

# Special Education and School Discipline

DisAbility Megaconference

June 16, 2016

**SPLC**



**Southern Poverty Law Center**

# Objectives:

1. Describe the disproportionality of disciplining students with disabilities
2. Understand the rights of students with disabilities in school disciplinary processes

# OBJECTIVE 1:

Describe the disproportionality of disciplining students with disabilities

# Students with disabilities are disproportionately suspended from school.

- Students with disabilities served by IDEA (11%) are **more than twice** as likely to receive at least one suspension as students without disabilities (5%).
- More than **one in five** African American boys with disabilities (23%) received at least one suspension, compared to one out of ten white (10%) boys with disabilities.
- **One in five** multiracial girls with disabilities (20%) received at least one suspension, compared to one in twenty white girls with disabilities (5%).

# OBJECTIVE 2:

Understand the rights of students with disabilities in school disciplinary processes

# Objective 2 Roadmap



1. Removals
2. MDRs
3. FBAs/BIPs
4. Special Circumstances
5. Appeals
6. Disciplinary placement before eligibility evaluation

# Change of Placement

- **10 day rule**
  - 10 cumulative days + pattern of similar behavior = change of placement
  - Triggers a Manifestation Determination Review (MDR)
  
- **Less than 10 days**
  - The school must provide school work

Mississippi State Policies Regarding Students with Disabilities under the IDEA (2004)  
IDEA 300.530 and 300.536

# Manifestation Determination Reviews (MDRs)

An MDR is a meeting to determine:

1. Whether the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; **or**
2. If the conduct in question was the direct result of the school district's failure to implement the IEP.

# Manifestation Determination

## Option 1:

The school district must:

**If “Yes”  
for Conduct  
Directly Related  
to the Student’s  
Disability**

- Either -
  - Conduct an FBA and implement a BIP for the child; **or**
  - If a BIP already exists, modify it, as necessary, to address the behavior.

***And***

- Return the child to the placement from which the child was removed

# Manifestation Determination

## Option 2:

If “Yes” for Failure to Implement the IEP

The school district must:

- Take immediate steps to remedy the deficiencies in the IEP; *and*
- Return the child to the placement from which the child was removed

# Manifestation Determination

If **NO** ~

(Determination is that the behavior is **not** a manifestation and the school district did not fail to effectively implement the IEP)

The student is disciplined in the same manner and for the same duration as the procedures would be applied to students without disabilities.\*

*\*the student continues to receive services as described in Section 300.530(d).*

# Prepare for the MDR

**GOAL: Get the team to say “yes”**

1. Double check the Written Prior Notice.
2. Request the discipline referral packet and the student’s disciplinary record.
3. Research the disability and its manifestations.  
*Use the DSM IV.f*
4. Re-read the IEP. *Did the school implement it?*
5. TIP: Create a handout linking the behavior to the child’s disability.

# Manifestation Determination Review Form

Child's Name:	School:	District:	School Year:
MSIS ID Number:	Grade:	Race/Ethnicity:	Gender:
Date of Birth (month/day/year):	Phone Number:	Date of Current Eligibility:	Eligibility Category:
Mother's Name:	Father's Name:	Address:	

## Section 1: Relevant Information

1. A review of relevant information in the child's file, including the child's IEP, teacher observation, and any relevant information must be completed to determine whether a child's conduct was the direct result of the child's disability or a failure of the LEA to implement the IEP (§300.530(e)(1)).

Date of Incident \_\_\_/\_\_\_/\_\_\_  
 Date(s) of Disciplinary Removal \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_  
 Date of Manifestation Determination \_\_\_/\_\_\_/\_\_\_  
 Date of Special Education Referral (if Basis of Knowledge applies) \_\_\_/\_\_\_/\_\_\_

2. Description of incident resulting in a Manifestation Determination:

What caused the removal?

3. Describe the Code of Conduct Violation:

Special Circumstances (§300.530(g)):     Weapons     Drugs     Serious Bodily Injury

Make sure removal for more than 10 days is an allowable consequence for the violation in question

4. Record of behavior subject to disciplinary action within the school year.

Dates of Previous Disciplinary Actions	Days of Removal	Behavior/Conduct that Resulted in Removal

Manifestation Determination Review Form continue

Section 2: Functional Behavioral Assessment, Behavior Intervention Plan, and IEP

1. Was a functional behavioral assessment (FBA) conducted prior to the date of the incident?  yes  no  
Date the FBA was completed. \_\_\_\_/\_\_\_\_/\_\_\_\_
2. Does the child have an existing behavior intervention plan (BIP)?  yes  no  
Date the BIP was completed. \_\_\_\_/\_\_\_\_/\_\_\_\_  
Date the BIP was implemented. \_\_\_\_/\_\_\_\_/\_\_\_\_  
Date of the last modification of the existing BIP. \_\_\_\_/\_\_\_\_/\_\_\_\_
3. Are behavioral goals from the BIP included in the IEP?  yes  no

Note: BIP behavior goals not listed

The goal is to get one of these checked "yes"

Section 3: Determination Decision

- yes  no The behavior in question was caused by or had a direct and substantial relationship the child's disability.
- yes  no The behavior in question was a direct result of the district's failure to implement the IEP and/or BIP.

Document basis of decision:

If the yes is checked for either question, proceed to Section 4. If no is checked for both questions proceed to Section 5.

Section 4: Manifestation Determination

It has been determined that the behavior is a manifestation of the child's disability. The IEP committee must

either:

1. Conduct a functional behavioral assessment and implement a behavior intervention plan (if no FBA had been completed prior to the conduct) (§300.530(f)(1)(i)); or
2. Review and modify, as necessary the existing BIP to address the behavior (§300.530(f)(1)(i); and
3. Return the child to his/her previous placement location. (The school district and parent(s) may agree to a change of placement as part of the modification of the IEP) (§300.530(f)(2)).

If the conduct was a result of failure to implement the IEP, immediate steps to remedy deficiency are (§300.530(e)(3)):

If an interim alternative educational setting (IAES) is currently in place, please identify the setting and services that will be provided.

Manifestation Determination Review Form continue

**Section 5: Behavior Determined Not a Manifestation of the Child's Disability**

The committee reviewed all relevant information in the child's file, including the child's IEP, teacher observations and information provided by the parent and has determined that the child's conduct was not a manifestation of the child's disability and that disciplinary procedures applicable to children without disabilities will be applied.

The IEP committee determined that the child will continue to receive educational services so as to participate in the general education curriculum, although in another setting and to progress toward meeting IEP goals; and receive a FBA, BIP, and modifications, which are designed to address the behavior violation so that it does not recur.

**Placement Decision** (Identify the location and describe length of removal and use of positive behavior supports):

Section 6:	
Name/Title or Role	Name/Title or Role
_____	
_____	
_____	
_____	
_____	
_____	
_____	
_____	
_____	
_____	

Both of these must be checked

If you disagree with the decision, put it in writing, including the reason, on the MDR form.

# At the MDR



# You got to “yes”... now what?

## The District must conduct a Functional Behavioral Assessment (FBA)

- An FBA is a detailed and specific examination of *why* the student is misbehaving.

# Components of an FBA

1. Clear description of the problematic behavior
2. Identification of the antecedents that predict *when* the problem behavior will and will not occur.
3. Identification of the consequences of the problem behavior
4. Hypotheses and summary statements which describe the problem behavior and its function
5. Collection of data from a variety of sources

# Common Issues with FBAs

Vague Language	Clear Language
“Tim is aggressive”	“Tim hits other children in the playground. This does not occur in the classroom”
“Tim is disruptive”	“Tim interrupts class with irrelevant and loud comments. This does not occur on the playground.”
“Tim is disrespectful”	“Tim argues with teachers and uses inappropriate language in the classroom and in the hallways.”
“Tim is insubordinate”	“Tim does not follow directions and argues with the teacher in the general classroom. He follows directions in resource classes.”

# Behavior Intervention Plan (BIP)

- A plan designed to **teach and reward positive behaviors**. The BIP is based on the results of the FBA.
- *What behaviors (skills) will be taught to replace the student's misbehavior?*
- *How will consequences be managed to reinforce positive behavior, not problem behavior?*

# Components of a BIP

1. Observable and measurable description of the problematic behavior
2. Identifiable purpose of the problem behavior *as a result of the FBA*
3. General strategy for changing the problem behavior
4. Written description of when, where, and how often the strategy will be implemented
5. Consistent system for monitoring and evaluating the effectiveness of the plan

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**Behavioral Intervention Plan**

Child's Name:	School:	District:	School Year:
MSIS ID Number:	Grade:	Race:	Gender:
Date of Birth (month/day/year):	Phone Number:	Current Eligibility Certification Date:	Eligibility Category:
Mother's Name:	Father's Name:	Address:	

Problem Behavior(s)		
	Description of Behaviors	
Behavior 1		<input type="checkbox"/> Skill Deficit <input type="checkbox"/> Performance Deficit
Behavior 2		<input type="checkbox"/> Skill Deficit <input type="checkbox"/> Performance Deficit
Behavior 3		<input type="checkbox"/> Skill Deficit <input type="checkbox"/> Performance Deficit

- Skill deficit: The child does not know how to perform the desired behavior.
- Performance deficit: The child knows how to perform the desired behavior, but does not consistently do so.

Intervention Strategies			
	Environment and/or Circumstances: Can the environment or circumstances that trigger the behavior or the result of it be adjusted? If so, how?	Curriculum and/or Instruction: Would changes in the curriculum or instructional strategies be helpful? If so, what and by whom?	Other Strategies or Positive Supports: (including school personnel, peers, or family)
Behavior 1			
Behavior 2			
Behavior 3			

Really important to distinguish between skill/performance

**Desired Replacement Behavior**

	<u>What behavior will the child be taught to replace the targeted behavior? How and by whom?</u>
Behavior 1	
Behavior 2	
Behavior 3	

**Rewards and/or Motivators:**

	<u>How will the child be reinforced</u> so that the replacement behaviors are more motivating than the problem behavior?
Behavior 1	
Behavior 2	
Behavior 3	

**Consequences: What consequences will be implemented for repeated occurrences of the problem behavior?**

	1 <sup>st</sup> Occurrence	2 <sup>nd</sup> Occurrence	3 <sup>rd</sup> Occurrence	Continuing
Behavior 1				
Behavior 2				
Behavior 3				

**Crisis Plan**

How will an emergency situation or behavior crisis be handled? (Define possible scenarios, including the use of in-school or out-of-school suspension, or aversive techniques, as appropriate)

**Monitoring of Behavior**

How will behavior(s) be assessed and evaluated? What data will be collected? How and by whom? When will the plan be first reviewed for its effectiveness? Thereafter?

**The following persons participated in the creation of the BIP**

_____		_____	
Signature/Title	Date	Signature/Title	Date
_____		_____	
Signature/Title	Date	Signature/Title	Date
_____		_____	
Signature/Title	Date	Signature/Title	Date
_____		_____	
Signature/Title	Date	Signature/Title	Date

Assessment and evaluation are extremely important in determining effectiveness of the intervention(s)

# Special Circumstances

There are 3 special circumstances for which school personnel may remove a student from school for not more than ***forty-five (45)*** school days without regard to whether the conduct is determined to be a manifestation of the child's disability

# Removal to IAES For Not More than 45 Days



Carrying or possessing a weapon

“weapon, device, instrument, material or substance that is used for or readily capable of causing death or serious bodily injury.”\*

\*knife blade of less than 2.5 inches is excluded.



Knowingly possessing or using illegal drugs, or selling or soliciting the sale of a controlled substance

Illegal drug means a controlled substance, but not a controlled substance that is legally possessed.



Infliction of serious bodily injury upon another person

- Substantial risk of death
- Extreme physical pain
- Protracted and obvious disfigurement
- Protracted impairment of the function on a bodily member, organ or mental faculty

# What happens if I'm dissatisfied with the result of the MDR?

1. Parents and school districts have the right to a due process hearing to appeal decisions regarding placement and MDRs.
2. Hearing officers determine whether:
  - The behavior was a manifestation of the student's disability; and
  - Whether the removal was a violation of 300.530
3. Hearing officers have the authority to either:
  - Return the child to the placement from which s/he was removed; or
  - Place the child in an IAES for not more than 45 days

# What about children not yet eligible for special education services?

- Did the District have a “basis of knowledge” that the child needed services?
  - The parent expressed concern in writing to the school that the child needs services,
  - The parent requested an evaluation of the child, or
  - A teacher expressed specific concerns about a pattern of behavior to the director of special education of the agency.



# References

- Civil Rights Data Collection. (2013-2014). A First Look. Retrieved from [http://www2.ed.gov/about/offices/list/ocr/docs/CRDC2013-14-first-look.pdf?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term.](http://www2.ed.gov/about/offices/list/ocr/docs/CRDC2013-14-first-look.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term.)
- Mississippi Department of Education. (2013). State policies regarding children with disabilities under the individuals with disabilities education act amendments of 2004. Retrieved from <http://www.mde.k12.ms.us/OSE/PP>.
- Mississippi Department of Education Office of Special Education. (2015). Procedures for State Board Policy 7219 Volume IV: Discipline. Retrieved from <http://www.mde.k12.ms.us/OSE/PP>.
- Wright, P. D., & Wright, P. W. D. (2006). Special education law (2nd ed.). Hartfield, VA: Harbor House Law Press, Inc.

# QUESTIONS

## Presenter information

<b>Lydia Wright</b>	<b>Megan O'Connor</b>
Law Fellow	Community Advocate
<a href="mailto:lydia.wright@splcenter.org">lydia.wright@splcenter.org</a>	<a href="mailto:megan.oconnor@splcenter.org">megan.oconnor@splcenter.org</a>

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**Southern Poverty Law Center**

**(601) 948-8882**

**[www.splcenter.org](http://www.splcenter.org)**