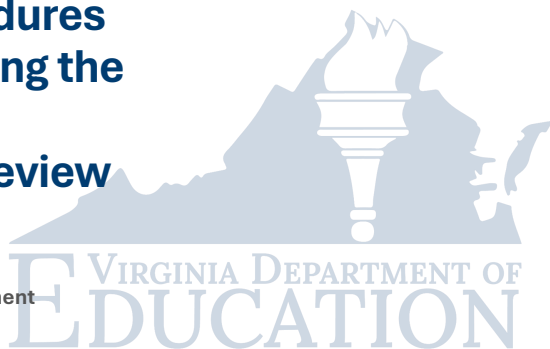


An Overview of Discipline Procedures for SWDs Including the Manifestation Determination Review

Virginia Department of Education
Division of Special Populations
Special Education Family Engagement
Presented by Peter Grabowski



1

OVERVIEW OF OUR SESSION

- Review discipline procedures relevant to students with disabilities.
- Discuss the manifestation determination review (MDR) process and apply this information to a given scenario.
- Provide guidance to families on navigating issues related to student discipline and the MDR.

2

KEY FUNCTIONS OF THE OMBUDSMAN

- The Parent Ombudsman for Special Education serves as a resource to parents in non-legal special education matters.
 - Neutrality
 - Independence
 - Informality
 - Confidentiality

3

SPECIFIC DUTIES OF THE OMBUDSMAN

- The Ombudsman provides:
 - Information
 - Navigation
 - Communication
 - Brainstorming
 - Referrals
 - Reports to Leadership

4

REVIEW OF DATA

- Top 7 constituent topic areas from the past year:
 - General questions regarding IEP process
 - Evaluation/Eligibility
 - Dispute Resolution
 - IEP implementation
 - Request for resources
 - Placement
 - Discipline

5

Discipline Practices for Students with Disabilities



6

DISCIPLINE OVERVIEW

- Each school division is required to inform parents and children of the local student conduct requirements.
 - Code of Conduct
 - Student Rights & Responsibilities
- These requirements are applicable to all students, regardless of disability status.

7

POSITIVE BEHAVIORAL SUPPORTS

- If a child's behavior limits his or her ability to learn, or the ability of other students to learn, the child's IEP Team must consider using positive behavioral interventions, strategies, and supports to address the behavior.
 - IEP goals
 - special education and related services
 - accommodations

8

FBA AND BIP

- Schools should also *consider* conducting a functional behavioral assessment to determine if a behavioral intervention plan is needed whenever the behavior of a student with a disability impedes their learning or that of others.
- OSEP noted that, "...data gathered through an FBA allows educators to develop positive and proactive BIPs that use a function-based approach to teaching and learning to create more inclusive, developmental and educational experiences, without having to resort to removals from the classroom."
- Once a BIP is developed, revisions are typically needed.

9

HYPOTHETICAL SCENARIO

- A student attending a local school in your area receives support through an IEP. You've been asked by a friend to help.
- School administration, teachers, and the child's family have expressed concerns related to the student's progress in both academic and behavioral areas, referencing the negative impact of disciplinary consequences on the child's progress.
- You review the following discipline profile.

10

REMOVALS

- "Removal" vs. "suspension".
- Partial-day removals.
- Informal removals.
- Is every suspension a removal?
- Is every removal a suspension?

11

IN SCHOOL SUSPENSION

- A day of ISS can constitute a day of disciplinary removal unless the following factors are met:
 - the child is afforded the opportunity to continue to appropriately participate in the general curriculum;
 - the child continues to receive the services specified on the child's IEP; and
 - the child continues to participate with nondisabled peers.*

12

BUS SUSPENSION

- If transportation is a related service required for the provision of a free appropriate public education and included in the child's IEP, a bus suspension may be treated as a removal.
- If transportation is not required for FAPE and is not a part of the child's IEP, a bus suspension is typically not considered a disciplinary removal. The child's parent would then have the obligation to get the child to and from school.

13

TYPES OF REMOVALS

- Short-term removal
 - Up to 10 consecutive school days*; or
 - 10 cumulative school days in a school year.
- Long-term removal
 - More than 10 consecutive school days; or
 - A series of short-term removals that constitutes a **pattern**.
 - Maintaining accurate records is critical.

14

DISCIPLINARY CHANGE IN PLACEMENT

- The removal is for more than 10 consecutive school days*; or
- The child has been subjected to a series of removals that constitute a **pattern**.
 - Conduct a pattern analysis

15

PATTERN ANALYSIS

- A pattern analysis is needed anytime a proposed removal would exceed 10 total/cumulative days of suspension in a single school year.
 - behavior is substantially similar;
 - length of each removal;
 - total amount of time the child has been removed;
 - the proximity of the removals to one another.
- Examples

16

DISCIPLINARY CHANGE IN PLACEMENT

- The pattern analysis is an administrative determination.
- A parent may challenge the school's pattern analysis decision by utilizing a formal special education dispute resolution option.
- If a change in placement occurs, the school should issue prior written notice and procedural safeguards to family.

17

EDUCATIONAL SERVICES DURING REMOVALS

- If student with an IEP receives more than 10 disciplinary removals in a school year, the school must provide educational services.
- Best practices.
- If current removal is less than 10 consecutive school days and a disciplinary change of placement has not occurred (short-term removal) a school-based administrative team determines the extent to which educational services are needed.
 - Examples

18

SERVICES DURING LONG TERM-REMOVAL

- If the current removal is a change of placement, the IEP Team determines services.
- IEP team should also consider:
 - Changes to the IEP to appropriately address behavioral needs.
 - FBA/BIP

19

Manifestation Determination Review



20

MDR BASICS

- Required for long-term removals/disciplinary change in placement.
- Scheduled and held within 10 school-days of the school's decision to take disciplinary action.
 - What happens if the parent does not respond to attempts to schedule the meeting?
 - What happens if the family is unavailable to meet within the 10 school-day timeline?

21

MDR CONSIDERATIONS

- MDR Team composition.
- Who may the parents invite?
- Who may the school invite?
- Requests for education records.
- FERPA and IDEA articulate a parent's right to inspect and review records prior to an MDR.

22

MDR OVERVIEW

- Review the child's records, including the IEP, observational data, and information provided by the family.
- Questions addressed by MDR team:
 - if the behavior in question was the direct result of the LEA's failure to implement the IEP.*
 - determine whether the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability.

23

MDR GUIDANCE

- Team should carefully examine whether a direct and substantial relationship exists.
 - Review all relevant information in the child's file.
 - Use appropriate sources/experts (School Psych, SSW, DSM-V).
 - Direct and substantial is not equivalent to "some" relationship.
 - Is there a history of similar behavior? Medication changes?
- Documentation should reflect clear and concise reasoning on whether a direct and substantial relationship exists.
- Subjectivity and reaching consensus.
 - Voting?
 - Consent?

24

IF NO MANIFESTATION IS FOUND

- Regular discipline applies.
 - in some cases, a disciplinary hearing may be scheduled.
- Educational services during the removal is determined by the IEP team.
- Consider FBA/BIP.

25

IF MANIFESTATION IS FOUND

- Child must return to previous placement unless otherwise agreed upon by the IEP team.
- Requirement to conduct FBA or consider revisions to the current BIP.
- School must address implementation issues immediately if that was the reason for the team's determination.

26

MDR APPEALS

- Local review?
- Expedited due process hearing.
- A school division may request a due process hearing regarding placement if they believe the child is dangerous.

27

45-DAY REMOVAL- SPECIAL CIRCUMSTANCE

- Regardless of MDR determination, when the removal is for:
 - Weapons
 - drugs
 - serious bodily injury*
- School must still hold MDR meeting in these cases.
- The child may remain in an alternative setting that is determined by the IEP team.

28

PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE

- Children that have been referred but not yet been identified.
- Basis of knowledge.
 - OSEP shared if the school was notified of a disability prior to disciplinary incident, the school should conduct an MDR based on suspected eligibility category.
- If child is referred for evaluation after the incident occurred:
 - Serve suspension
 - Expedited evaluation

29

SECTION 504

- An MDR remains a requirement for children that are served with Section 504 Plans
- Key differences from IEPs:
 - No entitlement to educational services during a long-term removal
 - No requirement for an MDR for infractions related to alcohol and drugs.

30

MDR PREPARATION TIPS

- Review disciplinary paperwork/records prior to meeting.
- Review info from school division's code of conduct.
- If an MDR is required, recognize the significance of the event, and prioritize attending the meeting.
- Identify information related to manifestations of the child's disability within the applicable special education documents.
- Review relevant information from outside sources.
- When appropriate, connection the behavior in question to the child's disability and/or failure to implement child's IEP.

31

RESOURCE BANK- VDOE

- [Discipline and Students with Disabilities video](#)
- [School Discipline and Students with Disabilities](#) one page resource
- [Manifestation Determination Review](#) one page resource
- [Your Family's Special Education Rights – Virginia Procedural Safeguards Notice](#) -(Pages 33-39)
- [Functional Behavior Assessments and Behavior Intervention Plans: Guidelines for Effective Development and Implementation](#)
- [The Virginia Family's Guide to Special Education](#)

32

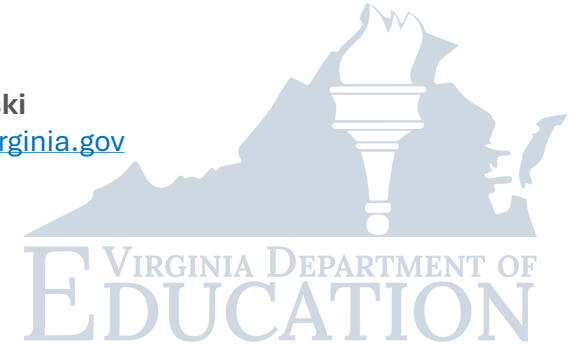
RESOURCE BANK- EXTERNAL

- PEATC Toolkit, [*Manifestation Determination Review*](#)
- OSEP guidance, [*Questions and Answers on Discipline Procedures*](#)
- OSEP guidance, [*Using Functional Behavioral Assessments to Create Supportive Learning Environments*](#)
- OCR guidance, [*Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973 \(PDF\)*](#)

33

Questions?

Contact Peter Grabowski
Peter.Grabowski@doe.virginia.gov
804.371.7420



34