

Manifestation Determination Reviews (MDRs) Under IDEA: ARDC Members' Roles, Data Bases, Documentation, and Caselaw Examples

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**Basic IDEA Rule**

- Schools may impose long-term disciplinary removals only after finding the offense was not related to the student's disabilities (i.e., not a "manifestation" of the disabilities)
- Finding is called a manifestation determination review (MDR)
- Thus, the MD review (MDR) is crucial

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**Basic IDEA Rule**

- Sources—34 CFR § 300.530(e), 300.536(a)(1)

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**When is the MDR Required?**

- **Main situation**—Prior to disciplinary changes in placement (long-term removals of >10 consecutive school days)  
See 34 CFR § 300.530(c), (e).
- Also, when short-term removals get to be “too much” in a year (pattern of exclusion change in placement)  
See 34 CFR § 300.536(a)(2)

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**When is the MDR Required?**

- **Main situation**—Prior to disciplinary changes in placement (long-term removals of >10 consecutive school days)  
Applies even if removal is due to off-campus behavior (if state law allows disciplinary removals for off-campus offenses)  
Applies even if removal is “mandatory” under state law

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**When is the MDR Required?**

- **Pattern of Removals**—When short-term removals get to be “too much” in a year  
Beyond the “safe 10,” if more short-term removals are too close, too big, add up to too many, and involve similar behaviors, then it’s likely to be seen as a pattern of removals that represents a change in placement

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### When is the MDR Required?

- **Conservative Approach**—Campus should not exceed 10 total days of short-term removals per school year

Have an IEP meeting before the 10-day-total mark is reached

Or, opt for smart in-school suspension (ISS with services sufficient for progress)

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### The 2004 MDR Reforms

- *Policy background*—Congress wanted a “raising of the bar” for MDRs
- Modern MDR Formulation—Need for **causal, direct, or substantial** relation between behavior & disability
- Failures to implement IEP must **directly result** in behavior for a link finding

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### The 2004 MDR Reforms

- “*Attenuated*” relationships, like low-self esteem arguments, are not enough
- Also, a desire to *simplify* MDRs (which was quite complicated under IDEA ‘97)
- Analysis of behavior across settings and time (a modern emphasis for MDRs)
- *Appropriateness* of IEP not an MDR issue, only implementation

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**MDR Decision-Makers**

- IDEA does not require that the IEP team make the MDR, or that it happen in a meeting
- Decision-makers are the school, parent, and “relevant” members of the IEP team
- School and parent are supposed to mutually determine who the “relevant” IEP team members are

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**MDR Decision-Makers**

- The flexibility has created potential for legal arguments
- *Fitzgerald*—Parents don’t have equal right to determine MDR members
- *Philadelphia*—Parents not allowed opportunity to mutually pick members
- *Cherry Creek*—No notice of right to mutually select MDR members

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**MDR Decision-Makers**

- **Bottom Line:**  
Safest process is for schools to conduct MDRs in properly convened IEP team meetings

But, notice requirement creates some inconvenience (if campus is out of short-term removal days)

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### Return to Placement if “Link”

- If MDR concludes there is “link,” then student must return to his placement, unless parents agree otherwise (34 CFR § 300.530(f))
- Any thoughts on parents agreeing to a disciplinary placement in cases of “link”?

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- **Return to placement if behavior related**

Why the rule? To avoid campus seeking educational changes in placement in lieu of disciplinary change in placement

But, parents can agree on change of placement

See 34 C.F.R. § 300.530(f)(2)

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### “Stay-Put” Exception

- *Old rule*—If parent filed DP to challenge MDR, student stayed in normal setting
- In 2004, Congress created an exception
- If parent challenges MDR, “stay-put” is in disciplinary setting
- Parent gets expedited hearing
- Intended to reduce litigation incentive

See 34 CFR § 300.533

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**Modern MDR Forms**

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**Basic Questions on Form:**

1. Was behavior caused by, or directly and substantially related, to the disabilities?
2. Was the behavior the direct result of the school's failure to implement the IEP

See 34 CFR § 300.530(e)

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**Modern MDR Forms**

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IEP team must, however, do more than simply answer the two yes or no MDR questions

Either MDR form or minutes should include a concise statement of the reasoning behind the committee's MDR determination.

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**Modern MDR Forms**

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**• Example of MDR Statement of Reasoning**

"The student's behavior of roughly pushing of the teacher was not related to his OHI (ADHD) because he has exhibited no prior history of aggressive behavior or impulsive reactions. In addition, as a general matter, the DSM-V does not indicate that aggressive behavior generally associated with ADHD. Lastly, there is no claim that there was any failure to implement the student's IEP."

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**Role of ARDC Members in MDRs**

- **LSSPs?** Best to consult with evaluating psychologist before meeting so they can provide their opinion on MDRs involving students with ED
- **Teachers?** Can provide input on student's long-term behavior
- **Witnesses?** Can provide info on details of behavioral incident

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**Manifestation Determination Review (MDR) Meetings**

- **Administrator's Role?** Not different than in any other meeting, but provides input on MDR questions like other members  
 Although administrators may have a keen interest in result of MDR, they must allow the ARDC to reach its collective decision without undue influence on other members

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**Practical Guidance on MDRs**

- Prepare for MDRs
- Consult school psychologists or attorney with questions
- Outline thinking (not just answers)
- Avoid rules-of-thumb, preconceptions
- Can you explain the finding easily?
- That there's *some* relationship doesn't mean it's sufficiently related for a finding of manifestation

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## Practical Guidance on MDRs

- Does the school have “clean hands”?
- Collect and review all evidence of offense (can affect finding)
- Don't forget planning for FAPE in the discipline setting, if a no-link finding is made...

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- **Students suspected of disability**

Students suspected of having disability have IDEA discipline protections (really goes back to IDEA 1997...)

Criteria for “basis of knowledge” of disability is included in provision

See 34 C.F.R. § 300.534

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- **Students suspected of disability**

*Anaheim Union High Sch. Dist.*  
(C.D.Cal. 2013)

504 committee discussed escalating behavior, private diagnoses, amidst placement in alternative school

HO found IDEA MDR was required

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- When IDEA discipline protections apply to a student suspected of having a disability, can the team conduct an MDR prior to completing an IDEA evaluation?

Traditionally, many school attorneys advised LEAs in such situations to hold off on the MDR and disciplinary action until the initial evaluation was completed and reviewed, in order to conduct the MDR determination with an understanding of the student's disabilities, if any.

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But, in **Letter to Nathan, 73 IDELR 240 (OSEP 2019)**, OSEP held that the discipline regulation “does not include an exception to allow additional time to complete an evaluation prior to conducting the MDR” if the school had made a decision to effect a disciplinary change in placement for the student with suspected eligibility.

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The letter indicates that the MDR could in fact proceed without an initial evaluation. “The group would likely consider the information that served as the LEA’s basis of knowledge that the child may be a child with a disability under IDEA, such as concerns expressed by a parent, a teacher or other LEA personnel about a pattern of behavior demonstrated by the child.”

Thus, the MDR would address “whether the conduct in question was caused by, or had a direct and substantial relationship to, the child’s **suspected** disability.”

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A Pennsylvania HO had actually taken the same position before the OSEP letter was issued. In **East Stroudsburg Area Sch. Dist., 73 IDELR 272 (SEA PA 2018)**, a student engaged in "inappropriate behavior toward a peer," which led to recommendation for a disciplinary removal. As an initial IDEA evaluation was pending, the parent requested at the MDR that the team put off its decision until the evaluation was completed.

The HO found that the MDR was required prior to changing the student's placement, and that the regulation allowed no exception to the MDR timeline.

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The HO agreed with the MDR team that the suspected disabilities of ADHD and mood dysregulation disorder (diagnosed by an independent evaluator) were not a "good fit" with respect to the behavioral offense at issue.

**Note**—Does the OSEP letter mean that the school cannot delay its *decision* to order a disciplinary change in placement until the initial evaluation is completed? Probably not, as the LEA's administrators can hold off on the disciplinary recommendation for a few weeks under local policies.

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But, OSEP now appears to allow for an MDR to be undertaken based on the suspected, as of yet identified, disability.

(OSEP's position *could* have been that the school is required to postpone, although not drop, its disciplinary decision until the initial evaluation is completed, in order to allow for a properly based MDR decision. Or, that the LEA could expedite the evaluation in such a case).

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### MDR Data

- “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)
- Examples—current evaluation, IEP, records on offense (witness statements, offense reports), parent input, staff input

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### MDR Data

- Which disabilities “count” for purposes of conducting MDR?

Questions arise when students subject to MDRs have non-qualifying impairments other than those that support IDEA eligibility

This issue has split hearing officers and commentators...

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### MDR Data

- Which disabilities “count” for purposes of conducting MDR?

The regulation requires consideration of “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).

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- Some cases hold that only the *qualifying* disabilities play into the MDR

In **Henry Cty. Sch. Dist., 73 IDELR 86 (SEA Georgia 2018)**, a student with ED, Autism, and ODD was involved in an aggressive incident. The HO determined that the behavior was related to his ODD, and not his qualifying disabilities, and thus, the team properly determined that the behavior was not related to disability.

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- Some cases hold that only the *qualifying* disabilities play into the MDR

Even though the student had a history of aggression, elopement, work refusal, and following directions, the HO upheld the finding of no link.

HO stated that “children with ODD are able to make choices regarding their conduct” and that “ODD is not recognized as a disability under IDEA.”

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- Some cases hold that only the *qualifying* disabilities play into the MDR

In **In re: Student with a Disability, 117 LRP 44585 (SEA Virginia 2017)**, a high-schooler with ED and OHI (ADHD) was also diagnosed with ODD.

The HO found that “the evidence did not establish a nexus between ADHD and ODD or ED and ODD” and that it failed “to show that Child’s ODD diagnosis was associated with any IDEA recognized disability.”

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■ Other cases hold that failing to consider *all* existing disabilities, whether qualifying or not, invalidates the MDR.

In ***Fulton County Sch. Dist., 49 IDELR 30 (SEA Georgia 2007)***, after a student with ADHD and ODD verbally threatened to kill a teacher, the MDR team considered only whether the threat behavior was related to ADHD, and refused to allow the parents to provide input on the effect of his ODD, even though the school psychologist noted that all of the child's disabilities had to be considered as part of the MDR. The HO thus overturned the school's MDR finding.

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■ Other cases hold that failing to consider all existing disabilities, whether qualifying or not, invalidates the MDR.

In ***East Allegheny Sch. Dist., 119 LRP 31890 (SEA Pennsylvania 2019)***, a team considered a § 504 teenager's ADHD, but not his diagnosed ODD and Conduct Disorder as part of an MDR addressing an aggressive incident. The HO found that the "failure to adequately consider all circumstances including all of Student's disabilities was a fatal flaw."

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■ Other cases hold that failing to consider all existing disabilities, whether qualifying or not, invalidates the MDR.

The HO in ***Orange Cty. Sch. Bd., 118 LRP 36395 (SEA Florida 2018)*** overturned a school's MDR finding because the team failed to consider documentation of additional diagnoses submitted by the parent at the MDR. "The MDR is obligated to consider all relevant information, including information brought by the parents to the meeting."

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After a 7<sup>th</sup>-grade sp ed student sexually harassed a teacher, the team found that the behavior was not related to his IDEA disability (OHI due to ADHD). ***In re: Student with a Disability, 114 LRP 39929 (SEA Virginia 2014)***. The HO held that the MDR violated § 504 when it failed to consider the student’s additional mood disorder and possible sexual addiction and conduct disorder as part of the MDR. The HO found that the school should have evaluated the student under § 504, since his IEP did not address the additional conditions, and that the student was entitled to a § 504 MDR to address the non-IDEA conditions.

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The HO also found that the IDEA team’s failure to consider all relevant information regarding the additional conditions invalidated the MDR and denied the student a FAPE.

*Note*—While the HO’s analysis raises questions, if the IDEA team refuses to acknowledge additional non-qualifying impairments in an IDEA MDR, does the MDR not violate the IDEA student’s underlying § 504 rights? Is the answer really that the student should have a separate § 504 eligibility and plan to address the non-IDEA conditions, or should all the conditions be seen as part of the student’s relevant information in an IDEA MDR?

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- A key factor is the relative reliability of the additional diagnosis.

Not every private diagnosis of an additional impairment is equally reliable, particularly if the LEA has already evaluated in the area of diagnosis.

In ***Z.H. v. Lewisville Ind. Sch. Dist., 65 IDELR 147 (E.D.Tex. 2015)***, a 6<sup>th</sup>-grader with ADHD and depression wrote a “shooting list” over a period of several days. The IEPT determined the act was not related to his ADHD, but the parents submitted a private diagnosis of PDD-NOS 5 days after the removal.

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- A key factor is the reliability of the additional diagnosis.

The Magistrate found that the student had actually been evaluated for autism spectrum by the school 18 months prior, but the evaluation found behaviors inconsistent with ASD (significant social interaction and humor). The HO's reliance on the private diagnosis was thus error. He concluded that the IEPT was correct that the behavior was not related to either the ADHD or depression.

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- **Practical Thoughts?** Failure to consider additional non-qualifying impairments in an MDR can create legal risks for the school

A better idea might be for the IEP team to address and consider whether the additional conditions are in fact present, based on school evaluations.

If they are, this is likely relevant information to an MDR.

If they are not, the IEP team should document it does not believe the student has the alleged conditions, and thus, they do not need to be addressed in an MDR.

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**Aside**—Does the common notion that certain conduct-based conditions (e.g., conduct disorder, ODD) cannot create IDEA eligibility really have support in the law and regulations? Could not any DSM diagnosis potentially support ED eligibility if the ED criteria in the regulation is otherwise met?....

The ED regulation excludes only social maladjustment, a condition not recognized as a mental impairment in the DSM. 34 C.F.R. § 300.8(b)(4)(ii).

The notion above might in fact be just a legally dangerous misconception.

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**Modern MDs in Action:  
Impulsivity Claims**

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**Z.H. v. Lewisville ISD (E.D.Tex. 2015)**

6<sup>th</sup>-grader drafts “shooting list”

PDD issue raised late, no symptoms

Court finds list created over several days, not impulsive, not related to ADHD

Reverses HO’s decision

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**Modern MDs in Action:  
Impulsivity Claims**

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**Connecticut Tech. High Sch. Sys., 73 IDELR 109 (SEA CT 2018)**

16-yr-old with ADHD put numbing cream on straw in teacher’s cup

Private psychologist argued “low self-esteem” caused behavior

HO rejected argument, citing congressional report and DOE commentary

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**Impulsivity Claims**

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**Southington BOE (SEA CT 2013)**

18-year-old (ADHD) with 200 steroid pills

HO finds behavior was planned, involved multiple transactions

HO finds MDR deficient—conducted with little discussion or records review—but arrived at the correct answer

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**■ Parkway C-2 Sch. Dist., 73 IDELR 59 (SEA MO 2018)**

10<sup>th</sup> grader with ADHD improperly gained access to school laptop

Parent argued impulsivity, but HO found it was a planned behavior, as he wanted the laptop and found a way to access one

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**■ J.H. v. Rose Tree Media SD, 72 IDELR 265 (E.D.Pa. 2018)**

15-yr-old with ADHD and LD had a friend film him brutally assaulting a classmate

Parent requested expedited hearing, argued that not every team member reviewed video

Court noted "each member of the review team need not review the entire file"

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**■ J.H. v. Rose Tree Media SD, 72 IDELR 265 (E.D.Pa. 2018)**

Court: "It is unapparent to the Court how J.H.'s disability, or its impulsive effects and associated stressors, caused or directly and substantially related to a planned assault."

Student "planned the assault for hours, if not days"

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***Fitzgerald v. Fairfax Co. (E.D.Va. 2008)***

ED Student involved in paintball vandalism at school over span of hours at night

Notice parents' procedural arguments...

Court agreed there was no link, noted student was the "planner," and that he went back for ammo three times

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***Boutelle v. BOE of Las Cruces Pub. Schs., 74 IDELR 130 (D.N.M. 2019)***

EBD middle-school student (ADHD, Mood Disorder, PTSD) was removed for throwing rocks at other students and injuring them

Parents argued behavior was related to Tourette's

They also argued that three witness statements were not provided to them as part of MDR

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***Boutelle v. BOE of Las Cruces Pub. Schs., 74 IDELR 130 (D.N.M. 2019)***

Court noted that before throwing a rock, student asked "do you think I can hit him?"—"Certainly seems to suggest intentional conduct, rather than some sort of involuntary, complex motor tic, as suggested by Plaintiff."

HO below felt lack of witness statements impacted parents' opportunity to participate, but Court is not so bothered

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**Boutelle v. BOE of Las Cruces Pub. Schs., 74 IDELR 130 (D.N.M. 2019)**

Court on private medical report: “non-committal discussion on somewhat contrived symptoms— further reinforcing an attitude of entitled victimhood instead of responsibility when it comes to L.B.’s behavior at school.”

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**Pasadena ISD, 119 LRP 42545 (SEA TX 2019)**

Team found no link between student’s undisclosed behavior and his ADHD.

School psychologist indicated at the MDR that she did not believe the student’s behavior was impulsive or related to his disability

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**Pasadena ISD, 119 LRP 42545 (SEA TX 2019)**

*Note*—Case highlights the importance of involving LSSP in MDRs involving students with ED or behavioral disorders

Best to consult with evaluating LSSP (or LSSP that works with student) prior to the MDR

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**Jay F. v. William S. Hart Union High Sch. Dist., 74 IDELR 188 (9<sup>th</sup> Cir. 2019)**

But, ARDCs cannot simply rely on the opinion of the LSSP, as they can be incorrect...

Here, LSSP was of the opinion that a student's threat behavior was not related to his ED

But, there was lots of evidence of a lengthy history of similar behavior

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**Jay F. v. William S. Hart Union High Sch. Dist., 74 IDELR 188 (9<sup>th</sup> Cir. 2019)**

Team failed to reconcile the long history of threat behavior with the LSSP's opinion

*Note*—A history of similar behavior is a strong indicator that the behavior is related to disability

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**Modern MDs in Action: Valid Impulsivity Claims**



**In re: Student (SEA W.Va. 2009)**

Student with ADHD, ODD, borderline IQ, took a pill given to him by older boy

Records indicated he was impulsive, susceptible to peer pressure

School's brief MDR did not review key info above, predetermined MD

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**Modern MDs in Action: Valid Impulsivity Claims**

- **District of Columbia PS (SEA DC 2013)**

SED student lit fire in locker room

Parent had told school of history of arson

School psychologist did not know details of incident, had not reviewed records

HO overturns finding of no-link

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**Modern MDs in Action: Faulty MDRs**

- **Fortuna Union High Sch. (SEA CA 2020)**

Student with AU punched a peer and texted another about planning a school shooting

Student, however, had been experiencing a sudden mental decline and change in meds

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**Modern MDs in Action: Faulty MDRs**

- **Fortuna Union High Sch. (SEA CA 2020)**

HO overturned finding that behavior was not related to AU, as team failed to consider student's recent mental decline and doubling of antidepressant meds

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**Modern MDs in Action:  
Faulty MDRs**

- **Killeen ISD (SEA TX 2019)**

HO overturned finding that aggressive behavior was not related to student’s AU, ADHD, and ED.

Team reasoned that student was purposefully targeting certain peers

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**Modern MDs in Action:  
Faulty MDRs**

- **Killeen ISD (SEA TX 2019)**

HO found that there was significant prior history of aggressive behaviors, as indicated by the fact that such behaviors were targeted in FBAs and BIPs.

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**Modern MDs in Action:  
Weapons Cases**

- **Columbia Borough SD (SEA PA 2015)**

SED teen new to school brought “pointed object,” allegedly to protect himself on way to school and back

HO finds, social skills deficits, need for transportation to address social problems, problems with peers, were “backdrop”

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### Modern MDs in Action: Weapons Cases

■ **Columbia Borough SD (SEA PA 2015)**

HO found link, ordered student back to school from IAES

*Question*—Had student served 45 days in IAES?

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■ **Pittsburgh SD (SEA PA 2015)**

Teen with AU brought knife to school (forgot it in pocket after camping trip)

Parent felt 45-day placement too harsh for unintentional possession

HO found special offense provision allowed 45-day placement, even if possession was unintentional

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### More Practical Tips for MDRs

- Again, filling out the form questions is not enough—IEP team should include a concise statement of its *reasoning*
- Do not ignore relevant information—strive to explain or reconcile data
- Obtain and consider all information regarding disciplinary offense

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### Practical Ideas for MDRs

- Do not rely on trite generalizations: “behavior was willful,” “student knows right from wrong,” “student is capable of controlling himself when he wants.”
- Examine whether there is a history of similar behavior
- Use general info (DSM V) and info specific to the student in question

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### Practical Ideas for MDRs

- If team does not think it will be possible to find behavior is not related, is it worth issuing the disciplinary recommendation and conducting the MDR?...
- If there is information supporting link and no link, where should school err?
- Document parent’s arguments and their weaknesses

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### Practical Ideas for MDRs

- If dealing with newly-submitted private diagnoses, first have IEP team determine if it seems valid (Info from school considered? Timing? Any indications at school? Prior district evals in that area)
- If new diagnoses seems invalid, indicate so and proceed with MDR on existing identified disabilities

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**An MDR Scenario**

- 8<sup>th</sup>-grade LD student with tendency toward impulsivity, frustration, and anger begins to deteriorate academically, grades dropping to the C and D range
- Student brought marihuana to school, arranged for a classmate to sell it to another, passed the pot to the "middleman," who in turn sold it to the third student. This sequence of events took several hours

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**An MDR Scenario**

- The student admitted to the behavior, and to understanding the rules regarding drugs at school. The District recommended expulsion.
- **Questions:**  
MDR result?  
Reasoning?  
Key info?

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**Another MDR Scenario**

- An ED 7<sup>th</sup>-grader served in a self-contained setting for ED/BD students suffers from depression, low self-esteem, and mood swings
- On a bad day, he demands to call his dad so he can come pick him up and take him home. When he calls, dad refuses to pick him up. After he is sent back to class, he refuses to work, leaves class without permission, and pulls a fire alarm.

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### Another MDR Scenario

- When police arrive, he calmly tells them there is no emergency, but that he pulled the alarm because he wanted to go home and he knew he would be suspended for pulling the alarm.
- MDR result and reasoning?

See similar Texas case—*Northeast ISD* (SEA TX 2019)(calm student explanation)

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### Third MDR Scenario

- 9<sup>th</sup> grade ED student found smoking pot during a field trip. He sneaked out with peers after they had been allowed to go back to their room and the chaperones were in the day room of the dormitory.
- The students went out a back door and smoked pot and cigarettes in an isolated location against a back wall, where they were not easily discoverable.

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### Third MDR Scenario

- During wrestling season, student showed good sportsmanship, complied with directions, retained composure, and had good grades. Student and parents signed a behavioral contract before the field trip specifying the rules and consequences involving drugs on the trip
- Parents argued there was a lack of supervision on the trip, and that behavior was related to executive functioning problems and fetal alcohol syndrome (neither of which had been formally diagnosed).

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