



Current Results	
Who's in the loop? Know whom to involve in IEP when student has guardian	07/01/22
These 5 MDR decision points notoriously trip up teams	03/22/24
Did coach discriminate by discouraging student from away games?	03/03/08

[Back to Search Results](#)

[First Match](#)

These 5 MDR decision points notoriously trip up teams

When a team conducts a manifestation determination review, the stakes are high. Handing out the wrong disciplinary consequences can lead a team to violate the IDEA. Yet, deciding whether a student's conduct is a reflection of her disability is not as straightforward as it may seem.

An MDR must be performed when the district proposes a disciplinary measure that will result in a change of placement. [34 CFR 300.530](#) (e). Under [34 CFR 300.530](#) (e)(1), a student's conduct must be found to be a manifestation of his disability if: 1) the conduct was caused by or had a direct and substantial relation to the student's disability; or 2) the conduct was a direct result of the district's failure to implement the student's IEP.

Don't let your MDR team get tripped up when [making manifestation determinations](#). Is a majority vote appropriate for deciding whether a student's behaviors constitute a manifestation of his disability? Should a functional behavioral assessment be conducted every time parents ask for one? Find answers to these questions and more as you walk through common MDR missteps and review an attorney's advice on making the right call.

1. Pigeonholing student based on disability

When making a manifestation determination, avoid getting stuck on the identified disability and failing to see the whole child, the entire IEP, and additional information, said Erin R. [Shaffer](#) \geq , an attorney at Shipman & Goodwin LLP in Hartford, Conn. For example, if a child has ADHD, avoid insisting that the behavior must be impulsive to be [connected with the disability](#). The team should always ask whether more information is needed to help the student manage behaviors and create a better program, she said.

2. Leaving decision up to vote

While the hope is that the MDR team can reach a consensus when determining whether a student's behaviors were a manifestation of disability, this might not always be the case, said \leq [Shaffer](#) \geq . If consensus cannot be reached, it's important to remember that this is not a voting situation where the [majority rules](#). The district will make the final determination, and if the parents disagree, they will be provided with procedural safeguards. Remember to note on the MDR paperwork whether a consensus was reached, she said.

3. Finding no manifestation, despite pattern of known behavior

While states may have differing [MDR procedures](#), in general, a history of observed behavior should give the team pause, said [≤ Shaffer ≥](#). The more a team recognizes that the behavior has emerged across settings, the more problematic it will be for them to claim it's not a manifestation of the student's disability. The team will need to specify why, in this circumstance, the behavior is different than those seen previously, she said.

4. Conducting FBA simply because parents request it

When finding a student's behavior was a manifestation of his disability, there may be a behavioral intervention plan in place that was informed by an FBA, [≤ Shaffer ≥](#) said. In that case, a team might not need to conduct another FBA. She said the IEP team should, however, regroup to discuss the current BIP and modify it if needed. If parents insist on a new FBA, the team should investigate why they believe one is necessary. Conducting an FBA just because a parent wants it is probably not the best response, [≤ Shaffer ≥](#) said. Focus on whether the FBA is out of date or needs updating and determine how the BIP should be modified, she said.

5. Forgetting to link IEP implementation failure directly to conduct

In determining whether student conduct resulted from a district's failure to implement the IEP, establish a connection between the behavior and any missed services, said [≤ Shaffer](#). For example, consider a math support that has not been implemented because the special education teacher has been out for two weeks. This missed service may not have any relationship to the student's behavior on the school bus, she said. It's important for the team to look at the IEP as a whole when making this decision.

See also:

- [Dig into frequently asked questions about conducting MDRs](#)
- [SmartStart: Manifestation Determinations](#)
- [Before, During, and After the MDR: Tips and Tools to Achieve Compliance](#) by Joseph L. Pfrommer, Esq.

[Janiece Branson](#) covers Section 504 and other special education issues for LRP Publications.

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