

NDE Discipline and Manifestation Determinations Questions & Answers

Guidance Document

The following document provides answers to frequently asked questions related to manifestation determinations and disciplinary protections for children with disabilities. To review the associated federal and state rules and regulations, select [**Disciplinary Actions and Removals**](#).

The questions addressed include:

1. What is a manifestation determination review (MDR)?
2. When must a MDR occur?
3. Do in-school suspensions count as removal days?
4. Do partial school days count as removal days?
5. Do bus suspensions count as removal days?
6. Is a child not yet eligible for special education entitled to disciplinary protections?
7. Who conducts the manifestation determination?
8. When must the district notify the parent of a removal that constitutes a change of placement of a child with a disability and before convening meetings regarding the manifestation determination and the services to be provided during disciplinary removals?
9. How might district staff prepare for meetings regarding the manifestation determination and the services to be provided during disciplinary removals?
10. What happens during a MDR meeting?
11. What happens if the team determines the behavior was NOT a manifestation?
12. What happens if the team determines the behavior WAS a manifestation?
13. What are special circumstances that would permit a district to remove a child with a disability to an interim alternative education setting for up to 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability?
14. What are some things the district can do to address discipline requirements to prevent violations of disciplinary protections for children with disabilities?
15. What are additional resources about manifestation determinations?
16. What happens if a parent disagrees with the manifestation determination decision?
17. Does the Nebraska Department of Education have a required manifestation determination documentation form?

1. What is a manifestation determination review (MDR)?

The Individuals with Disabilities Education Act (IDEA) and Nebraska statutes and regulations provide disciplinary protections for children with disabilities. These disciplinary protections prevent district staff from disciplining children with disabilities for behavior that is a manifestation of the child's disability and to assess, plan for, and support the child to address the behavior. When a district changes the placement of a child with a disability due to a disciplinary issue, the district must complete a "manifestation determination review" (MDR). A MDR is a review of all relevant information compiled by a team (including the parent) about the child and the situation to determine whether the child's behavior that led to the disciplinary issue was (a) caused by, or had a direct and substantial relationship to the child's disability, or (b) the direct result of the district's failure to implement the child's individualized education program (IEP). Based on that determination, the disciplinary protections outline what will need to take place next for that child.

A manifestation determination is the decision regarding whether the child with a disability's behavior that led to the disciplinary issue was:

- A.** caused by, or had a direct and substantial relationship to the child's disability, or
- B.** the direct result of the district's failure to implement the child's individualized education program (IEP).

34 C.F.R. § 300.530(e); 92 Neb. Admin. Code § 51-016.02E.

2. When must a MDR occur?

A MDR must occur within 10 school days of a decision to change the placement due to discipline (because the child with a disability has violated a code of student conduct).

A change in placement occurs when:

- The removal is for more than 10 consecutive school days; or
- The child has been subjected to a series of removals that constitutes a pattern of removals because:
 - The series of removals total more than 10 school days in a school year;
 - The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 - Such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

Per 92 Neb. Admin. Code § 51-009.016.01B, the school district or approved cooperative will determine if a series of removals constitute a pattern. However, this decision may be reviewed if a parent requests a due process hearing.

34 C.F.R. § 300.536; 92 Neb. Admin. Code § 51-016.01.

3. Do in-school suspensions count as removal days?

An in-school suspension does not count as a school day of suspension for services or change of placement purposes if, during the in-school suspension, the child is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the child's IEP, and continue to participate with nondisabled students to the extent they would have in their current placement.

[Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed. Reg. 46,540, 46,715 \(Aug. 14, 2006\).](#)

4. Do partial school days count as removal days?

According to the United States Department of Education, “[p]ortions of a school day that a child had been suspended may be considered as a removal in regard to determining whether there is a pattern of removals” However, there is no explicit guidance on how long a portion of the day is for it to be considered a removal. It is recommended to at least consider whether a child has attended less than half of a school day. It should also be noted, that if it is “recommended” a parent pick up a child and thus the child leaves school early due to problematic behavior that it should be considered a suspension. The spirit behind the regulations implementing IDEA ensures teams adequately address behaviors that impede learning proactively, to prevent repeated discipline for behaviors related or caused by the child's disability, and to prevent loss of instruction.

[Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed. Reg. 46,540, 46,715 \(Aug. 14, 2006\).](#)

Additionally, federal guidance has indicated the following about informal removals: “Informal removal, although not defined in IDEA and its implementing regulations, means action taken by school personnel in response to a child's behavior that excludes the child for part or all of the school day, or even an indefinite period of time. These exclusions are considered informal because the school removes the child with a disability from class or school without invoking IDEA's disciplinary procedures. Informal removals are subject to IDEA's requirements to the same extent as disciplinary removals by school personnel using the school's disciplinary procedures. Informal removals include administratively shortened school days when a child's school day is reduced by school personnel, outside of the IEP Team and placement process, in response to the child's behavior.”

Questions and answers: [addressing the needs of children with disabilities and idea's discipline provisions, July 19, 2022 osep q&a 22-02](#)

5. Do bus suspensions count as removal days?

If transportation is specified as a related service on the child's IEP, suspension from bus transportation to and/or from school would count in determining if a change of placement occurs and in provision of services, unless the district provides alternative transportation. If transportation is not specified as a related service on the child's IEP, suspension from bus transportation to and/or from school do not count as school days of suspension for change of placement and provision of services and the child's parents have the obligation to transport the child to school.

However, bus suspension may affect the district's requirement to provide a free and appropriate public education (FAPE). If special education services are needed for the child to receive FAPE and the child needs transportation to receive special education services, transportation would be needed and should be addressed by the IEP Team. The district is always required to provide FAPE. If a child with a disability cannot get to school to benefit from special education, it is likely the district is required to continue to provide transportation in some manner.

[Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed. Reg. 46,540, 46,715 \(Aug. 14, 2006\).](#)

6. Is a child not yet eligible for special education entitled to disciplinary protections?

If the district had knowledge that the child has a disability (prior to a behavior leading to disciplinary removal), the child is entitled to disciplinary protections. A school district is deemed to have such knowledge in the following instances:

- a parent has indicated in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that they think their child may need special education and related services;
- a parent has requested an evaluation; or
- district staff has expressed specific concerns about a pattern of behavior the child demonstrates directly to the district special education director or to other district supervisory personnel.

If a parent requests an evaluation after the behavior leading to discipline occurs, the district must complete the evaluation in an expedited manner; however, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. When the evaluation is completed, if the child is determined eligible for services, the child is eligible for all disciplinary protections, including, the district providing special education and related services during the suspension or expulsion.

The district is deemed to not have knowledge of the child's disability if the parent has not allowed an evaluation of the child or has refused special education and related services; or if the child has been evaluated and determined to not be a child with a disability.

34 C.F.R. § 300.534.

A manifestation determination meeting may also be needed in cases where a child has a 504 plan prior to a significant change in placement. See the following guidance document from the Office of Civil Rights (pg A-2): [Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973 \(PDF\)](#)

7. Who conducts the manifestation determination?

At minimum, a representative of the school district or approved cooperative, the parent, and relevant members of the child's IEP Team (as determined by the parent and the school district or approved cooperative). Typically, all required members of a MDR are also part of the IEP Team. Nebraska Department of Education (NDE) guidance has been that the IEP Team completes the MDR.

34 C.F.R. § 300.530(e)(1); 92 Neb. Admin. Code § 51-016.02E1.

8. When must the district notify the parent of a removal that constitutes a change of placement of a child with a disability and before convening meetings regarding the manifestation determination and the services to be provided during disciplinary removals?

The parent must be given notice on the same day that school district staff decide on the removal that constitutes a change of placement of a child with a disability, and the district must provide the parents with the procedural safeguards notice. The school district must provide parents with notice of meeting, in writing, regarding the manifestation determination and the services to be provided during disciplinary removals. However, unlike an IEP Team meeting, the notice does not have to be provided 10 days in advance of the meeting. However, it is recommended to provide the parent 24-hour notice so that they will have an opportunity to attend. Additionally, district staff need time to collect information to review as part of the MDR meeting.

34 C.F.R. § 300.530(h); 92 Neb. Admin. Code § 51-016.02H.

9. How might district staff prepare for meetings regarding the manifestation determination and the services to be provided during disciplinary removals?

The MDR must include a review of all relevant information in the child's file, including their IEP, any teacher observations, and relevant information the parent provides. This information should be collected before the meeting so that all MDR members will be able to review it during the meeting. It is recommended that the following information be collected, summarized, and available for further review during the meeting should team members want to review the information themselves:

- Current and past evaluations
- Most current IEP
- Most recent functional behavior assessment (if applicable)
- Current behavior intervention plan (if applicable)
- Disciplinary report (for current incident and entire school year)
- Manifestation determination history (for at least the current school year)
- Teacher observations of the conduct leading to discipline and removal(s)
- Child interview (if able)
- Relevant parent input

The school district or approved cooperative should develop procedures that designate staff responsible for collecting and summarizing the needed information. A model MDR form that can be used to summarize information for the team is available in Appendix A. Additionally, procedures should outline who coordinates the MDR meeting, who will typically attend as required members, and additional supervisory roles to be notified of removals/MDRs.

34 C.F.R. § 300.530(e)(1); 92 Neb. Admin. Code § 51-016.02E1.

10. What happens during a MDR meeting?

The following steps should occur when conducting a manifestation determination meeting:

1. Review, as a team, all of the relevant information in the child's file, including the child's IEP and relevant information the parent provides (see the section on preparing for the MDR meeting above).

The team should consider:

- A. Behavior prompting disciplinary removal
 - Description of behavior
 - Documentation
 - Incident reports
 - B. Appropriateness of current services and placement
 - Current academic achievement and functional performance and impact of the child's disability on the child's involvement and progress in the general curriculum
 - Behaviors noted in the initial evaluation referral
 - Results of the initial evaluation and any re-evaluation or independent evaluation
 - Current services and placement
 - C. Ability of the child to understand the impact of their behaviors and consequences
 - Has the child received information regarding school rules?
 - Has the child expressed that similar conduct is not permitted at school?
 - D. Ability to control behavior
 - Does the child's behavior impede the child's learning or that of others?
 - E. Conduct that has merely an attenuated association to a child's disability, such as low self-esteem, would not equal a manifestation of the child's disability. Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed. Reg. at 46,720.
2. Determine whether the conduct leading to removal was:
 - A. Caused by, or had a direct and substantial relationship to the child's disability; or
 - B. The direct result of district's failure to implement the child's IEP (including a behavior intervention plan).
 3. Document the decision. It is recommended that documentation include a statement representing the decision and signatures of participating team members (including a place to document reasons for disagreements).
 4. Follow the applicable steps related to the manifestation determination decision (see Questions and Answers below).
 5. Complete and provide the parent with a prior written notice documenting any proposed changes in services or placement or requesting consent for any needed evaluations, seeking parent consent when required.

34 C.F.R. § 300.530(e); 92 Neb. Admin. Code § 51-016.02E.

11. What happens if the team determines the behavior was NOT a manifestation of the child's disability?

If after a review of all relevant information the team determines the conduct leading to removal was NOT a manifestation of the child's disability, the child may be disciplined in a manner consistent with nondisabled peers; however, the child must continue to receive a FAPE, which includes special education and related services to meet the child's unique needs.

The IEP Team must ensure the child:

- A.** Continues to receive special education and related services,
- B.** Participates in the general education curriculum, although in another setting, and
- C.** Progresses toward meeting the goals set out in the child's IEP.

34 C.F.R. §§ 300.530(c), (d); 92 Neb. Admin. Code § 51-016.02D.

12. What happens if the team determines the behavior WAS a manifestation of the child's disability?

If after a review of all relevant information, the team determines the conduct leading to removal WAS a manifestation of the child's disability, the IEP Team must:

- 1.** Return the child to the placement from which the child was removed, unless one of the exceptions applies:
 - A.** The removal was due to special circumstances (see question 13 for an explanation of special circumstances).
 - B.** The parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan.
- 2.** Address the behavior leading to disciplinary actions through a functional behavior assessment (FBA), unless one has been recently completed examining similar conduct.
 - A.** A behavioral intervention plan must be developed or, if one already exists, it must be reviewed and modified as necessary to address the behavior.

If the team determines that the student's behavior was the direct result of the district's failure to implement the child's IEP, the IEP Team must take immediate steps to remedy those IEP implementation deficiencies (e.g., staff training, compensatory services, etc.).

34 C.F.R. §§ 300.530(e)(3), (f); 92 Neb. Admin. Code § 51-016.02F.

13. What are special circumstances that would permit district staff to remove a child with a disability to an interim alternative education setting for up to 45 school days without regard to whether the behavior is determined to be a manifestation of the child’s disability?

The special circumstances are outlined in regulations and are circumstances in which the child:

1. Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of NDE or a school district or approved cooperative; or
2. 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 under the jurisdiction of NDE or a school district or approved cooperative; or
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of NDE or a school district or approved cooperative.

The interim alternative educational setting must be determined by the child’s IEP Team. The team must still complete a MDR within 10 days of the change in placement and follow any applicable next steps based on the decision of the MDR (i.e., functional behavior assessment, behavior intervention plan, provision of special education services, etc.).

34 C.F.R. § 300.530(g); 92 Neb. Admin. Code § 51-016.02G. 92 Neb. Admin. Code § 51-016.03.

14. What are some things the district can do to address discipline requirements to prevent violations of disciplinary protections for children with disabilities?

It is recommended the school district:

- Develops a protocol to track and document disciplinary actions and manifestation determination reviews.
- Maintains consistent written discipline procedures for all schools to follow.
- Includes roles and responsibilities within discipline procedures.
- Determines a documentation system for manifestation determinations.
- Trains administrators and educators annually on district policy and procedures.
- Embeds a review process as part of self-monitoring procedures. Review whether procedures are followed, and adjust if they are not, and review root causes of disciplinary actions as well as trend discipline data.

15. What are additional resources about manifestation determinations?

The following are a couple of external resources that may be helpful:

Parent-friendly information: [Manifestation Determination in School Discipline | Center for Parent Information and Resources \(parentcenterhub.org\)](#)

Federal Guidance: [IDEA: Questions and Answers on Discipline Procedures \(PDF\)](#)

Questions and answers: [Addressing the needs of children with disabilities and idea's discipline provisions, July 19, 2022 OSEP Q&A 22-02](#)

16. What happens if a parent disagrees with the manifestation determination decision?

If the child's parent disagrees with any decision regarding the disciplinary placement or the results of the manifestation determination, the parent may request an expedited due process hearing by filing a petition pursuant to [92 Neb. Admin. Code § 55](#). An NDE-appointed hearing officer will make determinations (unless the parents and district resolve the matter during the resolution meeting or agree to use the mediation process and come to agreement during mediation).

If the child is placed in an interim alternate education setting as a result of the discipline decision, the child shall remain there pending the decision of the NDE-appointed hearing officer or until the expiration of the period provided for in [92 Neb. Admin. Code § 51-016.02C](#), whichever occurs first, unless the parent and the school district or approved cooperative agree otherwise.

Parents may continue to follow appeal procedures in [92 Neb. Admin. Code § 55](#) if they disagree with the NDE-appointed hearing officer's decision.

[34 C.F.R. §§ 300.532, .533; 92 Neb. Admin. Code §§ 51-009.016.04-.05.](#)

17. Does the Nebraska Department of Education have a required manifestation documentation form?

There is not a required NDE form for manifestation determinations; however, NDE has created a model form that districts may use or adapt. Each district is responsible for determining the policy and procedures to ensure state and federal disciplinary procedural safeguards are properly addressed. This includes documentation of notices, meetings, decisions, and disciplinary actions.

The model manifestation determination review documentation form can be found in Appendix A.

Manifestation Determination Review Form

[Insert School District]

Student Name: _____ School: _____
Student ID: _____ Grade: _____
Date of Birth: _____ Primary Disability: _____
Race/Ethnicity: _____ Additional Disabilities: _____

Date of incident: _____
Date of parent notification of incident: _____
Date of manifestation determination meeting: _____

Review of Relevant Information

A review of all of the relevant information in the child's file, including the child's individualized education program (IEP), teacher observations, and any relevant information provided by the parent must be completed to determine whether the child's conduct was caused by, or had a direct and substantial relationship to the child's disability or the direct result of the district's failure to implement the child's IEP.

Sources of Information (check all that the team reviewed)

- | | |
|---|---|
| <input type="checkbox"/> IEP | <input type="checkbox"/> 504 Plan |
| <input type="checkbox"/> Behavioral Intervention Plan (BIP) | <input type="checkbox"/> Functional Behavioral Assessment (FBA) |
| <input type="checkbox"/> Discipline Report | <input type="checkbox"/> Cumulative File |
| <input type="checkbox"/> Assessments/Evaluations | <input type="checkbox"/> Student Interview |
| <input type="checkbox"/> Teacher Observations | <input type="checkbox"/> Relevant Information from Parent |
| <input type="checkbox"/> Medical Information | |

Discipline History

1. Number of out-of-school suspension days for the child this school year: _____
2. Number of in-school-suspension days for the child this school year: _____
3. Previous manifestation determination meetings (include date, conduct leading to discipline, manifestation determination decision): _____
4. Describe the conduct violation (behavior that led to disciplinary action): _____
5. Describe the district policy concerning the behavior: _____
6. Was this a special circumstance? Yes No **If yes:** Weapons Drugs Serious bodily injury
7. Was this behavior a single occurrence or is there a history of similar behavior?
 Single occurrence History of similar behavior (describe): _____

Special Education Services and Supports

1. Was an FBA completed prior to the incident? Yes No
If yes, include the date, behaviors targeted, and function:
2. Does the child have an existing BIP?
 - a. Date of most recent plan:
 - b. Have services/interventions in BIP consistently been provided Yes No
3. The services in the IEP have been provided
 - were consistently implemented
 - were not provided or consistently implemented
4. Are there any pertinent medical or other diagnoses to consider? Yes No
If yes, explain:
5. Is the child currently being reevaluated? Yes No
If yes, what is the purpose?

Team Decisions

- A. Was the conduct in question caused by the child's disability or have a direct and substantial relationship to the child's disability? Yes No
- B. Was the conduct in question the direct result of the district's failure to implement the child's IEP or 504 plan? Yes No
 (If yes, the district must take immediate steps to ensure that all services set forth in the child's IEP or 504 plan are provided, consistent with the child's needs as identified in the IEP.)

NOTE: If either condition is true, the conduct subject to disciplinary action would be considered a manifestation of the child's disability.

Manifestation Determination

The team determined that the behavior subject to discipline:

WAS NOT a manifestation of the child's disability.

1. The child may be disciplined in a manner consistent with his or her nondisabled peers; however, the child must continue to receive FAPE in a manner that enables the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.
2. Location of Services: _____

WAS a manifestation of the child's disability.

1. The IEP Team must conduct a FBA, unless a FBA has already been conducted.
2. The IEP Team must develop and implement a BIP for the child based on the FBA or, if a BIP has already been developed, review and modify the BIP, as necessary, to address the behavior resulting in this disciplinary incident.
3. The child is returned to the placement from which the child was removed, unless the parent and district agree to change of placement as part of the modification of the BIP (this does not apply to special circumstances: drugs, weapons, serious bodily injury).

Role: Print Name	Signature	Agree	Disagree	Date

Required: A representative of the school district or approved cooperative, the parent, and relevant members of the child's IEP Team (as determined by the parent and the school district or approved cooperative). Recommended team members include a LEA designee, special education teacher, general education teacher, the parent, assessment specialist(s) or person that can interpret evaluation results, and the student if age appropriate.