

# Oklahoma State Department of Education

Discipline Under Section 504



**OKLAHOMA**  
Education



# Overview

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- The manifestation determination review (MDR) is used 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 504 Accommodation Plan.
- The MDR is a key process under Section 504 because it impacts the type of discipline the district can impose and whether the district may remove the student from their current placement due to a code of conduct violation.
- The Office for Civil Rights (OCR) interprets Section 504 as requiring the same disciplinary protections as the IDEA when a student is subject to a "significant change in placement" under [34 CFR 104.35](#).
- The term "manifestation determination" does not appear in the regulatory language of Section 504. However, OCR and most courts interpret Section 504 as requiring an MDR when disciplinary actions constitute a "significant change in placement."

# Significant Change In Placement

- Under OCR, “a significant change in placement” occurs when a student with a disability is suspended for more than 10 consecutive school days in a school year.
- A pattern of short disciplinary removals that total more than 10 cumulative days in a school year can constitute a “significant change in placement.”
- A “significant change in placement” triggers an MDR.
- Section 504’s regulations require an “evaluation” before a significant change in placement (34 C.F.R. §104.35(a)).
- This evaluation; a “manifestation determination,” is required before the eleventh school day of a disciplinary removal.
- An MDR is conducted in substantially the same way regardless of whether the student is IDEA-eligible or covered under Section 504 (*Dunkin (MO) R-V School District* (OCR 2009)).

# Significant Change In Placement

- OCR specifically addressing how to calculate the 10 days of suspension can be found in [Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions](#) (OSERS 2022).
- Informal disciplinary removals, such as requiring a parent to pick up a student early from school due to the student's behaviors, count toward the 10-day rule.
- Districts should keep appropriate records of informal removals or avoid the practice to prevent potential violations of the MDR requirement.

# Manifestation Determination Review

# Procedures for Conducting Manifestation Determination Reviews

- Under [20 USC 1415](#) (k)(1)(E)(I), the behavior is a manifestation of the student's disability if:
  1. the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or
  2. the conduct in question was the direct result of the district's failure to implement the 504.
- The regulations clarify that "the conduct must be determined to be a manifestation of the student's disability if the LEA, the parent, and relevant members of the student's team determine that either condition is met" ([34 CFR 300.530](#) (e)(2)).

# Procedures for Conducting Manifestation Determination Reviews

- The MDR team must meet within 10 school days of deciding to change the placement of a student with a disability due to a violation of the code of conduct.
- With the MDR, the 504 team determines whether the behavior in question was caused by or has a direct and substantial relationship to the student's disability.
- The team must review all relevant information in the student's file, including the student's 504 Plan, teacher observations, and other relevant information provided by the parents.
- Section 504 regulations are left to OCR's interpretations regarding who must conduct an MDR and when a student's behavior must be considered a manifestation of the student's disability.
- Determining the outcome before the manifestation determination meeting also applies to students on a 504 Plan. Predetermination is prohibited.



# Procedures for Conducting Manifestation Determination Reviews

- OCR requires that the determination of whether a student's misconduct is related to the disability be made by people knowledgeable about the student and the meaning of the evaluation data.
- There is no guidance regarding which team members should participate in an MDR under 504, the MDR does not have to be conducted by the full team, but nothing prohibits the school district from doing so.
- OCR has determined that a manifestation determination team should include a parent (*Mobile County (AL) Sch. Dist.*, (OCR 1989) and *Newton County (GA) Sch. Dist.*, 9 GASLD 22 (OCR 2015)).
- The team must also include individuals knowledgeable regarding Section 504 procedures (*Greenville (TX) Indep. Sch. Dist.*(OCR 04/11/13)).

# Information to be Used in an MDR

Relevant information may include:

- previous evaluations of the student concerning disability-based behavior;
- the student's Section 504 plan (including any behavioral supports, updates to the plan, and information about whether the plan is implemented with fidelity);
- psychological or medical evaluation data related to the behavior at issue;
- relevant information provided by the student's parents or guardians;
- academic records;
- relevant discipline records, and incident reports; and
- relevant teacher notes, observations, and data collected about the behavior.

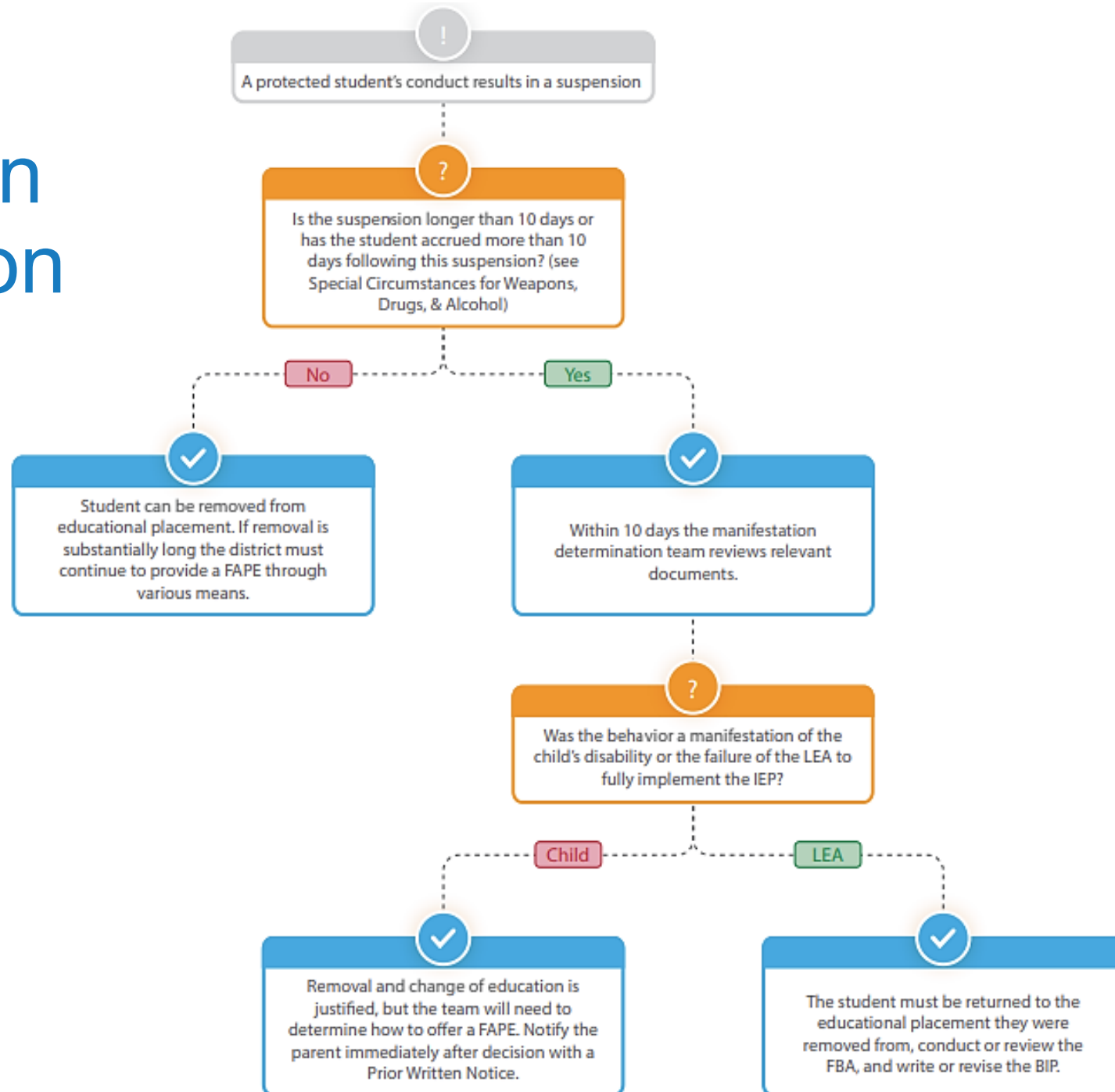
# Manifestation Determination

- If the student's misconduct is determined to be **caused** by the disability the student may not be disciplined.
- The evaluation team must determine whether the student's current educational placement is appropriate (34 C.F.R. §§ 104.4(a); 104.33(a), (b)(1)(i); 104.35(a), (c)).
- The team should also evaluate whether the student needs interventions through a behavioral intervention plan or different interventions if a BIP is already in place and not providing the necessary support.
- The 504 team may determine that additional assessments, including a functional behavior assessment, are necessary. This assessment may lead the team to use the information obtained to develop and implement a BIP.

# Manifestation Determination

- If the MDR team determines the student's misconduct was **not** related to the student's disability, the district may impose the same long-term suspension as would be imposed on a nondisabled student under the same circumstances.
- If a student's return to school involves a significant change in placement, Section 504 requires the school to evaluate the student to determine the student's appropriate placement, and any individualized behavioral supports needed to address the student's disability-based behavior (34 C.F.R. § 104.35(a)-(c)). This may include an FBA used to develop a BIP.
- If the student's return does not involve a significant change in placement, the 504 team may want to reconvene to determine if there is a need for adjustments in the student's placement, behavioral supports, and/or other services to support the student's and prevent future behavioral incidents.

# Manifestation Determination Flowchart



# Exemption for Discipline Related to Drug Use

- If the behavior is related to the use of alcohol or illegal drugs, school districts may take disciplinary action against a student with a disability to the same extent that it takes disciplinary action against persons not having disabilities.
- The due process procedures do not apply when disciplinary actions are due to the current use of illegal drugs or alcohol by students with disabilities. [29 U.S.C. Sec. 705(20)(C)(iv).]
- If the student is no longer using drugs and is in treatment, then a disability occurs because of the drug abuse then they could be eligible for 504  
<https://www.ed.gov/laws-and-policy/individuals-disabilities/protecting-students-with-disabilities#:~:text=No.,extent%20as%20students%20without%20disabilities>

# Parent Disagreement with the MDR

- Parents may file a complaint with the school district requesting an internal investigation based on disability discrimination.
- Schools are required to have two procedures for addressing Section 504-related issues: a grievance procedure and an impartial hearing (due process) procedure.
- These are two separate procedures so a parent cannot be required to file a grievance before requesting a due process hearing, or vice versa.
- Section 504 regulations and Office of Civil Rights (OCR) guidance provide few details about specific procedures required for a 504 due process hearing.  
<https://www2.ed.gov/about/offices/list/ocr/504faq.html>
- The parents may also challenge the district's decision by filing a disability discrimination complaint with the OCR within 60 days of the completion of the investigation or district hearing.

# Parent Disagreement with the MDR

- Each school district establishes its own Section 504 hearing procedures. The school district chooses a hearing officer to decide on the disagreement.
- OCR states that employees and board members of the district may not serve as hearing officers [*Letter to Anonymous*, 18 IDELR 230 (OCR 1991).].
- Section 504 does **not** include an explicit stay-put provision so the student's placement could be changed while the Section 504 hearing is still pending.
- OCR suggests that changing a student's placement before the parent challenges the decision "seems to undermine the rights given by due process," and a "fair due process system would encompass the school district waiting for the results of the process before making the change" [*Letter to Zirkel*, 22 IDELR 667(1995).]



# Students Not Yet Identified Under 504 or IDEA

- A student may be entitled to an MDR if, at the time of the misconduct the student had not yet been found eligible.
- The obligation applies if the district is deemed to have known the student was a student with a disability before the behavioral incident occurred ([34 CFR 300.534](#)).
- An MDR must be performed when a district proposes disciplinary measures that will result in a change of placement for a student with a disability [34 CFR 300.530](#) (e).

# Suspensions

# Long-term Suspensions Under Section 504 -- Generally

- The U.S. Supreme Court in *Honig v. Doe*, [559 IDELR 231](#) (1988), held that suspensions of more than 10 days are subject to special rules and regulations under both the IDEA and Section 504.
- With a few exceptions, the disciplinary rules and procedures of Section 504 largely mirror those of the IDEA.
- The Office for Civil Rights usually considers suspension and expulsion issues consistent with IDEA.
  - Note: A district can satisfy its Section 504 obligations by providing a Section 504 student the same disciplinary protections available to IDEA-eligible students.

# Long-term Suspensions for Conduct **Not** Related to a Disability

- If the 504 team determines the conduct was unrelated to the student's disability, the district may suspend the student for more than 10 consecutive school days.
- The district may subject the student to its disciplinary code if the conduct is **not** a manifestation of a disability, the district may not discipline a student with a disability more harshly than students without disabilities.
- Section 504 does not require a district to continue to provide education services while a student is on suspension unless a district has a policy or practice of providing educational services to nondisabled students removed for similar offenses, a district must provide services to a suspended Section 504 student.
- Oklahoma Statute (70 O.S. § 24-101.3(D)) requires students (nondisabled or disabled) to receive services after being suspended out-of-school for more than five (5) days.

# Long-term Suspensions for Conduct Related to a Disability

- If the MDR team determines the misconduct was related to the student's disability, the district may not subject the student to a long-term suspension or removal.
- The district must allow the student to return to school after the MDR team determined that the student's conduct was a manifestation of a disability.
- Additionally, the district must reevaluate the student to determine whether the student's current educational placement and Section 504 accommodations are appropriate and whether the student needs a behavioral intervention plan.

# Placement in an Interim Alternative Educational Setting

- Although IDEA allows a student's placement in an **IAES** for situations, including when the student is dangerous or commits a weapon or drug offense ([34 CFR 300.530](#) (g)); procedures exist under Section 504 only when the student has committed a weapon offense involving a gun (*Letter to Zirkel*, OCR 1995).
- OCR determined removal of a student on a 504 to an IAES may be appropriate in some instances such as violent behavior (*Crockett County (TX) Consol. Common Sch. Dist.*, OCR 2003).

# Placement in In-School Suspension

- In-school suspensions that exceed 10 consecutive school days may be a significant change in placement under Section 504 if they interrupt the student's services or educational program (*Greenville County (SC) Sch. Dist.*, (OCR 1991)).
- If the student has access to the same educational services and accommodations they regularly receive, the ISS stay doesn't count toward the 10-day rule.
- ISS days do count if the student does not have access to the same services and accommodations as when they are not in ISS.

# Pattern of Short-term Removals - Significant Change in Placement

A change in placement requiring an MDR occurs when the student has been subjected to a series of removals that constitute a pattern:

1. The short-term removals total more than 10 cumulative school days in a school year.
2. The student's behavior is substantially similar to the student's behavior in previous incidents that resulted in a series of removals.
3. Additional factors such as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.



# Manifestation Determinations for Short-term Suspensions

- The OCR generally interprets Section 504 regulations consistent with the IDEA's requirements concerning short-term suspensions.
- Neither OCR nor the courts consider the suspension of a 504-eligible student for 10 days or less to be a significant change in placement triggering an MDR.
- A district is not required to provide procedural safeguards under Section 504 prior to suspending a student with a disability for 10 school days or less where there is no pattern of removals.
- According to OCR, a series of short-term suspensions that are each 10 days or less in duration may create a pattern of removals that constitutes a significant change in placement.
- Factors such as the length of each removal, the total amount of time of the removal, and the proximity of the removals to one another.

# Manifestation Determinations for Short-term Suspensions

- IDEA requires a district to examine whether a student's conduct leading to each short-term removal was "substantially similar," but OCR does not always include that factor in its analysis.
  - For example, in one decision OCR considered only length, total days, and proximity. In another, they considered whether the student's latest misconduct was substantially similar to the misconduct the student was suspended for on previous occasions, and in another decision, OCR found the student's short-term disciplinary removals constituted a pattern because his unsafe behaviors leading to the suspensions were substantially similar and occurred close in proximity.
- When determining the need for an MDR the team may consider relevant facts such as the pattern of exclusions in the previous school year, evaluation results, and the 504 plan.

# Pattern of Short-term Removals - Significant Change in Placement

- In a *Dear Colleague Letter* (OSERS/OSEP 2016) the USDE stated districts should attempt to prevent future disciplinary removals for students subjected to a short-term disciplinary removals if the removals are caused by repeated misconduct.
- Districts should ensure students receive positive behavioral interventions and additional or different services if necessary to receive a FAPE.

# Counting Cumulative Short-term Suspensions

- Exclusions in a previous school year **may not be counted** as part of a possible pattern when deciding if a series of short-term suspensions creates a pattern of removals.
- The requisite 10 or more cumulative school days of exclusion are counted based on the current school year only.
- In-school suspensions may not count as disciplinary removals for purposes of the 10-day rule **if** the district **provides the student services outlined in the Section 504 plan**.

# Informal Removal

- Informing a parent the school will suspend the student, or refer the student to law enforcement if the parent does not:
  - pick up the student from school;
  - agree to transfer the student to another school, which may be an alternative school or part of a residential treatment program;
  - agree to a shortened school day schedule; or agree to the use of restraint or seclusion; and
- Informing a parent or guardian the student may not attend school for a specific period or indefinitely due to their disability-based behavior unless the parent is present in the classroom or otherwise helps manage the behavior (e.g., through administering medication to the student).

# Informal Removals

- Requiring a parent not to send their student to school, to pick up their student early from school or a school-sponsored activity, such as a field trip;
- Placing a student on a shortened school day without convening the 504 team to determine whether the schedule is necessary to meet the student's disability-specific needs;
- Requiring a student to participate in a virtual learning program when other students are receiving in-person instruction; and
- Excluding a student from accessing a virtual learning platform all other students use for their instruction.

# OCR's Authority

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- OCR receives complaints from parents, students or advocates, conducts agency-initiated compliance reviews, and provides technical assistance to school districts, parents, or advocates.
- OCR does not engage in formal mediation. However, OCR may offer to facilitate mediation, referred to as “Early Complaint Resolution,” to resolve a complaint filed under Section 504. This brings the parties together to discuss possible resolution of the complaint immediately.
- If both parties are willing to utilize this approach, OCR will work with the parties to facilitate resolution by providing each an understanding of pertinent legal standards and possible remedies. An agreement reached between the parties is not monitored by OCR.



# OCR's Authority

- OCR attempts to bring the school district into voluntary compliance through the negotiation of a corrective action agreement.
- If OCR is unable to achieve voluntary compliance, OCR will initiate enforcement action. OCR may: (1) initiate administrative proceedings to terminate Department of Education financial assistance to the recipient; or (2) refer the case to the Department of Justice for judicial proceedings.
- OCR has been given administrative authority to enforce Section 504 through the Department's administrative process or through the Federal court system.
- The Section 504 regulations do not require that a person file a complaint with OCR and exhaust administrative remedies before filing a private lawsuit.

# Questions

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