



Key points:

- **Conduct FBA to determine behavioral triggers**
- **Develop, modify BIP**
- **Return student to current placement**

After the MDR: What to do if student's misbehavior is manifestation of disability

A middle school student with ADHD is suspended for 12 days after getting into a fight in the cafeteria. The student's IEP team conducts a manifestation determination review and concludes that the student's problem behavior was a manifestation of his disability. What must the district do next?

Under the IDEA, if a student's behavior is found to be unrelated to her disability, then the district may impose the same consequences as it would for a student without a disability. However, if an MDR reveals that the student's misbehavior was caused by or had a direct and substantial relationship to the student's disability or was the direct result of the district's failure to implement the student's IEP, then the district must take the steps outlined below.

1. Examine the student's behavior. Conduct a functional behavioral assessment (unless the district conducted an FBA before the behavior that resulted in the disciplinary removal) and implement a behavioral intervention plan for the student.

If a BIP has already been developed, review it and modify it as necessary to address the student's behavior. [34 CFR 300.530](#) (f).

Closely examine the student's environment and disability-related needs during the FBA, recommended Anne Littlefield, a school attorney with [Shipman & Goodwin LLP](#) in Hartford, Conn.

"We're looking for what triggers the behavior -- the conditions that lead to the behavioral incident," she said. Such triggers might include time of day, unstructured settings, or certain activities, she said. Consider: Is the student trying to get out of a non-preferred activity? Is there a sensory issue at play?

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Then, determine what strategies and supports can be put in place to prevent the student from engaging in those behaviors, Littlefield said. Update the behavioral goals and objectives section of the student's IEP to reflect the new plan.

2. Return student to original placement. The student must be returned to the placement from which she was removed, unless the student's parents and the district agree to a change of placement as part of the modification of the student's BIP. [34 CFR 300.530](#) (f).

Before the student returns, ensure you've taken the necessary steps to address future behavioral incidents and protect the safety of the student and her peers, Littlefield recommended.

Keep in mind that typically, you won't have enough time to complete the FBA and create or modify the BIP before the student returns, she said. "So, what we advise is, at the IEP team meeting in which you're doing the MDR, make interim adjustments based on the information you have," she said. Then, when you finish the FBA, reconvene the IEP team to decide on final changes to the student's BIP, she said.

3. Know when exceptions apply. If a student with a disability engages in any of the following behaviors, the district may remove the student to an interim alternative educational setting for no more than 45 school days without regard to whether the behavior is a manifestation of the student's disability:

- Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function;
- Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function;
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.

[34 CFR 300.530](#) (g).

Use those 45 days to determine how to address the student's behavior, which may involve conducting an FBA or increasing the structure of the student's program or setting to avoid the behaviors and address safety concerns, Littlefield said.

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"You might also decide that, based on the FBA or the IEP team's decision, the setting from which the child was removed is no longer appropriate," she said. "In that context, you would have 45 days to conduct an IEP team meeting and decide on a new placement."

Keep in mind that you must still conduct an MDR after the removal, Littlefield said. If the behavior is determined to be a manifestation of the student's disability, then the team can take appropriate steps to develop or modify the student's BIP, she said. And if the behavior is found to be unrelated to the student's disability, then the district may apply the same discipline as it would for a student without a disability -- up to and including expulsion.

See also:

- [Ensure MDR team considers all relevant information](#) (July 18)
- [YOU BE THE JUDGE: Does result of MDR permit disciplinary removal of student with suspected disability?](#) (Aug. 12, 2016)
- [SmartStart: Manifestation Determinations](#)

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