

A PEATC

Do You Know....



Factsheet for Virginia's Parents—Manifestation Determination Review

Legal Protections for Students Who Break the Rules

All students must follow the school rules, according to the Code of Conduct, but students also have rights. In some situations, students with disabilities have extra rights under the federal **Individuals with Disabilities Education Act (IDEA)** and under Virginia law and regulations. A **Manifestation Determination Review (MDR)** may be required to find out if the behavior is directly related to (a manifestation of) the student's disability. This is also true in some instances under **Section 504** of the Rehabilitation Act of 1973. It is important for you to work with the school, as the discipline process can be complicated, and you are your child's best advocate.

What Can I do to Address Behavior Issues?

If your child has an Individualized Education Program (IEP) or a 504 plan, the IEP/504 team must address the behavior issue, either in the IEP/504 Plan, or for a child with an IEP, in a **Behavior Intervention Plan (BIP)** that follows a **Functional Behavioral Assessment (FBA)**. During an FBA, your child is observed in multiple settings over multiple days, and information/data are collected to see what is causing the behavior. Then a plan is created to address the behavior. You can ask for an FBA if your child's behavior interferes with his/her learning. Your child is trying to communicate something with their behavior so it's important to figure out what that is.

What Happens when my Child with an IEP is Suspended or Expelled?

- If your child is suspended (removed from school) for **10 days or less**, they will be treated like any other student with no extra protections because of his/her disability.
- If your child is suspended for **more than 10 days or is expelled**, this would be a **change of placement** under IDEA and an **MDR** is required.
- If your child is suspended for short periods of time for the same or similar behavior, (**a pattern of suspension**) **that ends up being more than 10 days total in a school year**, this may also be considered a change in placement, and require an **MDR**.

Helpful Resources for More Detailed Information

Virginia Regulations Governing Special Education:

www.doe.virginia.gov/special_ed/regulations/state/regs_speced_disability_va.pdf

VDOE Parents' Guide to Special Education:

www.doe.virginia.gov/special_ed/parents/parents_guide.pdf

disAbility Law Center Special Education Online Advocacy Guide:

www.dlcv.org/special-ed

Legal Aid Justice Center, Helping you Help Your Child

www.justice4all.org/wp-content/uploads/2014/05/HYHYC-Handbook-2014-Final-Version-6th-Edition-FOR-WEB.pdf

Manifestation Determination Review Under Section 504:

<http://sss.usf.edu/resources/topic/section504/504course/Module8/ManifestationDetermination.html>

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Factsheet for Virginia's Parents

What Happens under a Manifestation Determination Review?

A long term (more than 10 day) removal or a pattern of removals that is more than 10 days, is considered a change in placement. An MDR will determine if 1) the behavior was caused by or directly/substantially related to your child's disability and/or 2) if it was a result of a failure to implement the IEP. **The MDR must occur no more than 10 days** after the decision to remove the student. You have the right participate in the MDR and can bring someone to support you in the process.

The team will look at the IEP to see if any part of it was not implemented which could have led to the behavior or, whether the IEP plan as it is currently written is appropriate to address the behavior. The team will consider teacher observations and information that you provide. The MDR will consider what is happening in the school and at home, whether there have been any physical, mental or developmental changes, your child's discipline history, and any unique circumstances that may have led to the behavior.

If there is NO manifestation of disability, your child will be subject to the same disciplinary action that a child without a disability would receive. **HOWEVER**, your child is still entitled to receive special education and related services. If you disagree with the decision, you should put that in writing at the MDR meeting. You can request an **expedited due process hearing**, but your child will remain in the disciplinary placement until it is complete. The hearing must be held within 20 days of your request and a decision provided within 10 days of the hearing. Your school division may have a process for an **informal internal review** which could be quicker and less stressful.

If there IS a manifestation of disability, your child's placement cannot be changed unless it is through the IEP process of which you are a part of. The IEP team will need to conduct an **FBA**, if one has not already been done, and develop a **BIP**. You can request an Independent Educational Evaluation (IEE) if you disagree with the school's evaluation.

If the offense involves weapons, drugs, or serious injury to another person, the school can place your child in an **Interim Alternate Educational Setting (IAES)** for up to 45 school days regardless of a manifestation determination. Your child will still receive their IEP services in the Interim Alternate Educational Setting.

This Fact Sheet is not all inclusive of disciplinary rules and processes. See Resources.

What if My Child has a 504 Plan?

Under 504, the school must conduct an **MDR** before suspending or expelling a student, if the action is a **significant change in placement**. This determination is made prior to implementing a disciplinary removal of more than 10 consecutive school days or a pattern of short-term removals that add up to more than 10 school days in a year and are a significant change of placement. If the school finds that the behavior is a manifestation of the disability, the student **cannot be expelled or suspended for more than 10 days**. Placement should be reviewed, and the team should discuss strategies to address the behavior.



PEATC's mission focuses on building positive futures for Virginia's children by working collaboratively with families, schools and communities to improve opportunities for excellence in education and success in school and community life.

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The contents of this factsheet were developed under a grant from the US Department of Education, **#H328M140013-18**. However, those contents do not necessarily represent the policy of the US Department of Education, and you should not assume endorsement by the Federal Government. Project Officer. PEATC is not a legal services agency and cannot provide legal advice or legal representation. Any information contained in this factsheet is not intended as legal advice and should not be used as a substitution for legal advice.

