



Dos, don'ts for conducting MDRs involving students with ED

A manifestation determination review is an evaluation of a child's misconduct to determine whether that conduct is a manifestation of the child's disability. It must be performed when a district proposes disciplinary measures that will result in a change of placement for a child with a disability. [34 CFR 300.530](#) (e). According to the IDEA, the conduct must be found to be a manifestation of the child's disability if the team answers yes to these two questions:

- Was the conduct in question caused by or did it have a direct and substantial relationship to the child's disability?
- Was the conduct in question the direct result of the district's failure to implement the IEP?

But what if the student has an emotional disturbance? Examining whether a student's challenging behavior is related to his anxiety, bipolar disorder, or other ED may be trickier for teams to do. Special education directors should ensure team members know what steps to take to conduct an appropriate MDR.

"Doing a manifestation determination review for a student with ED can be difficult because, by definition, they are identified as needing special education services because of some kind of emotional disability that could manifest itself in misconduct," said Peter Maher, a school attorney at Shipman & Goodwin LLP in Hartford, Conn. "That's often just a starting point for consideration, but I think if you get input from all the relevant team members, you can use the process to try to arrive at the right answer. It's just making sure the process is applied appropriately to each individual student's unique situation."

Have teams review these dos and don'ts when conducting an MDR for a student with ED:

X Don't rush to discuss latest incident. Instead of first questioning whether the conduct was caused by the student's ED, start the conversation by looking at how the student's ED usually manifests itself according to the experience of staff members who work with the student, Maher said. What behaviors has the student exhibited in the past in school? "That helps the team feel a little more comfortable talking about the student rather than just jumping to the question related to discipline," he said. "It's hard for teachers and other staff members because they may not want to be contributing to the ultimate removal of the student. But their input is crucial. They have a responsibility to provide information to the team to consider."

✓ Do use existing information to discuss manifestation. After discussing behaviors the student has exhibited in the past in relation to his ED, examine whether the conduct that is

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subject to discipline is related to that information, Maher said. "Ultimately, you have to decide, but you can start by talking about the student to elicit input and discussion and make the analysis more efficient," he said.

X Don't limit discussion to primary classification. Don't just focus on the student's primary classification label, Maher said. If teachers and other staff members are aware the student has exhibited other behaviors in the past, that information should be considered. "If there are evaluations or records that shed light on the student's unique profile and how their disabilities manifest themselves, you want to make sure you include that information," he said.

If there is no direct correlation or similar function or antecedent that led to the behavior, the team may conclude that it was not directly related to the student's disability, Maher said.

✓ Do follow up even if behavior is deemed not a manifestation. Ensure the student continues to receive FAPE and make progress toward his IEP goals during his disciplinary removal, Maher said. Also, determine if additional services may be appropriate for the student when he returns to school. The district may want to conduct more evaluations to inform the IEP team discussion. A new functional behavioral assessment and behavioral intervention plan may be necessary. "Just because it was not a manifestation doesn't mean you can't review or revise the IEP," he said. "It should not negate further discussion about how to try to address the student's needs. The IEP team should always be looking at the student's functioning and performance and whether the IEP needs to be revised."

Remember that students with emotional disturbances can make errors in judgment, Maher said. Educators can help them learn from their mistakes and avoid engaging in the same behavior again.

This is particularly important in light of the pandemic, Maher said. "I think that for students with emotional disturbances, districts are going to need to understand that there's been a lot of transition over the last year and a half and, in some cases, trauma, and there's going to be a lot of work that's going to be required to assess and monitor and assist certain students who are coming back," he said. "There are a lot of variables that may contribute to students acting out."

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