

MANIFESTATION DETERMINATION REVIEWS (MDRS)



*A Toolkit for Helping Parents
in Virginia Understand MDRs
and Prepare for an MDR
Disciplinary Hearing*

Since 1978, PEATC has provided tools and information to empower Virginia's students with disabilities (birth – age 22) and their families and help them navigate the special education process. PEATC promotes respectful, collaborative partnerships between parents, schools, professionals, and the community to increase the success of students with disabilities. As Virginia's **Parent Training & Information Center (PTI)**, we talk to many families struggling to navigate the special education system. When disciplinary actions are involved, it is even more stressful and complex for parents and students.

We believe that families are their children's first and best teachers. We also believe that information and training will empower families and professionals to build strong partnerships.

PEATC created this Guide to help families understand the disciplinary review procedures of the **Manifestation Determination Review (MDR)**. The MDR process plays a critical role in protecting students with disabilities who have violated the school division's code of conduct by determining if the conduct is substantially related to their disability.

RULES

Remember, PEATC staff are not attorneys and cannot provide legal advice. Some disciplinary proceedings are very complicated, and we encourage you to consult an attorney for legal support. Additionally, the Virginia Department of Education has made available for parents [Virginia Family's Guide to Special Education](#) to assist in a better understanding of the rights and responsibilities, which includes the child's rights and the school's responsibilities to meet those individual needs.

LAWS

This Guide has been reviewed for accuracy by the disAbility Law Center of Virginia, Virginia's protection and advocacy system, and by the Virginia Department of Education. We thank them for their time and effort.

REGULATIONS

PEATC is here to help. If you have questions about disciplinary procedures or Manifestation Determination Reviews, please don't hesitate to reach out.

We have bilingual staff to support our Spanish-speaking families.

Visit our website: www.peatc.org to review our Fact sheet on Manifestation Determination.

Contact us to talk the situation through and get guidance on possible next steps.
Call 703-923-0010 | Email partners@peatc.org

If you need to consult a lawyer, there are organizations that may be able to assist you at no cost. These include but are not limited to the disAbility Law Center of Virginia and the JustChildren Program at the Legal Aid Justice Center in Charlottesville, VA.

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Manifestation Determination Reviews (MDRs)

What You Need to Know

WHY DO I NEED TO KNOW ABOUT THIS?

All school divisions have a **Code of Student Conduct that addresses** how students will behave while on school property and during academic and extracurricular activities. Schools must inform parents and students of these standards, so make sure you have a copy of this Code of Conduct.

If your child, **regardless of age or disability**, exhibits inappropriate behavior at school or during a school-based activity that violates the Code of Conduct, they may face disciplinary action just like any other child would.

The difference is that IDEA provides **additional procedural safeguards** that school divisions must follow when disciplining students with disabilities.

Schools must conduct a **manifestation determination review (MDR) before** a change in placement due to a disciplinary violation. These protections are included in the *Individuals with Disabilities Education Act* (IDEA) and Virginia's *Regulations Governing Special Education for Students with Disabilities* 8VAC20-81-160(D).

When a student with an Individualized Education Program (IEP) under IDEA exhibits challenging behaviors that interfere with their learning or the learning of others, the local school division should hold an IEP meeting to discuss the student's needs and consider the use of positive behavioral interventions, strategies and supports to address the behavior. During this meeting, the IEP team should develop goals and services specific to the student's behavioral needs. These supports may include but are not limited to conducting a functional behavioral

analysis (FBA). The FBA is used to identify the root cause of the challenging behavior. The results of the FBA, as well as other relevant data the school may have, are used to develop the Behavior Intervention Plan (BIP). The BIP includes goals and strategies to address and mitigate the identified behaviors. If the student does not already have a BIP, the MDR results may require one to be put into place.

If your child is facing disciplinary action due to an alleged violation of the Code of Conduct, **be prepared to participate in the** MDR process as a team member to review and discuss the conduct and provide your input as the team determines whether

- ✓ your child's conduct was a manifestation of **(was caused by or had a direct or substantial relationship to)** their disability or
- ✓ the conduct in question was the direct result of the school division's **failure to implement your child's Individualized Education Program (IEP) or 504 Plan.**

WHAT DO THE LAW AND REGULATIONS SAY ABOUT MANIFESTATION DETERMINATION?

It is essential to know **how IDEA talks about Manifestation Determination.** We will then discuss the process to make it more understandable and help you prepare for it if your child faces disciplinary action.

IDEA 34 CFR 300.530(c), (d), (f) and (g) - Manifestation Determination

Virginia Special Education Regulations define a Manifestation Determination Review as a “process to review all relevant information and the relationship between the child’s disability and the behavior subject to the disciplinary action.”

The purpose of the MDR is not to determine whether the child violated the rules but to determine if the student’s behavior was a manifestation of their disability.

Within ten school days of any decision to **change the placement of a child with a disability because of a violation of a code of student conduct**, the school division, the parent, and relevant members of the child’s IEP Team as determined by the parent and the school must review all relevant information in the student’s file, including the child’s IEP, any teacher observations, and all pertinent information provided by the parents to determine:

Question 1 - If the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability; or

Question 2 - Was the conduct in question the direct result of the local education agency (LEA)’s failure to implement the IEP?

The conduct must be determined to be a manifestation of the child’s disability if the LEA, the parent, and relevant members of the child’s IEP Team determine that the condition of this section was met.

If the LEA, the parent, and relevant members of the child’s IEP Team determine the condition described in Question 2 of this section was met, the LEA must take immediate steps to remedy those deficiencies.

The important thing to remember from these definitions is that you and the IEP team are figuring out whether your child’s behavior **was caused by** or had a direct and substantial relationship to your child’s disability or was caused by the school division’s **failure to implement their IEP, including an existing BIP**.

The results of the MDR will determine your child’s educational placement and/or the type of disciplinary action they will face.

If your child is suspended, **do not sign anything without thoroughly reviewing it**. You don’t want to mistakenly agree to a change in placement, an admission about your child’s actions, or waive your child’s rights.

DOES THE MDR APPLY TO ALL STUDENTS?

This process and its procedural safeguards (protection of rights) apply to students served through **the IDEA or Section 504** of the Rehabilitation Act (504). The procedural safeguards apply to students not identified

as having a disability under IDEA or 504 **if the school division knew they had a disability** before the behavior that resulted in the disciplinary action.

The **school division is assumed to have known** that the child was a child with a disability if:

1. The **parents expressed concern in writing** to an administrator, teacher, or other appropriate staff in the division that their child needed special education and related services (one way would be a referral for a special education eligibility evaluation) and/or
2. The **parents requested that the school evaluate** the child for special education and related services and/or
3. The **child’s teacher or other school division staff expressed concerns** about a pattern of behavior directly to the special education director or other school division supervisory staff.

If the parent has not allowed an evaluation of their child, has refused services, or if the child has been evaluated and found not to be a child with a disability under IDEA (or 504), then the **school is considered not to have knowledge that the child has a disability.**

WHAT TRIGGERS AN MDR?

Not all disciplinary actions or behavior incidents result in an MDR. An MDR is triggered if there is a change in placement that results in the disciplinary removal of the child from their current educational placement under [§34 CFR 300.536](#). That means:

- ✓ A child is suspended (removed) from school for **longer than ten consecutive** (all in a row) **days**; this is considered a long-term removal and constitutes (represents) a change in placement.
- ✓ A child has been suspended for **less than ten days at a time, but the total time exceeds ten days, and the suspensions constitute a pattern** (we'll explain this soon). This is also considered a change in placement.

The 10-day period starts over each school year.

An MDR must be conducted when either of these things happens.

The school division must notify you **of the change in placement** (because of disciplinary removal) consistent with [§34 CFR 300.503](#) and a copy of the procedural safeguards described in [§34 CFR 300.504](#).

The school division cannot change a student's placement without parental consent or take the parent to a due process hearing unless the offense involves drugs, weapons, and/or serious bodily harm. If a due process hearing is requested, the due process placement is "stay put" unless both the school division and the parent agree on an alternative placement. Stay put means the student's last agreed-upon placement in the IEP.

WHAT ARE SHORT TERM REMOVALS?

Short-term removals, **those less than ten days or a series of short-term removals that do not constitute a pattern, do not bring into play the MDR protections.** The school can discipline the child just as it disciplines children without disabilities. The school division is required to follow its own Code of Conduct for discipline purposes. Services do not have to be provided during the first ten school days in a school year if those services are not provided to students without disabilities.

For **additional short-term removals** beyond the first ten days that have not been determined to be a pattern, the **school division must provide the services** necessary for the child to continue participating in the general education curriculum and progress on their IEP goals.

So, what is a pattern? The following must be considered when determining if a series of short-term removals constitute a pattern.

- ✓ The **length** of each suspension
- ✓ The total amount of time the child is **excluded from school** (more than ten days in a school year)
- ✓ Whether the removals are for the **same or substantially similar behavior** in previous incidents and/or
- ✓ Whether the removals happen close **to one another** (a short amount of time passes between one suspension and the next)

It is essential to note that the **school division determines** when isolated short-term removals are considered a pattern.

The short-term removals are only considered a change in placement (**invoking MDR protections**) if the school makes that determination. If you believe the removals constitute a pattern, even if the school has said they do not, you can access **dispute resolution procedures** like mediation or a due process hearing. You can also file a written state complaint if there is

an alleged violation of IDEA or state special education regulations.

WHAT ABOUT LONG-TERM REMOVALS?

If your child is long-term removed (suspended for more than ten consecutive days or expelled or if a series of short-term removals is determined to constitute a pattern of removal), they must:

- ✓ Continue to receive educational services that will allow them **to continue participating in the general education curriculum** in a different setting.
- ✓ Continue to receive the services and modifications, including those in their current IEP, which will enable them to **progress toward meeting their IEP goals**.

- ✓ Receive, as appropriate, **a functional behavioral assessment (FBA) and behavior intervention plan (BIP)** that address the behavior that occurred so that it does not happen again.
- ✓ Students also must still be included in **state and division-wide assessment programs**.
- ✓ Services do not have to be of the same **intensity and duration** as before the long-term removal. The IEP team makes those decisions. **Parents can access dispute resolution options to appeal decisions with which they disagree**. For example, if the school reduces a child's speech therapy from 2 hours a week to one hour per month, they can argue that the school is not providing their child a free appropriate public education.

HERE ARE SOME OTHER IMPORTANT CLARIFICATIONS ABOUT DISCIPLINARY REMOVALS.

1. Suspensions include both **in-school and out-of-school suspensions**. Sometimes, a school may say an in-school suspension does not count toward the ten days. **An in-school suspension is considered part of the days of suspension** unless the school division provides services to the extent determined necessary to enable the student to continue to participate in the general education curriculum and progress toward meeting their IEP goals. Services are determined by school personnel in consultation with the student's special education teacher.
2. Sometimes, parents are asked to **pick their children up early from school** due to behavior. The U.S. Department of Education defines these as **informal removals** because the child is removed without invoking IDEA's disciplinary procedures. These include shortened school days when school personnel reduce a child's day outside of the IEP team and placement process in response to the child's behavior. **Informal removals are subject to IDEA's requirements to the same extent as disciplinary removals using the school's disciplinary procedure.**
3. If your child receives **transportation** as part of their IEP and is suspended from the bus, this is considered a suspension day unless the school provides alternate transportation.
4. If the parent and school division agree to a specific change in placement after the child has violated the Code of Student Conduct, **it is not considered a removal under disciplinary provisions**.
5. If the parent has **revoked consent** for special education and related services, their child will not have the additional IDEA protections.
6. The **disciplinary provisions in IDEA apply to students** in public schools, public charter schools, and private schools if the student is placed in the private school by the school division (including preschool children placed in programs operated by another agency—like Head Start) and in correctional facilities.

WHEN MUST THE MDR OCCUR?

The MDR must take place **within ten school** days of a decision to change the placement of a child with a disability due to a violation of the Code of Student Conduct. It can occur before that 10-day mark. If you need more time to prepare, you can **request a delay**.

If your child is short-term suspended, even if it is just for a day or a few hours, you can **ask the school to conduct an FBA and implement a BIP** so that the behavior doesn't recur. Even if the school turns you down, you will have documented your concerns about your child's behavior, including actions the school took to address the behavior, if any, or whether they addressed it in a manner you feel appropriate.

WHO PARTICIPATES IN THE MDR PROCESS?

There will be a variety of people involved in the process. Required members include:

- ✓ LEA /School administrator(s)
- ✓ The parents or guardians
- ✓ School Administrator
- ✓ Special Education teacher
- ✓ General Education Teacher
- ✓ Other Relevant members of the IEP team as determined by the parent and the LEA (such as an individual who can interpret evaluation results and their relationship to instruction)

The school and parents can invite other people to provide additional information or data to support the MDR discussion. These can include but are not limited to:

- ✓ School psychologist
- ✓ Behavior analyst
- ✓ Related services staff (O.T., P.T., Speech if they have relevant knowledge)
- ✓ The parents' advocate or attorney
- ✓ Outside professionals who work with the student like therapists, medical practitioners, etc.
- ✓ People that the parents want to invite who know the child or have special expertise regarding them, like neighbors, friends, coaches, leaders from your faith community, etc.
- ✓ Other people that the team agrees are needed.



WHAT HAPPENS AT THE MDR?

All the invited parties will be present. The group has to discuss and answer the two questions listed earlier.

1. Was the child's behavior that resulted in removal caused by or had a direct and substantial relationship related to their disability?
2. Was the behavior that resulted in removal caused by the school division's failure to implement the IEP (including a BIP if it exists)?

The process should include reviewing all relevant information in the child's file, including the child's BIP, if there is one, the IEP, teacher observations, and information provided by the parent. **Everyone should be allowed to participate with information relevant to the child and the discussion.** The process should not be rushed. The parents should be able to ask as many questions as they like and present relevant information.

To answer Question 1 (*Was the child's behavior that resulted in removal caused by or had a direct and substantial relationship to their disability*), the MDR team must work together to review information and records and think about the child's disability, behavior, and needs and the specific incident that violated the code of conduct and for which the child is being disciplined. Here are some areas the team should examine:

- ✓ Environmental factors, including school and home.
- ✓ The student's mental, physical, and/or developmental disabilities.

- ✓ Disciplinary history and whether the types of disciplinary actions resulted from the same or substantially similar behavior.
- ✓ The unique circumstances of the incident.
- ✓ Whether the behavior involved weapons, drugs, or serious bodily injury (*See section on Special Circumstances*).
- ✓ Whether an FBA has been conducted.
- ✓ Whether the child has a BIP.
- ✓ Whether the IEP had appropriate behavioral goals and strategies.
- ✓ Whether the parents or school staff had requested additional evaluations related to behavior.

Concerning disability, while the team will likely look at the behavior related to your child's special education eligibility classification, they also must **consider information that may not seem to be related to the identified disability**.

For example, a vision impairment does not have behavioral challenges associated with that disability classification. However, suppose the child recently lost their sight and is experiencing trauma or emotional problems because of the loss of vision. That cannot be ignored just because it is not associated with the labeled disability.

To answer Question 2 (*Was the behavior that resulted in removal caused by the school division's failure to implement the IEP (including a BIP if it exists?*), the team must decide **if the school followed**

all parts of the IEP and/or BIP and if they did so in the way that was written and intended by the team. (This is called implementation fidelity or integrity). If the MDR team finds that the IEP and/or BIP were not implemented correctly, they must look at how or if that impacted the student's goals, services, and resulting behavior. So, if the school has not been following everything on the IEP or BIP, then the **team must decide if that is why the behavior occurred**.

For example, if your child's BIP requires that they have a sensory area to relax and regroup if they get stressed and the student was denied access to that area, resulting in a behavior that violated the code of conduct, then the team may determine that the behavior was a manifestation of the disability because the behavior may not have occurred if the BIP had been implemented as written.

Once the review is complete, **get a copy of the MDR form or completed worksheet**. If the school division says they will send it to you, you can ask to take pictures of each page so you have a copy until then.

WHAT IF THE BEHAVIOR IS FOUND TO BE A MANIFESTATION OF MY CHILD'S DISABILITY?

If your child's behavior is determined to be a manifestation of the disability, the following must occur:

1. Your child has the **right to return to school immediately** unless special circumstances apply. (*These are explained later in the document.*) Typically, the child will return to the placement from which they were removed. However, **the parent and school division could agree in an IEP meeting to a change in placement**. The exception to this provision is if a child has been removed for not more than 45 school days to an interim alternative educational setting as allowed for students with and without disabilities. In this case, the school division may keep the student in the interim alternative education setting until the expiration of the 45 days.





2. The school must **conduct an FBA** to determine what is causing the behavior (unless the LEA has conducted an FBA – **Not FBP** as written) before the behavior that resulted in change in placement). An FBA may include a review of existing data, new testing data, or evaluation as determined by the IEP team. Parental consent is required to conduct an FBA. If you disagree with the results of the FBA, you can request an Independent Educational Evaluation (IEE) at the school division's expense.

3. The school must **create a BIP and/or modify the IEP** to ensure that appropriate behavioral and other supports and strategies are implemented to provide the support your child needs to address the behavior.

If your child already has a BIP and/or IEP that the school was not following or the IEP or BIP has not been effective, the team needs to review both documents, modify them as necessary, and ensure that they are implemented as written and agreed to.

4. Your child **cannot be expelled** if the behavior is determined to be a manifestation of the disability.

WHAT IF THE BEHAVIOR IS FOUND NOT TO BE A MANIFESTATION OF MY CHILD'S DISABILITY?

If your child's behavior is determined to NOT be a manifestation of the disability, the following must occur:

Your child's suspension/removal or other disciplinary procedures will remain in place, and your child will be treated in the same way as a child without disabilities who committed the same violation of the Code of Student Conduct.

DO I HAVE TO SIGN THE MDR FORM?

There may be an **attendance form** that the school asks you to sign. Signing it means you were at the meeting. **It doesn't mean that you agree with the findings.** However, if you prefer, you can sign as an

attendee and make a note that you disagree with the MDR determination if that is the case.

CAN I APPEAL THE MDR DETERMINATION?

If you and the school division disagree on whether the behavior was a manifestation of the disability (or a failure of the school division to implement the IEP), **the school representatives on the team will make the final decision.** They must provide **Prior Written Notice** to the parents of the decision and the justification. (See *PEATC Fact Sheet on [Prior Written Notice](#)*)

The parents and the school division have the right to file a due process complaint to appeal decisions made during disciplinary proceedings.

Parents can request **mediation or a due process hearing** (see below information on expedited due process hearings.) to resolve the disagreement. Parents can also file a **written state complaint** to VDOE if they believe the school division violated IDEA and/or state special education regulations related to the manifestation determination.

WHAT IS AN EXPEDITED DUE PROCESS HEARING?

A due process hearing is a **formal procedure** used to **resolve disagreements** about the identification, evaluation, or education of a child with a disability or the provision of a free appropriate public education (FAPE) to that child.

An **impartial, trained hearing officer** approved by the Virginia Supreme Court hears the case. Hearing officers are lawyers trained by the Virginia Department of Education (VDOE); they do not work for the **VDOE**.

Like a court hearing, both sides call witnesses, give evidence, and make legal arguments that support their case. The hearing is usually held in a conference room at a **mutually agreed time and location** and is **recorded**.

For more information, see PEATC's [Due Process Toolkit for Parents](#).

If the due process issue relates to **disciplinary action**, an **expedited** (quicker) due process hearing can be requested. Parents can request an expedited hearing if:

- ✓ They disagree with a manifestation determination that their child's behavior was (or was not) **caused by or had a direct or substantial relationship to the disability**.
- ✓ If they disagree with a manifestation determination that the child's behavior was (or was not) a direct result of a **failure to implement the IEP**.
- ✓ They disagree with a school division's discipline-related decision regarding their child's **educational placement**.

Unlike in a regular due process hearing, the parties are not required to participate in an **early resolution meeting**. However, they can choose to do so if they think the issue can be resolved through early resolution or mediation.

Content of Request. The information included in a request for an expedited hearing request is the same as for a regular due process hearing request.

Timelines: The timelines are faster for an expedited hearing than a regular due process hearing.

Within three business days, the school division must obtain the hearing officer's name.

Within seven calendar days, the school division must schedule the resolution session unless the parents and school division agree in writing not to have a resolution session or decide to go to mediation.

Within 15 calendar days, the hearing timeline starts if the dispute is unresolved.

The hearing must be held within 20 school days of the expedited request being filed.

Within ten school days of the hearing date, the hearing officer must issue a decision.

The Hearing Officer cannot extend these timelines unless both parties agree.

Hearing Officer Decision: The hearing officer's decision **must address**:

- ✓ Whether the school division adequately proved that the child's behavior had or did not have a direct or substantial relationship to the disability and
- ✓ Whether the behavior was the direct result of the failure of the division to implement the IEP.

If the school is considering a **change in placement** due to disciplinary issues, the hearing officer must determine whether that decision is correct.

The Hearing Officer can decide that the child with a disability **be returned to the placement from which they were removed** if they find that the removal was a violation of IDEA or that the behavior was a manifestation of the disability.

The Hearing Officer **can order a change in placement to an Interim Alternative Educational Setting (IAES) for no more than 45 days** if they determine that maintaining the current placement is substantially likely to result in injury to the child or others.

Suppose the school division disagrees with a Hearing Officer's decision to return the child to the original placement. In that case, they can file for another expedited hearing to challenge the hearing officer's decision.

Both parties can request a review of the Hearing Officer's decision by VDOE and may be able to file a civil action in court following a due process decision. Consult with an attorney to learn more.

WHAT HAPPENS TO MY CHILD'S EDUCATION PROGRAM DURING AN MDR APPEAL?

During an MDR appeal, your **child's current IEP remains in place** unless they have been removed to an Interim Alternate Educational Setting (IAES) due to special circumstances. At any time during this appeal, the parents and school can agree to amend the IEP.

IF MY CHILD IS PLACED IN AN IAES, WHERE WILL IT BE, AND WILL MY CHILD STILL GET THEIR IEP SERVICES?

The IAES will depend on the circumstances of the case. There is no one setting that is used. However, the IAES has to allow the child to continue to **participate in the general education curriculum** while in that setting and to **make progress toward meeting their IEP goals**. Home instruction cannot be the only IAES option that is offered.

While the child is in the IAES, the school division is **not required to provide the services in the child's IEP**. The IEP team decides the type and intensity of services that will be provided, but it must meet the criteria for allowing the child to progress on their IEP goals.

WHAT ARE THE SPECIAL CIRCUMSTANCES IN WHICH A CHILD CAN BE REMOVED TO AN INTERIM ALTERNATIVE EDUCATIONAL SETTING (IAES)?

In some cases, a **student can be removed to an IAES for no more than 45 days, regardless of whether the behavior is determined to be a manifestation of the disability**. The offenses must occur at school, on school premises, or at a school function under the jurisdiction of the school division or the Virginia Department of Education. So, for example, if the child has a weapon at a school football game, it can result in being placed in an IAES. However, the school will not have jurisdiction if they carry a weapon to a movie theater. That would be under the jurisdiction of law enforcement. Here are the special circumstances:

1. The student has a **dangerous weapon**. (A pocketknife of less than 2-1/2" is not considered dangerous.)
2. The student **knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance** while at school. (this includes prescription drugs other than those prescribed for the child and administered by the school.)
3. The child **inflicts serious bodily injury on another person at school**. Serious bodily injury is defined in the U.S. Code 18 USC § 1365(h)(3) as bodily injury that includes a substantial risk of death, extreme physical pain, protracted (continued) and obvious disfigurement, permanent injury to a body part, or mental abilities. It does not typically include scratches or bruises. **The school division cannot apply its own definition of serious bodily injury.**

In these circumstances, the student can be removed for 45 days and placed in an **Interim Alternative Educational Setting (IAES)** if keeping the child in the current placement is "substantially likely to result in an injury to the child or others." **The MDR will still occur, but the child will be in the IAES.**

An IAES can include a different school, meeting with a teacher at home or somewhere in the community, like a library, virtual meetings with teachers, or other alternative education settings.

Tips on Preparing for a Manifestation Determination Review

Preparing for the MDR and trying to be objective regarding your child's behavior is essential. The purpose of the MDR is to determine whether the child's behavior was caused by the disability or failure to implement the IEP. In some cases, the behavior will be a manifestation; in others, it will not, and the disciplinary action will be upheld. Here are some tips on how you can prepare.

✓ **Obtain and/or review a copy of your child's entire student record and the school's discipline policy.**

The school is not required to copy the record for you, so if they will not provide you with a copy, even at a cost, you may want to take notes or take pictures on your phone of relevant documents, etc. Be alert and ask the school division to correct any inaccuracies in the record. If they refuse to correct items you feel are inaccurate or misleading, write up your concerns and ask that the document be included in your child's record.

✓ **Review the school's discipline policy.**

You may be able to find this on the school website, or you may have to ask for a copy. You want to be sure your child was not disciplined more severely than his peers without disabilities would be in the same incident.

✓ **Review federal and state regulations.**

Be sure you know what IDEA and Section 504 say about disciplinary protections and review Virginia's [Regulations Governing Special Education Programs for Children with Disabilities in Virginia](#).

✓ **Decide if you want to hire an advocate or attorney to assist you.**

Depending on the complexity of the behavior and its results (particularly in a case involving drugs, weapons, or serious bodily injury), it may be advisable to consult an attorney. If you decide to hire outside representation, involve them as quickly as possible so they have time to prepare for the MDR.

✓ **Make sure you gather all the details of the incident or incidents.**

Get all the facts about what happened and the context in which it occurred. You'll want to ask for a copy of the investigation report and any witness statements. Find out what happened before the incident, i.e., what might have caused your child to react in the way alleged. Were there obvious triggers for your child that the school should have known about? Were there other children involved, and how were they disciplined? The school will not be able to violate the privacy of those other children, but you may know their parents and be able to ask them.

Your child may be unable to relay all the details, especially if they have a cognitive disability, and the school staff may have made a mistake or drawn an incorrect conclusion about the incident. Even if your child

admitted to the behavior, find out if they felt intimidated or forced into doing so or didn't understand what they were being asked. If you find that the facts presented by the school are correct or mostly correct, try not to be defensive or angry.

If you believe your child's behavior was caused by the disability or happened because the school did not implement your child's IEP, then focus on demonstrating that. However, the school division's decision may be correct, and the behavior may not be a manifestation of the disability. In this case, you will want to work with the team to look at how to prevent the behavior in the future.

✓ **Decide (with your attorney if you have one) whom you want to invite to the MDR to speak on behalf of your child.**

As mentioned earlier, this could be family, friends, coaches, mentors, behavior analysts, or other medical providers. It could also be witnesses to the incident. Invite those with specialized knowledge of your child, their disability, and/or their behavior.

✓ **Compile research/reference materials from a credible source.**

Try to use university-based or peer-reviewed research or established references like the Diagnostic Statistical Manual (DSM V), etc. You can use this as evidence that your child's behavior is consistent with the characteristics of their educational disability label, their medical diagnosis, or a suspected diagnosis that the school should have known about. You can prepare handouts for the team and review them during the meeting.

✓ **Organize your documents.**

Write dates and notes on them. Consider making copies for yourself and for the school division.

✓ **Make a list of all the issues and questions you want to discuss.**

This can help you remember all your concerns so you can present them in an organized manner. In addition, it will prevent the school team from rushing the MDR and making a quick decision without your input or the input of others you bring to speak on behalf of your son. Prepare talking points.

Have someone with you who can take notes. It is hard to be engaged in the MDR and take notes you may need if you decide to appeal the decision. Focus on the meeting and let someone else take notes.

✓ **Prepare yourself and others attending with you to discuss the aspects of your child's disability that caused or were substantially related to the behavior.**

If you have evaluations that address your child's behavior and/or disability, you will need those. Let's say your child has a diagnosis of ADHD and exhibits impulsive behavior; you may be able to show that the behavior of punching a classmate who was deliberately annoying him was directly related to that impulsivity characteristic of ADHD. See if it is in the IEP; be sure to point that out.

- Based on evaluations and the IEP, should the school have known that the behavior exhibited was a possibility (or had been exhibited before)?

- If the school knew about the behavior challenges, did they conduct an FBA or develop a BIP to address the behavior?
- Did they contact you about the behavior?
- If a BIP was in place, did they implement it with fidelity (in the way it was written and intended to be implanted)
- If the BIP was found to be inadequate, did they meet with you to revise it?
- Did the IEP include behavior goals and strategies, and did they relate to the behavior in question? Were those goals and strategies implemented as written? What about accommodations in the IEP? Were they implemented?
- Were all the accommodations followed if your child has a 504 plan?

✓ **Think about your child's disability and behavior and be prepared to provide information about:**

- Was your child trying to communicate something to school staff or peers, and do you know what that was?
- Does your child understand what they did and why it was wrong?
- Has their behavior improved, stayed the same, or gotten worse recently?
- Does your child see a counselor or behavior therapist?
- Does your child take medication, and if so, had it been changed before the incident, or are there relevant side effects to think about?

✓ **What did you do once you found out about the behavior?**

- Did the school or you call an IEP team meeting to discuss the behavior and how to address it? This would be most useful after short-term suspensions. Once a long-term suspension is underway, the MDR is required.
- Has your child seen any outside therapists or other medical providers to address behavior issues?
- Have you seen the behavior at home and if so, did you put strategies in place to address it?

✓ **Do you have a plan to deal with your emotions during the meeting?**

MDRs can be stressful for everyone on the team, but especially for parents as you are trying to defend your child and come out with the best outcome possible. It is important to remain respectful and courteous. If you feel your emotions are getting the best of you, ask for a break.

✓ **Try to arrive a little early to the MDR Meeting.**

You should give yourself time to settle in and organize the information you want to present so it is easily accessible.

Manifestation Determination Review

Case Examples

EXAMPLE 1

Behavior: Fred, a 4th grader, ran out of the school building (eloped) and ran across the playground towards the street. Two adults had to catch up to him and redirect him back inside.

Result: This is the third time this has happened, and Fred has been suspended for five days each time. This brings his total for the school year to 15 days suspended. Fred did have a functional behavior assessment (FBA) and behavior intervention plan (BIP) completed after the second time he eloped. Part of the BIP is a 1:1 aide available to Fred during transitions. Because Fred has an IEP, a manifestation determination review will be held.

Outcome: During the MDR, Fred's mom questioned where the aide was when Fred eloped. The aide had stopped in the office and left Fred alone in the hallway for ninety seconds. During that time, Fred eloped. Because the BIP wasn't being implemented as written, the behavior was determined to be a manifestation of his disability, and he was returned to class.

EXAMPLE 2

Behavior: Tiffany was given a vape pen by another student. After using the vape pen, Tiffany became very disoriented and went to the nurse. It was determined that it was a cannabis vape that Tiffany had used. Tiffany denied knowing it was a cannabis vape.

Result: Tiffany was long-term suspended for using drugs in school and told she would have to attend the interim alternative educational setting (IAES) for the rest of the school year. Because Tiffany has an IEP, an MDR hearing will be held.

Outcome: At the MDR, it was determined that due to Tiffany's disability, she didn't understand that this was a cannabis vape, and the long-term suspension was dismissed. The school determined she would still stay for 45 days in the IAES before returning to her school because the conduct was drug-related. This is allowable.

EXAMPLE 3

Behavior: Thomas became upset in math class and threw his desk toward the back of the room, away from other students. This is the third incident in math class in which this behavior has happened in the last four months.

Result: Thomas' behavior resulted in a 3-day suspension, bringing his suspensions up to 9 days for the last three months. It was determined that there was a pattern of behavior because the offenses were similar and happened within a short time period, and an MDR would be held.

Outcome: At the MDR hearing, the group discussed how Thomas has a specific learning disability in math, so the class is difficult for him. It was also mentioned that Thomas has ADHD with documented impulsivity issues, which are detailed in his IEP. The team determined that his behavior was a manifestation of his disability, and he was to be returned to class. An FBA will be completed to develop a BIP to assist Thomas with his impulsivity issues.

EXAMPLE 4

Behavior: Sam got into a fight with another student at school. It took two teachers to break up the fight. Sam claimed that the other student had started the fight. There were no witnesses that spoke up about what they saw.

Result: Sam and the other student received long-term suspensions of 20 days. However, because Sam has an IEP, an MDR was held.

Outcome: At the MDR, the team reviewed information about Sam's learning disability and other relevant information. The team found that the behavior was not a manifestation of his disability and that the suspension would stand. Sam will continue to receive special education services during the disciplinary removal.

Process For Filing A Request For An Expedited Due Process Hearing

When filing for due process, you do not have to use the VDOE due process request form but must **include all the required information**. However, **the school division cannot challenge the sufficiency of the request in an expedited case**. They can't ask the hearing officer to dismiss the case if you don't include all the required information.

Be sure you note on the letter or form that you are requesting an **EXPEDITED HEARING** in a disciplinary manner.

Be sure to include the following information and check with ODRAS to see if more information is needed.

1. **Your Contact Information** (name, address, email, telephone (home, office, mobile))
2. **Student Information** (full name, address, name of school, school division). In the case of a child experiencing homelessness, the request must include available contact information for the child, including the school's name.
3. **Name of Parents' representative, if any** (e.g., attorney or advocate)
4. **A description of the disagreement**
 - ✓ **Nature of the problem** (you disagree with the findings in a Manifestation Determination Review).
 - ✓ **Facts related to the disagreement** (Background information, why you think the decision is incorrect, and other relevant facts.
 - ✓ **Desired solution/resolution** to the problem (e.g., reverse the MDR and change the child's placement to X)

The Request for an Expedited Due Process Hearing must be sent at the same time to both:

VDOE, Office of Dispute Resolution and Administrative Services

P.O. Box 2120, Richmond, Virginia 23218-2120

Fax: 804-786-8520

Email: ODRAS@doe.virginia.gov

AND THE

The local school division against whom you are filing the hearing request.

You can send the request to the Special Education Director and/or the Superintendent of Schools for the division. You can also send a copy to the school principal. You can find **contact information** on your school division's website or social media site or by calling the school division's central office.

For comprehensive information on the due process hearing system, see PEATC's [Due Process Toolkit](#).

Sample Letter Expedited Due Process Filing (if not using the VDOE Due Process Request Form)

January XX, 20XX

VDOE Office of Dispute Resolution and Administrative Services
P.O. Box 2120
Richmond, VA 23218-2120

XYZ School Division
900 Reading Drive
Greenspace, VA 230001

Dear VDOE Compliance Specialist and Superintendent Burton, XYZ Schools

We request an **expedited due process hearing** for our son, Lawrence Book. I am sending it to you and the XYZ School division at the same time.

Our contact information is as follows:

Jasmine and Mark Book
9111 Roundtree Avenue, Greenspace, VA 23000
Jasmine.Crowfield@email.com
mcrowfield@email.com

757-222-7777 (home)
757-111-2222 (Jasmine Mobile) 757-333-4444 (Mark mobile)

Our son's information is as follows:

Lawrence Andrew Book
9111 Roundtree Avenue, Greenspace, VA 23000
XYZ school division, ZZZ Middle School

Our Attorney is Jackson Middleton, Middleton, Town, and Cityscape Law, Greenspace, Virginia 20012 (581) 333-4444; jmiddleton@mtclaw.org

We are filing for an expedited due process hearing to seek a reversal of a decision in a Manifestation determination meeting that Lawrence's behavior, which resulted in a series of short-term suspensions, one after another, totaling 21 days (for the same behavior) was not a manifestation of his disability. We disagree with this determination. We requested a functional behavioral assessment (FBA) multiple times and were denied because they said he was just acting out for attention. He does not have appropriate behavioral goals in his IEP, and he does not have a behavior intervention plan, all of which we have requested. The school has known this behavior has been a problem for the last six months. It is a manifestation of his disability. The IEP has also failed to address the behavior. They want to remove Lawrence and place him in an alternate interim educational setting. We object to this and believe it violates IDEA's disciplinary provisions and protections.

We are requesting that the hearing officer rule that the decision of the Manifestation Determination Review team was incorrect and reverse that decision. We would also like him to order that an FBA be conducted, a BIP be developed, and Lawrence's IEP amended to ensure that he has the supports needed so that the behavior does not reoccur.

Please contact me if you need further information concerning this request for a due process hearing.

Sincerely,

Jasmine Book, Mark Book, Jasmine and Mark Book

Cc: Maggie Black, Director of Special Education Services, XYZ School Division
Jonathan Ramirez, Principal, ZZZ Middle School

Sample Request for a Functional Behavioral Assessment and Behavior Intervention Plan

DATE:

Your Name

Street Address

City, State, Zip

Daytime telephone number

Email Address

Dear Principal, XYZ:

I am making a formal request that a functional behavioral assessment be conducted for my child (*child's name*). (*Child's name*) birth date is _____, and he/she is a student at (*name of school*) in grade ____.

(*Child's name*) is displaying behaviors that impede their learning or the learning of others. Specifically, they exhibit the following behaviors (*list all concerning behaviors*). We are concerned that if these behaviors are not addressed, they could lead to disciplinary actions.

Behavior serves a purpose and is a form of communication. (*Child's name*) behavior is directly related to their disability. We need to determine the function(s) of the behavior so that they can progress on their IEP. We request that this be a formal FBA in which data are collected and analyzed over multiple dates, times, and settings to find out (1) when and where the behavior is happening; (2) where and when it does not happen; (3) how often the behavior occurs; (4) who is there when it occurs; (5) what happens right before the behavior; and (6) what happens right after the behavior.

We would appreciate the FBA being conducted as soon as possible so we can then move to the next step of developing (*and/or modifying if one exists*) a Behavior Intervention Plan (BIP) for (*child's name*). I look forward to hearing from you. You can reach me at (*contact information*). Thank you for your assistance in addressing this proactively.

Sincerely,

Your Name

Cc: Anyone you would like to receive a copy of the request.

Sample Request for Copies/Review of Records under the Family Educational Rights and Privacy Act (FERPA)

DATE:

Your Name

Street Address

City, State, Zip

Daytime telephone number

Email Address

Dear *(Name of principal or special education administrator)*:

I would like to schedule a time to review my child's complete records as provided for under the Family Educational Rights and Privacy Act (FERPA). This includes electronic, handwritten, video or audio tape, film, computer media, print, or any other medium.

My son/daughter *(child's name)* is in the ___ grade at *(name of school)*. Their birth date is _____. Their case manager/primary teacher is *(name of the primary teacher or case manager)*.

I will need copies of all or some of these records, and I understand that this could involve a fee. Please let me know as soon as possible *(you can put in a date)* when I can inspect and review *(child's name's)* records. Thank you for your consideration.

Sincerely,

Your Name

Cc: Anyone you would like to receive a copy of the request.

NOTE: Rights to access records are transferred to the student at age 18. However, there are ways that parents can remain involved. The student can provide written consent or execute a power of attorney, providing you with access. They can allow you to review records with them. If you are a court-appointed guardian, you will maintain access rights.

Glossary of Relevant Special Education Terms

TERM	DEFINITION
Appeal	Procedure in which the parent or school division asks that a review be done of the Manifestation Determination Review Decision because they disagree with it. The appeal itself can also be appealed further.
Behavior Intervention Plan	A BIP is a written plan to prevent or replace interfering behaviors with more acceptable behaviors. The plan, based on data from an FBA, outlines positive, proactive strategies and supports that will be provided to increase desired or expected behavior.
CFR	The U.S. Code of Federal Regulations
Change of Placement	"Change in placement" or "change of placement" means when the school division places the child in an educational setting different from the setting where the child was previously receiving services.
Complaint	A written statement filed with the Office of Dispute Resolution and Administrative Services (ODRAS) alleging that a school division has violated one or more of the state and/or federal laws and regulations governing special education.
Due Process hearing	A hearing conducted by an impartial hearing officer to resolve disagreements over issues related to special education services that arise between parents and a school division.
Early Resolution System	A process that encourages both parties to agree on how to resolve the issues alleged in a due process complaint. It is not required for an Expedited Due Process Hearing.
Expedited Due Process Hearing	The same as a due process hearing but conducted with faster timelines. It applies primarily to disciplinary procedures like MDRs but can also be used for other purposes if both parties agree.
Expulsion	A disciplinary action in which a student is removed from school permanently or for a specific period of time (e.g., the remainder of the school year.)
FAPE	Free Appropriate Public Education under the Individuals with Disabilities Education Act

Functional Behavioral An evaluation that helps an IEP team determine the cause of interfering behavior that Assessment negatively affects the student's learning or the learning of the student's peers. An FBA typically includes observations of the child in different settings over a period of time to identify why the behavior is occurring, including where the behavior occurs, what happens before it, what happens during the behavior, and what happens afterward.

Hearing Officer An impartial lawyer, trained as a hearing officer, assigned to conduct the due process hearing, and decide disputes under IDEA between parents and school divisions.

Manifestation Determination Review A process in which information is reviewed following specific disciplinary actions to determine whether the student's conduct was (or was not) a direct result or substantially related to the student's disability or was (or was not) caused by a failure of the school division to implement the IEP.

Mediation The process in which an objective third party (a trained mediator) works with two opposing parties to come to a mutually agreeable solution to their disagreement.

Long-Term Suspension A disciplinary action in which a student is removed (excluded from school) for more than ten days in a row or a period of shorter-term removals totaling more than ten days if those suspensions constitute a pattern.

ODRAS Office of Dispute Resolution and Administrative Services. The VDOE Division that oversees complaints, mediation, and due process administration.

Pattern of Suspensions When a series of short-term suspensions exceeds ten days in total, it may be determined a "pattern" and considered a long-term suspension depending on the length of each suspension, the total amount of time the child is excluded from school, whether the removals are for the same or substantially similar behavior in previous incidents, and/or whether they happen close to one another (not a lot of time passes between one suspension and the next).

Prior Written Notice Prior Written Notice is a written statement that must be provided every time a school proposes or refuses to initiate (begin) or change the identification, evaluation, or educational placement of your child or proposes or refuses to initiate or change the provision of a free appropriate public education (FAPE). The school must justify its decision in the Prior Written Notice.

Short-Term Suspension A disciplinary action in which a student is suspended for less than ten days. A series of short-term suspensions for the same behavior, in proximity to one another (one after the other), and other factors may be a "pattern" and considered a long-term suspension.

VAC Virginia Administrative Code

THE FOLLOWING RESOURCES WERE USED IN THE PREPARATION OF THIS TOOLKIT:

ADA In Your Shoes: <https://adayinourshoes.com/manifestation-determination-hearing/>

disAbility Law Center of Virginia: *Special Education in Virginia: A Guidebook for Parents.*

Individuals with Disabilities Education Act:

<https://sites.ed.gov/idea/statute-chapter-33/subchapter-ii/1415/k/1>

Manifestation Determination for Parents:

<https://www.manifestationdetermination.com/how-to-prepare-for-your-manifestation-determination-meeting/>

Pacer Center: <https://www.pacer.org/parent/php/PHP-c285.pdf>

Parent Center Hub: <https://www.parentcenterhub.org/manifestation>

Virginia Department of Education: State Special Education Regulations:

<https://www.doe.virginia.gov/home/showpublisheddocument/894/637945623913600000>

U.S. Department of Education: <https://www2.ed.gov/policy/speced/guid/idea/discipline-q-a.pdf>

Wrightslaw: <https://www.wrightslaw.com/info/discipl.mdr.strategy.htm>

U.S. Department of Education: https://sites.ed.gov/idea/idea-files/qa-addressing-the-needs-of-children-with-disabilities-and-idea-discipline-provisions/#_Toc108604306



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