions in the Breakout Groups:

1. Have the services been provided consistent with the IEP?
2. If there were inconsistencies in the implementation of the IEP, did they directly impact the behavior in question?
3. Is the behavior in question (SLEEPING IN CLASS or DRUG USAGE) the DIRECT RESULT of the LEA's FAILURE TO IMPLEMENT the IEP?

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### GROUP 1: Is the behavior in question, SLEEPING IN CLASS, the DIRECT RESULT of the LEA's FAILURE TO IMPLEMENT the IEP?



16-year-old high school student who is identified as having an Emotional Disturbance *due to a general pervasive mood of unhappiness or depression.*

Student sleeps in class most days.

The administrator wants to send the student to the DAEP for 30 days for sleeping in class.

The student has a BIP for sleeping in class which is not being followed.

Is sleeping in class is a direct result of the LEA's failure to implement the IEP/BIP? YES!

**Causation: Failure to Implement IEP/BIP => Sleeping in Class**

**OUTCOME:** MDR SHOULD DECIDE THAT THE BEHAVIOR IN QUESTION (SLEEPING IN CLASS) IS A DIRECT RESULT OF THE LEA'S FAILURE TO IMPLEMENT THE IEP/BIP AND THEREFORE IS A MANIFESTATION OF THE DISABILITY AND THE STUDENT CANNOT BE DISCIPLINED.

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### GROUP 2: Is the behavior in question, DRUG USAGE, the DIRECT RESULT of the LEA's FAILURE TO IMPLEMENT the IEP?



16-year-old high school student who is identified as having an Emotional Disturbance *due to a general pervasive mood of unhappiness or depression.*

The student is caught smoking marijuana in the restroom at school.

The administrator wants to send the student to the DAEP for 30 days for smoking marihuana.

The student has a BIP for wandering the hallways unescorted, which is not being followed.

Is smoking marihuana a direct result of the LEA's failure to implement the IEP/BIP? NO!

**Correlation: Failure to Implement IEP/BIP => Wandering the Hallways => Smoking Marihuana**

**OUTCOME:** MDR SHOULD DECIDE THAT THE BEHAVIOR IN QUESTION (SMOKING MARIHUANA) IS NOT A DIRECT RESULT OF THE LEA'S FAILURE TO IMPLEMENT THE IEP AND THEREFORE IS NOT A MANIFESTATION OF THE DISABILITY AND THE STUDENT CAN BE DISCIPLINED.

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## Standard II: Questions to Consider



- Is the student making educational progress?
- Have the services been provided consistent with the IEP?
- Did all service providers have access to the IEP?
- Were the services implemented within a reasonable time?
- If there were inconsistencies in the implementation of the IEP, did they have a direct impact on the behavior in question?

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## How Do We Make the Determination?



To make these determinations, the group must review all relevant information in the student's file, including:

- The student's IEP including their supplementary aids and services.
- Any teacher observations.
- Any relevant information provided by the parents.
- The appropriateness of the placement.
- If the behavior intervention strategies were appropriate and consistent with the IEP.

[34 CFR 300.530(e)(1)] [71 Fed. Reg. 46719]

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## Using the NASP Ethics and Professional Practices Problem Solving Worksheet



Helps school psychologists navigate complex ethical dilemmas using a structured decision-making process aligned with NASP ethical standards.

School psychologists are encouraged to use this worksheet proactively to support ethical decision-making and to consult NASP resources when facing challenging professional situations.

[https://www.nasponline.org/Documents/Standards%20and%20Certification/Standards/NASP\\_Ethical\\_Problem\\_Solving\\_Worksheet.pdf](https://www.nasponline.org/Documents/Standards%20and%20Certification/Standards/NASP_Ethical_Problem_Solving_Worksheet.pdf)

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## Using the NASP Ethics and Professional Practices Problem Solving Worksheet



### Key Elements to Consider:

- Define the problem clearly.
- Identify the involved parties and their interests.
- Reference relevant ethical, legal, and professional guidelines.
- Consult with colleagues and supervisors.
- Evaluate the potential consequences of each action.
- Generate a list of possible solutions. Make a decision and document the rationale.
- Reflect on the outcome and future implications.

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## Case Study: The Fight in the Hallway



- Background:** Mr. Sanders, a middle school assistant principal, refers a 13-year-old Black student, Jordan, for a disciplinary placement in the Disciplinary Alternative Education Program (DAEP) for 45 school days following a physical altercation in the hallway where another student was injured. Jordan is eligible for special education under the category of Other Health Impairment (OHI) due to ADHD and has a Behavior Intervention Plan (BIP) targeting impulsivity and conflict resolution strategies.
- The Incident:** According to staff witnesses, Jordan reacted quickly and aggressively after a peer made a sarcastic comment. The peer sustained minor injuries. Teachers confirm that Jordan has been struggling recently with focus and peer interactions. A review of the behavior records shows an increase in disciplinary incidents over the past three weeks.
- The Dilemma:** The school psychologist is asked to attend the MDR meeting. Upon review, she notices that Jordan's BIP hasn't been followed with fidelity—particularly, there were no structured break opportunities or consistent check-ins, as outlined. The school psychologist feels the team may be leaning toward a finding that the behavior was not a manifestation of Jordan's disability, based on the nature of the physical aggression and the injury involved. However, she believes the lack of BIP implementation may have contributed to Jordan's behavior.

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**Describe the situation and determine if an ethical dilemma exists:**

### **Describe the problem situation:**

The problem is that the school is considering disciplinary placement for Jordan without fully accounting for the fact that his Behavior Intervention Plan, designed to support his disability-related needs, was not implemented as required, which may have contributed to his aggressive behavior.

### **Does an ethical dilemma exist:**

Yes, an ethical dilemma exists under the NASP 2020 standards. The school failed to follow Jordan's BIP, which may have contributed to his behavior. School psychologists must ensure supports are implemented and disciplinary decisions consider whether behavior is linked to a disability. The school psychologist is ethically obligated to advocate for Jordan and ensure these factors are considered in the MDR meeting.

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**Describe the situation and determine if an ethical dilemma exists:**

Competing values or priorities	Competing views of best practice	Policy and procedure adoption/implementation	Other factors to consider
The competing values are enforcing school safety and discipline versus ensuring fair treatment and support for Jordan's disability by properly following his BIP.	Administration believes enforcing consequences for aggression upholds school safety.  The school psychologist believes addressing unmet behavioral supports and considering the impact of Jordan's disability is essential for a fair and ethical response.	Federal Law (IDEA 2004)  Texas Law (Texas Education Code § 37.004  Fort Bend ISD Policy	Relevant factors may include Jordan's recent behavioral struggles, the school's failure to follow his BIP, and possible staff bias.  The pressure to maintain school safety could lead to overlooking the role of Jordan's disability.  These may impact the fairness and accuracy of the MDR decision.

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**Identify the broad legal and ethical issues pertinent to the situation. Based on the identified concerns, topics to research include:**

Legal	Ethical	Local policy/procedure
<p>Federal law requires that if a student's behavior may be linked to the failure to implement their IEP or BIP, the behavior must be considered a manifestation of their disability. Jordan's BIP was not followed, making this a critical legal concern.</p> <p>Both federal and Texas law mandate an MDR within 10 school days of a decision to change placement. The team must determine if the conduct was caused by the student's disability or the school's failure to implement the plan.</p> <p>If behavior is found to be a manifestation, the law limits the ability to change placement without proper supports and a revised plan, unless special circumstances (like weapons or drugs) apply—which do not in this case.</p>	<p>Jordan's BIP was not followed, which may have contributed to the behavior, raising concerns about the school's obligation to provide appropriate support.</p> <p>The MDR must fairly consider whether the behavior was linked to Jordan's disability and whether the school's failure to implement his plan played a role.</p> <p>The School Psychologist has an ethical duty to advocate for Jordan, ensuring his disability and support needs are fully considered.</p>	<p>Fort Bend ISD mandates that an MDR be conducted within 10 school days of any decision to change the placement of a student with a disability due to a code of conduct violation.</p> <p>The district's procedures emphasize the importance of implementing a student's BIP with fidelity. Failure to do so can be considered a contributing factor in behavioral incidents and must be considered during the MDR process.</p> <p>Fort Bend ISD's Student Code of Conduct outlines specific procedures for disciplining students with disabilities, ensuring that their rights are protected and that any disciplinary actions are consistent with federal and state laws.</p>

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### Consult available ethical and legal guidelines:

List the specific ethical standards that may relate to the situation.	List the specific federal statutes that may relate to the situation.	List the specific state statutes that may be related to the situation.	List the specific local policies that may be related to the situation.	List the specific local procedures that may be related to the situation.
<p>I.1.2 - Advocacy for students' rights</p> <p>I.2.4 - Failure to implement services</p> <p>II.1.1 - Commitment to effective services.</p> <p>II.3.10 - Advocating for services to be provided in a fair and equitable manner.</p> <p>IV.2.1 - Promoting policies and practices that safeguard the rights of students.</p>	<p>IDEA 2004 - Requirement for MDR review and BIP fidelity.</p> <p>Section 504 - Rights of students with disabilities.</p> <p>FERPA - Confidentiality of student information.</p>	<p>TEC § 37.004 - Placement of Students with Disabilities</p> <p>TEC § 37.009 - Disciplinary Alternative Education Programs (DAEPs)</p> <p>TEC § 29.003 - Eligibility Criteria</p> <p>TEC § 37.001 - Student Code of Conduct</p>	<p>Fort Bend ISD Manifestation Determination Review (MDR) Policy</p> <p>Fort Bend ISD Behavior Intervention Plan (BIP) Implementation Policy</p> <p>Fort Bend ISD's Student Code of Conduct</p>	<p>???</p>

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### Consider, to the best of your ability, all factors pertinent to the decision:

Consider racial, ethnic, cultural, socioeconomic, and background factors are important to understanding the context and/or the individuals involved.	Identify any of your own biases that could affect your perception of the situation and your professional judgment.
<p>Jordan is a Black male student with ADHD, placing him at the intersection of multiple risk factors for school discipline disparities.</p> <p>Research shows Black students are more likely to be perceived as aggressive or intentionally defiant, even when behavior may be disability-related.</p> <p>Cultural misinterpretations of communication styles, implicit bias, and lack of culturally responsive behavioral supports may all contribute to disproportionate disciplinary referrals.</p> <p>Jordan's experience must be evaluated in the context of these systemic patterns, and failure to implement his BIP could have amplified these inequities.</p>	<p>The team, including the school psychologist, must remain vigilant about implicit racial bias that could influence how Jordan's behavior is interpreted.</p> <p>There is a risk that his reaction—while aggressive—may be judged more harshly due to racialized perceptions.</p> <p>Assumptions about intent, threat, or defiance must be critically examined.</p> <p>The school psychologist must advocate for culturally responsive practices and highlight the intersection of race and disability in the manifestation determination process.</p>

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**Confer with supervisors,  
colleagues, and others:**

Administrative supervisor(s)	Clinical supervisor(s)	Professional colleagues	Others who may be familiar with contextual variables fundamental to understanding the situation.	Professional resources
Special education director  Principal  School district's attorney	Lead school psychologist	In-district school psychologists  Online groups but remember confidentiality  University faculty	School counselor or social worker  Family pr cultural liaison who may understand contextual influences	NASP Ethics Code, IDEA guidance documents, MDR case law, state DOE resources

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**Evaluate the rights,  
responsibilities, and  
welfare of all affected  
parties.  
:**

Party	Rights	Responsibilities	Welfare
Self	Provide ethical, legal input	Ensure fair process, advocate for student	Maintain professional integrity
Child	FAPE, behavioral supports, non-discriminatory discipline, fair MDR	Participate meaningfully, follow BIP	Risk of unjust placement; potential emotional harm; internalization of negative messages
Parent	Participate in IEP/MDR decisions	Provide insight, support child	May feel unheard or misinformed
Teacher	Safe environment, professional support	Implement BIP with fidelity	Needs support to manage behavior
Administrator	Ensure school safety and compliance	Oversee fair discipline, policy implementation	Responsible for legal defensibility of actions
Service Provider	Input into IEP/BIP effectiveness	Ensure documentation, monitor interventions	Must reflect on BIP integrity

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**Consider  
alternative  
solutions and the  
likely  
consequences of  
each:**

Solution	Positive Consequences	Negative Consequences
1. Find behavior <i>was</i> manifestation due to failed BIP implementation	Upholds IDEA, student remains in LRE, emphasizes need for support	May be viewed as undermining discipline
2. Find behavior <i>not</i> a manifestation	Maintains discipline consistency, addresses severity	Risks violating rights, possible legal action
3. Delay MDR to allow data collection on BIP implementation	More informed decision, time for staff to reflect	Delays decision, perceived as avoiding action
4. Provide additional training to staff on BIP implementation fidelity	Long-term systemic improvement	Doesn't address immediate disciplinary decision

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**Select a course of action  
and assume responsibility  
for this decision:**

**Decision:**

Advocate that the behavior ***was*** a manifestation of the disability due to failure to implement the BIP with fidelity. Emphasize the legal requirement under IDEA that when a BIP is not followed, the behavior must be presumed to be related to the disability.

**Next Steps:**

Present this perspective during the MDR.

Request documentation of BIP implementation be reviewed.

Recommend team revise supports and ensure fidelity.

Propose staff training on behavioral interventions and legal discipline procedures for students with disabilities.

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## Keep in Mind the Intent of an MRD



- The U.S. House of Representatives Conference Report 108-779 clarifies both the scope of the manifestation review and the intent behind it:
- *“The manifestation determination is **done carefully and thoroughly** with consideration of any **rare or extraordinary** circumstances presented.”*
- *“If a change in placement is proposed, the manifestation determination will analyze the child’s behavior as demonstrated across settings and across time when determining whether the conduct in question is **a direct result of the disability**.*

(71 Fed. Reg. 46720)

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## Is the Behavior a Manifestation of Disability? NO



- If the IEP committee answers "**NO**" to **both** of the questions:
  - The student's behavior is not a manifestation of the disability.
  - The relevant disciplinary procedures applicable to students without disabilities may be applied to the IDEA student.
  - The IDEA student may be disciplined in the same manner and for the same duration as a child without a disability.

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## Is the Behavior a Manifestation of Disability? NO



- The IEPc determines the setting in which the discipline removal will occur because this is a change of placement.
- The IEPc should consider the discipline setting recommended by the campus administration but not automatically place the student there.
- The IEPc must examine the setting and determine if the student can be provided FAPE there.

20 U.S.C. § 1415(k)(1)(C); 34 C.F.R. 300.530(c); 20 U.S.C. 1415(k)(2)

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## Is the Behavior a Manifestation of Disability? YES



If the IEP committee answers "YES" to **either** of the standard questions:

- The conduct shall be determined to be a manifestation of the child's disability. (20 U.S.C. § 1415(k)(1)(E)(ii) ; 34 C.F.R. § 300.530(e)(2) )
- The child must be returned to the placement from which the student was removed unless (1) special circumstances involving weapons, drugs, or bodily injury exist or (2) the parent and school agree to the change of placement as a part of the modification of the BIP. (20 U.S.C. § 1415(k)(1)(F)(iii) ; 34 C.F.R. § 300.530(f) )

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## MDR Timelines



What's the time frame for conducting a manifestation determination?

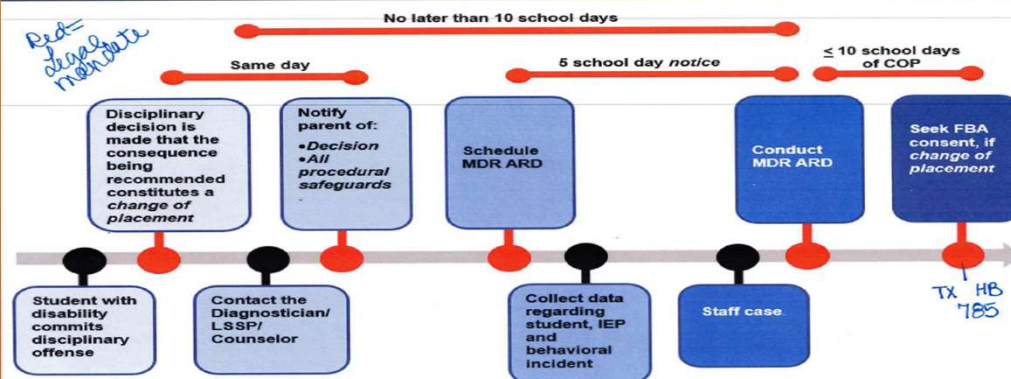
Under 34 CFR 300.530(e)(1), a manifestation determination **must** occur within 10 school days of any decision to “change in placement” because of a student conduct code violation.

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## MDR Timelines



### Manifestation Determination: *Timeline*



Ginger E. Gates, Ph.D. 2022

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## House Bill (HB) 785

House Bill (HB) 785:  
Frequently Asked Questions

The Texas Governor signed HB 785 on June 4, 2021, and became effective immediately.

What does HB 785 require in relation to behavior plans for students, such as Behavior Intervention Plans or Behavior Improvement Plans (BIPs)?

HB 785 amends TEC § 29.005 and **requires BIPs**, which are part of a student's individualized education program (IEP), **to be reviewed annually, at minimum, and more frequently as needed, or when not found effective.**

[https://tea.texas.gov/sites/default/files/hb\\_785\\_faq.pdf](https://tea.texas.gov/sites/default/files/hb_785_faq.pdf)

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## House Bill (HB) 785

House Bill (HB) 785:  
Frequently Asked Questions

When reviewing the student's BIP, the student's admission, review, and dismissal (ARD) committee must address the safety of the student and others, and changes in circumstances, including but not limited to:

- Placement of the student in a different educational setting;
- an increase or persistence in disciplinary actions taken regarding the student for similar types of behavior;
- a pattern of unexcused absences; or
- an unauthorized, unsupervised departure from an educational setting.

[https://tea.texas.gov/sites/default/files/hb\\_785\\_faq.pdf](https://tea.texas.gov/sites/default/files/hb_785_faq.pdf)

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## House Bill (HB) 785

House Bill (HB) 785:  
Frequently Asked Questions

### When does HB 785 require ARD committees to complete Functional Behavioral Assessments (FBAs) for students?

If an FBA has never been conducted or the most recent one is more than one year old, HB 785 requires the local education agency (LEA) to **seek consent** from a student's parent/guardian to conduct an FBA when an LEA takes a disciplinary action that results in a change of placement of a student serviced by special education. The LEA must seek consent by the 10th school day after the change in placement.

[https://tea.texas.gov/sites/default/files/hb\\_785\\_faq.pdf](https://tea.texas.gov/sites/default/files/hb_785_faq.pdf)

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## House Bill (HB) 785

House Bill (HB) 785:  
Frequently Asked Questions

### Does consent for the FBA and completion of the FBA need to occur within 10 days of disciplinary placement change?

The requirement is that consent for an FBA must be sought from the student's parent or guardian no later than the 10th school day after the change of placement. There is not a requirement that the consent be obtained, and that the FBA also be completed by the 10th school day. Note, however, that by the 10th school day after the change in placement, the LEA must also review any previously conducted FBA of the student and any BIP for the student based on that assessment.

[https://tea.texas.gov/sites/default/files/hb\\_785\\_faq.pdf](https://tea.texas.gov/sites/default/files/hb_785_faq.pdf)

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# House Bill (HB) 785

House Bill (HB) 785:  
Frequently Asked Questions

## HB 785: Implications for BIP Review

**Timeline for BIP Review**  
If a BIP is part of student's IEP, the ARD committee shall review the BIP:

At least **annually**

AND

**More frequently if**  
appropriate to address:

**Changes in**  
circumstances that may  
**impact behavior:**

**Safety of student**  
or others

Placement in different  
educational setting

Pattern of unexcused  
absences

Increase/persistence in  
disciplinary action for  
similar types of behavior

Unauthorized/unsupervised  
departure from educational  
setting

FBA=Functional Behavioral Assessment, BIP=Behavioral Intervention/Improvement Plan, MDR=Manifestation Determination Review

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# House Bill (HB) 785

House Bill (HB) 785:  
Frequently Asked Questions

## HB 785: Implications for FBA and BIP after MDR

After MDR, student receives disciplinary change of placement

Student's  
FBA status?

No FBA

Seek consent  
for FBA

Can seek  
and obtain  
at MDR  
ARD

Consent  
obtained?

YES

Determine timeline for  
conducting FBA

Conduct FBA

Review new  
FBA and other  
relevant data

NO

Review BIP, if  
one exists, and  
relevant  
behavioral data

May be  
done at  
MDR ARD

As necessary,  
develop new BIP or revise  
current BIP to address the  
behavior violation so that it  
does not recur.

Can be  
reviewed &  
developed at  
MDR ARD if  
sufficient data  
are available

FBA more than  
1 year old

FBA less than  
1 year old

Review  
previous/current FBA,  
BIP and other relevant  
data

Best  
practice:  
Conduct  
new FBA if  
current is  
insufficient

FBA=Functional Behavioral Assessment, BIP=Behavioral Intervention/Improvement Plan, MDR=Manifestation Determination Review

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## Systemic Barriers to Equitable MDRs



### Legal Risk Aversion

The tendency of school districts, administrators, or professionals to make decisions that prioritize avoiding lawsuits or legal complaints, sometimes at the expense of fairness, equity, or best practices for students.

In the context of Manifestation Determination Reviews (MDRs), legal risk aversion can:

- Lead school districts to prioritize legal defensibility over fairness.
- Cause school psychologists to experience pressure from administrators to conform to predetermined disciplinary decisions, which can hinder their ability to advocate effectively for students.
- Discourage recognizing behavior as related to a student's disability
- Promote excessive documentation, reduces transparency, and ultimately undermines equitable outcomes for students.

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## Best Practices Encouraged

Ethical advocacy by school psychologists.

Use of structured decision-making tools (e.g., NASP ethical worksheet).

Full consideration of disability context and IEP implementation.

Meaningful parent participation in MDR meetings.

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## Riley's Rule: HB 699

(May apply to many students eligible under SpEd/504)

House Bill 699  
Frequently Asked Questions

Bill Summary: House Bill 699 (HB 699) cited as "Riley's Rule":

- HB 699 requires school districts to excuse an absence and waive promotion requirements for students who are diagnosed with severe or life-threatening illnesses or are undergoing related treatments. A student or student's parent or guardian must provide a certification from a physician specifying the student's illness and the anticipated period of the student's absence as it relates to the illness or treatment.
- HB 699 also amends Section 25.0915 of the Texas Education Code related to truancy prevention measures. A school district must offer additional counseling to a student and may not refer the student to truancy court if a student's truancy is determined to be the result of a severe or life-threatening illness or related treatment.
- A student's excused absences under Riley's Rule may not be considered in determining whether the student satisfies the requirement of attendance for at least 90 percent of the days class is offered in order to be awarded a final grade or credit for a class.
- The changes under HB 699 apply beginning with the 2021-2022 school year. Additionally, this bill does not apply to open-enrollment charter schools.

<https://tea.texas.gov/about-tea/government-relations-and-legal/government-relations/2021-briefing-book.pdf>  
<https://capitol.texas.gov/tlodocs/87R/billtext/html/HB00699E.htm>