

DISSECTING THE ANATOMY OF A WINNING MANIFESTATION DETERMINATION REVIEW

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Disclaimer

This information is accurate as of the date of this presentation, is for information purposes only, and is not a substitute for specific legal advice.

1. Overview of the Basics

2. Proactive Measures before the Student Reaches 10 Days

3. Common Issues that Arise during an MDR

4. Proactive Measures after an MDR

Roadmap

01.
OVERVIEW OF THE BASICS

Within 10 schools of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents...

— 34 C.F.R. 300.530(e)(1)

When to Hold an MDR

- Upon “disciplinary change of placement” of a disabled student for more than 10 cumulative days in a school year.
- What constitutes a change in placement?
 - Out of school suspension
 - In-school suspension that changes the package of services provided to the student
 - Withholding of services usually provided to student
- Must hold an MDR within 10 days of a disciplinary change of placement.



During an IEP meeting, a parent expresses frustration that classroom teacher is “constantly” calling them during the middle of the day suggesting they should come pick up their child because they are being disruptive. You look at the attendance and behavior report, and it does not reflect any suspensions.

What should you do?

A. Pretend you didn't hear it. If it isn't recorded in the attendance or behavior detail report, it doesn't count.

B. Talk to the teacher and administrators to figure out what's going on but decide not to update the attendance because you don't want to draw attention to it.

C. Talk to the teacher and administrators, update the attendance report, and convene a belated MDR.

What you should do after learning a parent reports the school has been asking the parent to pick up the child from school?

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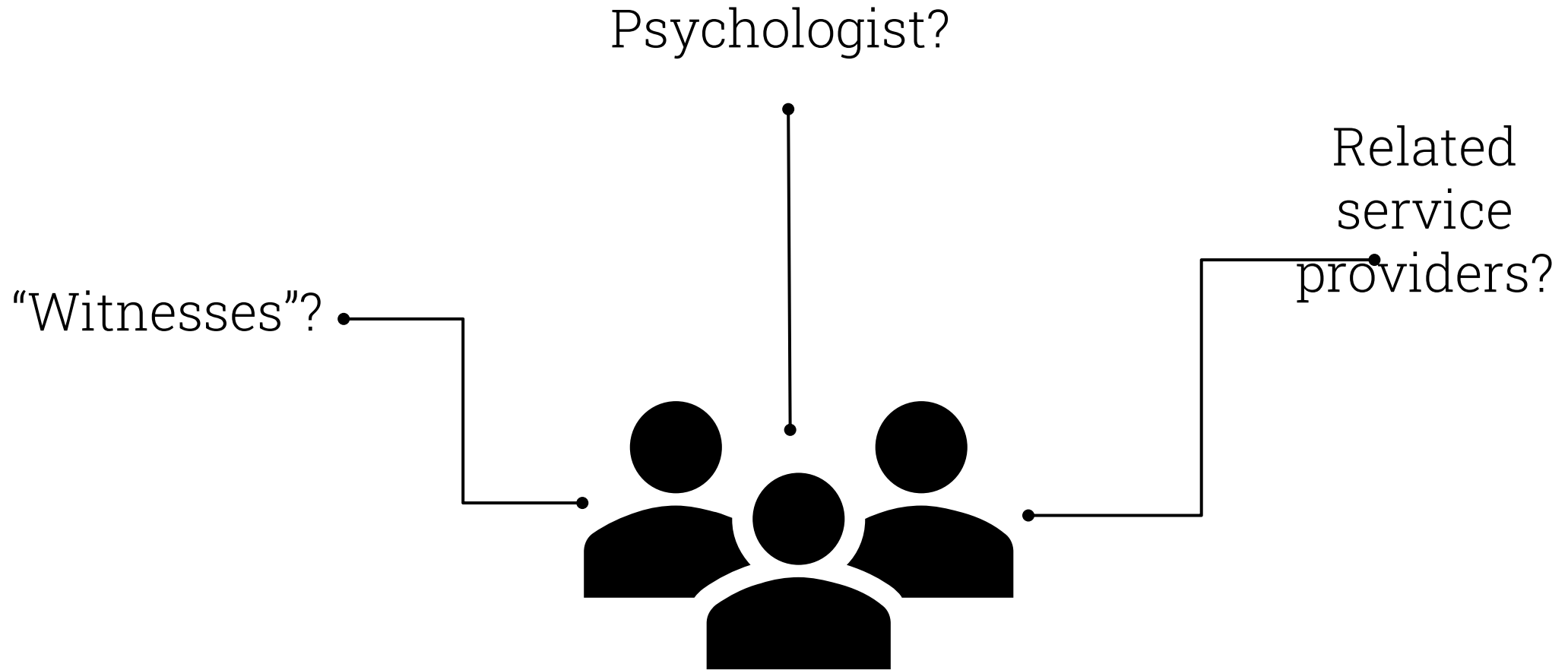
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Who Should Attend?



MDR Team Must Answer Two Questions

- 1 If the conduct was caused by, or had a direct or substantial relationship to the child's disability; or
- 2 If the conduct in question was the direct result of the school's failure to implement the IEP (or Section 504 plan)

If the answer to either of the above questions is “yes,” the behavior is a manifestation of the student's disability.

02.

**PROACTIVE MEASURES BEFORE
THE STUDENT REACHES 10 DAYS**

Are There New or Worse Behaviors?



How current are the evaluations?



If there is a BIP, is it being implemented with fidelity?



Is there another eligibility category the team should consider?



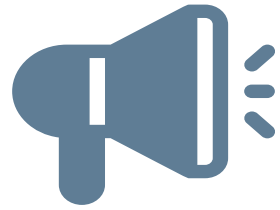
Should the BIP be revised?



Have we conducted an FBA?



Should we convene an IEP team meeting to discuss amending the IEP?



*Don't wait for an MDR to
have these discussions.*



Student is eligible under autism spectrum disorder. Since returning from summer break, his behavior has drastically worsened. There is a BIP in place. He had a comprehensive psychological 1.5 years ago.

What should you?

- A. Collect data.
- B. Convene an IEP meeting to determine if the IEP needs to be amended.
- C. Seek parental consent for a new comprehensive psychological evaluation.
- D. Seek parental consent for a new FBA.
- E. All of the above.

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03.
**COMMON ISSUES THAT ARISE
DURING AN MDR**

Direct and Substantial Relationship

- MDR teams must consider more than what is typical for students with the disability.
- Examples of direct and substantial relationship:
 - Student's emotional disturbance caused her to be impulsive and combative, which triggered her to elope from class and start a fire on school grounds.
 - Female student's misconduct of kicking male student in groin was directly related to post-traumatic stress she suffered after sexual assault.
- Not examples of direct and substantial relationship:
 - Bringing weapon to school was not a manifestation of ADHD.
 - Posting bomb threat online was not a manifestation of disability (noncompliance, hyperactivity, rude) where parent argued student was off medication.
 - Bringing marijuana to school was not a manifestation of SLD.

Did a Failure to Implement the IEP Cause the Behavior?

- Examples:
 - The more serious part of student's behavior was the direct result school official calling student's mother in student's presence, which was a clear violation of a long-standing provision in the student's IEPs.
 - Student's emotional and oppositional behavior "spiraled out of control" when an assistant principal confronted the student rather than allowing the student to back off as provided in his BIP.
 - Parent showed failure to implement IEP but did not show causal connection between the student's conduct and the lack of implementation.
- Failure to update or modify a BIP does not constitute a failure to implement.

Protections for Students Not Yet Eligible

- School district shall NOT be deemed to have knowledge (and child will not have discipline protections) if:
 - Parent of the child has not allowed an evaluation; OR
 - Parent has refused services; OR
- Child was evaluated and it was determined that the child was not a child with a disability

Protections for Eligible Students with New Suspected Disability

- What if the parent requests an evaluation or claims the child is disabled after the conduct in question?
 - School must conduct an “expedited evaluation.”
 - No specific timeline but should take less than the standard 60 calendar days.
- While evaluation is being conducted, the child’s educational setting will be determined by school personnel.
- Student must remain in disciplinary setting.

Henry County School District, Docket No. 2321739-OSAH-DOE-CPEXP-75-Walker

Background:

- 11th grader is eligible under OHI (ADHD) and SLD categories.
- The one target behavior identified in her BIP was refusal to complete independent work.
- Student engaged in a verbal turned physical altercation with another student. She reengaged in the altercation after employees removed her several times.
- At the MDR, parent claimed student had ODD for first time.

Henry County School District, cont.

1. Composition of the MDR team
 - The parent asked to add a member of student's IEP team to the MDR team. The District denied the request.
 - The court found this violated parent's right to choose who is on the MDR team.
 - The parent cannot veto the District's choices, but they can determine who they want to invite.
2. Parent brought 14 attendees to MDR to discuss ODD diagnosis.
 - Parent claimed they were not allowed to speak.
 - Judge found no one spoke when given the opportunity.
 - Parent did not meet burden of demonstrating they would have provided relevant information about ODD diagnosis.
 - They were there to vote.

Henry County School District, cont.

3. Whether Parent's attendees could vote
 - Only the MDR team can participate in this determination.
 - IDEA does not permit parents to "stack the deck."
 - One person should have been permitted to participate. But since the other members of the MDR team were in agreement, it would not have changed the outcome.

04.
**PROACTIVE MEASURES AFTER
AN MDR**

Placement after MDR

Conduct was a Manifestation

- Conduct or Update FBA/ BIP as appropriate
- Student is still entitled to services in alternative setting
- The same amount of services is not required

Conduct was NOT a manifestation

- Nothing in IDEA prevents a school district from recommending a non-disciplinary change in placement to provide FAPE.
- Avoid changes in placement that may be or have the appearance of being retaliatory
- Conduct or Update FBA/ BIP as appropriate

Services

- Alternative School Services
 - Should you have a new IEP Meeting?
- Virtual Services
 - When are these appropriate? Do you need an MDR?
- What if the IEP goals do not align to the new services?
- Can you move a student to Alternative School or Virtual School without an MDR?
- Examples:
 - Although a student's IEP did not include transportation before he was removed from his placement, the district was required to add transportation as a related service to allow the student to attend the alternative school.
 - A district may have to provide compensatory services if there is a lag in services beginning after removal.



A student is assigned to an alternative school. The parents claim the district cannot implement the student's IEP there and that the student must be assigned to a school where their IEP can be implemented.

What should you do?

A. Tell the family that the student's only options are alternative school or virtual school.

B. Convene an IEP meeting to determine whether the alternative school is appropriate.

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Leaderboard

Nobody has responded yet.



Evaluations

If parent raised new potential diagnoses during the MDR, convene a meeting to determine whether new evaluations are needed or whether the District should hold an eligibility meeting.

If there are new behaviors, would a new FBA be appropriate?





Student was suspended 8 days before being found eligible for special education services. Since being found eligible, her behavior has improved dramatically. But she gets into a physical altercation and is suspended for 2 days.

Should the District convene an MDR?

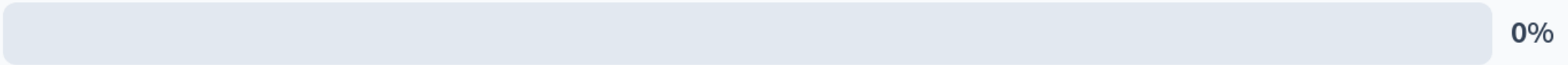
Should the District convene an MDR for student who was just found eligible?

A. Yes

B. No

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There is no data or documentation to show that the school has provided the behavior interventions in the BIP. How does this affect the second question?



A. It means the answer to the second question is automatically “yes.”

B. It means the answer to the second question is automatically “no.”

C. It means the team has to discuss whether the BIP was being implemented.

D. It means the district faces an uphill battle at the MDR or at a due process hearing.

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Thank you!



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