



AFC'S GUIDE TO

Manifestation Determination Review (MDR)

PROTECTIONS FOR STUDENTS WITH
DISABILITIES WHO FACE DISCIPLINE

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Advocates for Children of New York
Protecting every child's right to learn

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This guide does not constitute legal advice. This guide attempts to summarize existing policies or laws without stating the opinion of AFC. If you have a legal problem, please contact an attorney or advocate.

INTRODUCTION

Students with disabilities have special rights and protections when they are suspended from school or removed from class. One of those rights is a meeting that might help your child stay in the current classroom. The meeting is called a **Manifestation Determination Review**, or **MDR** for short.

What is the main goal of the MDR?

Your child cannot be removed from class or suspended from school for behavior that was caused by your child's disability or if the school is not following your child's IEP.

At the MDR, you and the school will answer two questions:

1. Was your child's behavior related to or caused by his or her disability?
2. Did the behavior happen because the school was not following your child's IEP?

If the answer to either one of these questions is yes, then your child must be immediately returned to his or her classroom. The behavior is called a **manifestation** of your child's disability.



NOTE:

Some of the rights listed in this guide are new and schools may not know about the changes. If the school is not following these rules, call Advocates for Children's Helpline. Contact information is on the back cover of this guide.

WHAT IS A SUSPENSION OR REMOVAL?

In New York City, only three types of removals from class or school are allowed. They are:

Teacher's Removals

A student who is very disruptive or interfering a lot in the classroom may be removed from class by the teacher. The student may be removed from the teacher's class for 1 to 4 days. The teacher must tell the principal of the removal the same day. The principal must make every effort to call the parent to tell the parent of the removal that day, but no later than the next day, and give the parent a chance to meet to discuss the removal. The student must be given education in another place in the school.



Principal's Suspensions

The principal may suspend a student from school for dangerous or disruptive behavior for 1 to 5 days. Written notice of the suspension must be given to the parent. The principal must hold a conference with the parent before the decision to suspend the student, unless the student poses a current threat of harm. The student must be given education in another place in the school.

Superintendent's Suspensions

For more serious behavior, the principal may ask the Superintendent to suspend the student from school for 6 to 180 days (a year). The student must be given education in another site outside of the school. Written notice of the suspension must be given to the parent. A hearing outside the school will be held within 10 days of the suspension.

For information about suspensions, please see *Advocates for Children's Guide to School Suspensions* at http://www.advocatesforchildren.org/sites/default/files/library/suspension_guide.pdf.

WHEN DOES AN MDR HAPPEN?

The school must hold an MDR before removing a student with a disability from class or school in any of the following three circumstances:

(1) Eleven or more days of removal in a row.

- Your child is suspended for 11 or more school days in a row.

(2) Eleven or more removals in 40 school days.

- Your child has been removed from class or suspended from school 3 or more times within 40 school days; **AND**
- The removals add up to a total of 11 or more school days in a 40-day period.

(3) Eleven or more removals in the school year PLUS a pattern.

- Within the school year, your child has been removed from class or suspended from school two or more times; **AND**
- The removals add up to a total of 11 or more days in the school year; **AND**
- The principal decides that these removals from class or school are similar to each other and form a pattern of removals (based on the length of past removals, the total time your child has been removed from class or suspended from school throughout the school year, and how close in time the removals were).

TIP:

Keep track of each time your child is removed from class or suspended from school. Write down:

- Each day your child has been suspended or removed from class for any amount of time;
- The length of each suspension or classroom removal; and
- Your child's behavior that resulted in the suspension or classroom removal.

EXAMPLE: A student gets a principal's suspension on January 1 for one day, a principal's suspension on January 30 for 5 days, and a principal's suspension for up to 5 days on February 5. The school must hold an MDR before the third principal's suspension because the student could be removed for more than 11 school days in a 40 school day period.

HOW TO PREPARE FOR THE MDR

STEP I: Gather and review relevant documents.

It is important to have information about your child's behavior at the MDR. It is helpful to gather school-related documents and documents you may have from a provider outside of school.

EXAMPLE: If your child was suspended for getting into a fight, look at your child's IEP and other documents, such as evaluations and classroom observations, to see if those documents describe this sort of behavior or if the documents say that your child struggles with verbal and/or physical aggression towards others.

TIP:

If you do not have any of your child's school-related documents, you can ask the school to give them to you before the MDR. Then you can review them and the other documents you have to prepare for the meeting.

Examples of useful documents include:

- Your child's most recent **IEP or 504 plan**.
- **Evaluations** done for your child's IEP or 504 plan, and/or evaluations done for your child that relate to the behavior being discussed at the MDR.
- **Information about the incident** that led to your child's suspension or classroom removal. For example, the suspension notice, incident report, witness statements, and video of the incident (you may have to ask the school to give you a copy of each of these).
- **Documents that show your child's behavior** or discipline in school, such as evaluations, progress reports, classroom observations, prior suspension documents, Functional Behavioral Assessments (FBAs), and Behavior Intervention Plans (BIPs). For more information on FBAs and BIPs, see http://www.advocatesforchildren.org/sites/default/files/library/positive_interventions_FBAs_and_BIPs.pdf.
- **MDR worksheets** from earlier incidents. The school must fill out an MDR worksheet with the help of the MDR team during every MDR. You can review a blank copy of the MDR Worksheet before the meeting and bring it to the meeting.
- **Reports and letters from your child's providers**, such as therapists, counselors, and doctors.

STEP 2: Prepare notes of what you want to say at the meeting.

You are an important member of the MDR team and what you say can convince the team that the behavior was a manifestation of your child's disability. It is important that you come prepared to the meeting.

If you think that your child's behavior was caused by or related to his or her disability, prepare by:

- Highlighting information in your child's documents, including: how your child behaves, what leads to the problem behavior, what your child needs to help prevent and manage the behavior, how the behavior keeps your child from learning, and how the behavior is related to his or her disability. This can come from the any part of the IEP, evaluations, the FBA, the BIP, teacher reports, and other documents.
- Looking for information about your child's behavior and disability from other sources, including family members and your child's doctor, provider, or therapist.

TIP:

Your child's disability classification on the IEP does not determine what disability-related behaviors your child has. At the MDR, be prepared to discuss *ALL* behaviors your child has and how they relate to the disability.

If you think that the incident happened because the school was not following any part of your child's IEP, prepare by:

- Reading the IEP and BIP (if your child has one) and highlighting services that the school did not give your child.
- Asking your child what services the school is giving and how often.
- If you do not know whether a service was given, prepare questions for the MDR team. For example, if the IEP says that your child has counseling services two times per week, ask the school to show you the records from those services or if your child has a paraprofessional, ask where the paraprofessional was during the incident.

STEP 3: Invite others who can support you.

The following people are part of the **MDR team** and must be at the meeting:

- You (the student's parent or guardian).
- Someone from the school district who knows your child and can interpret information about your child's behavior. This person is usually a school psychologist or social worker.

You can also bring others to the meeting to help support you. If your child is seeing a therapist, social worker, or other provider outside of school, you should ask if they can support you by attending the MDR either in person or by phone. Make sure to tell them about the incident that led to your child's suspension or classroom removal, share documents, and talk about whether they believe the incident was related to your child's disability.

If this person cannot attend the MDR, ask him or her to write a **letter of support**. The letter should:

- Explain how the provider knows your child;
- Explain how long he or she has known your child;
- Explain what type of services he or she gives your child outside of school;
- List documents he or she reviewed before writing the letter, if any;
- Describe other similar incidents he or she knows about, if any; and
- State that he or she believes this was a manifestation of your child's disability, AND explain why.



You can also bring an attorney or advocate with you to the MDR.

The school can also invite (and you can ask the school to invite) additional people to the MDR, such as teachers, a guidance counselor, your child's paraprofessional (if he or she has one), and staff who saw the incident.

If your primary language is not English, the school must provide an interpreter at the MDR upon request before the meeting.

WHAT HAPPENS AT THE MDR?

During the MDR, the MDR team will use the MDR worksheet to guide the meeting. A copy of the worksheet is available here: <http://bit.ly/mdrwkst>. Bring the MDR worksheet with you so you can follow along during the meeting. Below is a summary and some things to keep in mind.

Review of documents

At the MDR, the MDR team must review and discuss information about your child. Reviewing and discussing this information should help everyone better answer the main two questions that the MDR team must answer (see page 11). The MDR team must review documents including:

- Your child's IEP or 504 plan.
- Your child's evaluations.
- Teacher observations and progress reports of your child.
- Your child's Functional Behavioral Assessment (FBA) and Behavior Intervention Plan (BIP), if your child has an FBA or BIP.
- Information about the incident that led to your child's suspension or classroom removal.
- Any completed MDR worksheets from earlier incidents.
- Any documents for prior incidents showing similar behavior.
- Other relevant information in your child's education file, such as referrals for counseling.
- Any other documents and information that you provide related to your child's disability and/or the incident, such as reports and letters from your child's therapists, counselors, and doctors.



Listing “disability-related behavior”

After the documents are reviewed, the MDR team must describe your child’s disability and how it affects your child’s behavior. Every student with an IEP has a “classification” or disability label on the first page. In New York, your child can only have one classification on the IEP, even if he or she has more than one diagnosed disability. The team must look beyond just the disability classification on the IEP or your child’s diagnoses and think about whether the behavior that happened is related to your child’s disability challenges. Make sure the school lists all of your child’s specific behaviors.

EXAMPLE: Your child may have a classification of Learning Disability and become aggressive when he struggles to read or write. Your child may have a classification of Speech and Language Impairment and also have another disability, such as ADHD, and be impulsive or have difficulty sitting still.

Information about the incident

The team will then describe the incident that led to the suspension or classroom removal and the events that led to the incident. If there was a suspension hearing before the MDR, the school must rely on what the hearing officer found happened during the incident. These findings should be made available at the MDR by the suspension hearing office.

Relationship between disability and incident

In this section, the MDR team will describe the connection between the behavior that led to the incident and the “disability-related behaviors” listed in the previous section of the MDR. This is where the connection between your child’s past behaviors and the current incident is made.

NOTE:

Whether your child *intended* to behave in a certain way or knows right from wrong does not matter at the MDR. The school must look at your child’s disability-related behaviors and whether there is a connection between those behaviors and the incident that led to the suspension or classroom removal.

Discuss and answer final two questions

At the MDR, the team must discuss and answer two final questions:

1. Was your child's behavior that resulted in suspension or classroom removal caused by or related to his or her disability?
2. Did your child's behavior that resulted in suspension or classroom removal happen because the school was not following part of your child's IEP or BIP?

If the MDR team decides the answer to question 1 or 2 is yes, the behavior is called a manifestation of your child's disability.

QUESTION #1 asks the team to decide whether there is a connection between your child's behavior that led to suspension or classroom removal and your child's disability. The team should think about all of your child's behaviors and needs.

QUESTION #2 asks the team to decide whether the school actually followed all parts of your child's IEP or BIP. If the school has not been following everything on your child's IEP or BIP, the team must decide whether your child's behavior happened *because* the school was not following all parts of your child's IEP or BIP.

For example, if the IEP requires the school to give your child a paraprofessional all day, and the paraprofessional was not there or did not help your child during the incident that led to the suspension or classroom removal, the MDR team should find that the behavior was a manifestation of your child's disability.

Get a copy of the MDR worksheet

At the end of the MDR, ask for a copy of the completed MDR worksheet. If the school will not give you a copy before you leave the meeting, take a photo of each page with your phone and ask the school to send you a copy of the completed MDR worksheet. When you get it, compare it to the one that you took pictures of at the meeting to make sure they are the same.

REMEMBER:

The team must consider information about your child even if it does not seem to be related to your child's special education "classification." ***The school can find behavior to be a manifestation of your child's disability no matter what classification your child has.*** Most importantly, the school needs to look at how your child's behavior is impacted by his or her disability.

WHAT HAPPENS AFTER THE MDR?

If the school decides that your child's behavior WAS a manifestation of his or her disability:

- Your child has the right to return to school *immediately*.
- The school must conduct a Functional Behavioral Assessment (FBA) to identify what might be causing the problem behavior.
- The school must create a Behavior Intervention Plan (BIP) to give your child supports in school to address the behavior.
- If your child already had a BIP that the school was not following or that was not effective, it must be properly followed or changed to address the behavior.

If the school decides that your child's behavior WAS NOT a manifestation of his or her disability:

- Your child's suspension or classroom removal will continue until the end of the suspension or removal period.
- If your child has a superintendent's suspension, he or she will attend a suspension site called an "Alternate Learning Center" or ALC during the suspension.
- During your child's suspension, he or she must be given appropriate special education services. This means that your child must get services that allow him or her to make progress toward his or her IEP goals in a general education setting. For example, if your child is in a self-contained class at his or her school, your child will not be in a self-contained class at the suspension site, but should receive appropriate services and instruction.
- The suspension site will prepare a "**Suspension Plan**" that includes the special education services your child will get while suspended. The suspension notice should include the date and place of the meeting in which the Suspension Plan will be prepared. You should participate in the meeting when the suspension site writes the Suspension Plan to make sure it includes all the services your child needs.
- Even if the behavior is found to not be a manifestation, you may request that the school conduct an FBA and create a BIP to provide support for your child's behaviors.

WHAT IF I DO NOT AGREE WITH THE SCHOOL'S DECISION?

If you do not agree with the result of the MDR, you can ask for a hearing. You need to ask for the hearing in writing. Your hearing request should list any ways that the school did not follow the required process for an MDR, any documents the school did not consider, and the reason the MDR decision is wrong.

The hearing will take place much quicker than other special education hearings, so it is called an “**expedited hearing.**” If the case does not settle, there will be a hearing within 20 school days of the day you filed the hearing request AND you will get a final decision within 10 school days after the hearing.

For more information on hearings, including where and how to send the hearing request, see *Advocates for Children's Guide to Special Education Impartial Hearings*, available at www.advocatesforchildren.org/sites/default/files/library/impartial_hearings.pdf, or call AFC's Helpline for more information.

NOTE:

Signing the MDR attendance sheet does not mean that you agree with the MDR or with everything that was said during the meeting; it simply means that you were at the meeting.



WHAT IF I THINK MY CHILD HAS A DISABILITY, BUT HE OR SHE DOES NOT HAVE AN IEP YET?

If at the time of the suspension or classroom removal your child did not have an IEP, the school might still be required to hold an MDR.

“Deemed to know” case

Your child is *presumed to have a disability*—even if he or she does not yet have an IEP—and the school is considered “*deemed to know*” your child has a disability if one of these four things occurred before the incident that led to the suspension or removal:

1. You expressed concern in writing that your child needs special education services;
2. Your child’s behavior in school showed the need for special education services;
3. You made a written request for an evaluation; or
4. Your child’s teacher or other school personnel expressed concern about the behavior.

If you think the school is required to presume that your child has a disability, you should first ask the school for an MDR. You should also notify the suspension hearing office before or on the hearing date (for Superintendent’s Suspensions). Make sure you tell the hearing office and principal in detail why the school should be considered “deemed to know.” Provide a copy of the written request for evaluation, as well as when, how, and to whom it was given. Provide copies of incident reports, academic records, and other school-related documents from before the suspension or classroom removal that show your child’s behavior and need for special education services.

If the school is required to presume that your child has a disability, then:

- ***The school must hold an MDR.***
- ***Your child must get an expedited evaluation*** (within 15 days) to figure out what your child’s disability is and what his or her exact needs are.

The school must hold the MDR right away, using all documents showing concerns about your child’s suspected disability and behavior, including classroom observations, private evaluations, and reports from your child’s doctor. The school cannot wait until the evaluation is done.

You think your child has a disability

If your child does not have an IEP, and the school is not required to presume that your child has a disability (see page 14), but *you* think your child may have a disability when he or she is suspended from school or removed from class, then:

- Ask for an expedited evaluation in writing at the suspension hearing office or at the school. Keep a date-stamped copy of the evaluation request.
- Once you ask for the evaluation, it must be done within 15 days. Then the school must hold an IEP meeting to decide if your child is a student with a disability.

If the evaluations show that your child is a student with a disability, then:

- The IEP team will come up with a plan for special education services at the IEP meeting. For more information on special education services, please see AFC's *Guide to Special Education*, available at <http://bit.ly/afcguides> (under "students with disabilities") in English, Spanish, Arabic, Bengali, and Chinese.
- You can ask for an MDR for your child.

If the evaluations show that your child is NOT a student with a disability, then:

- Your child will not get an IEP.
- No MDR will be held.

If you do not agree with the result of the evaluation, you can ask for a hearing. For information on hearings, see AFC's *Guide to Special Education Impartial Hearings*, available at www.advocatesforchildren.org/sites/default/files/library/impartial_hearings.pdf, or call AFC's Helpline for more information.





Our Mission

Advocates for Children of New York (AFC)'s mission is to ensure a high-quality education for New York students who face barriers to academic success, focusing on students from low-income backgrounds. AFC achieves this through four integrated strategies:

- Free advice and legal representation for families of students;
- Free trainings and workshops for parents, communities, and educators and other professionals, to equip them to advocate on behalf of students;
- Policy advocacy to effect change in the education system and improve education outcomes; and
- Impact litigation to protect the right to quality education and to compel needed education reform.

Still have more questions? Please call the Jill Chaifetz Education Helpline:

Monday through Thursday

10 am to 4 pm

866-427-6033 (toll free)

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