



## OCECD Winter Newsletter Behavior: Part Two



Welcome to OCECD's Winter 2024 newsletter! This newsletter is the second in our 3-part series on the topic of Behavior. [In the first of our series](#), we discussed behavior and discipline, including information about Positive Behavioral Interventions and Supports (PBIS), Functional Behavior Assessments (FBA), Behavior Intervention Plans (BIP), and setting concrete goals and objectives related to behavior in the IEP. In the current newsletter, the second in our series, we continue with a discussion about discipline related to violations of student code of conduct due to

inappropriate behavior, which includes suspension, expulsion, and emergency removal and important information about the Manifestation Determination Review. The series will finish with our Spring 2024 newsletter, so check back for the third in our series then to learn more!

*The information provided in this newsletter is for general informational purposes only and should not be considered as legal advice.*

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**NOTE:** Since attorneys are able to make legal statements, OCECD has deferred to Disability Rights Ohio, a recognized legal agency in Ohio for this section of the newsletter.

<https://www.disabilityrightsohio.org>

Disability Rights Ohio provides legal assistance to parents of children with disabilities at no cost. Please see Resources list at the end of this newsletter for more information.

Suspension, Expulsion, and Emergency Removal

[Disability Rights Ohio - Suspension, Expulsion, and Emergency Removal](#)

March 14, 2023, by Chloe Palmer / [Special Education](#)





# Suspension, Expulsion, and Emergency Removal

## what’s the difference?

School discipline and student safety are top priorities for any school district. Students may be removed from school for a variety of reasons. The different removal types can impact a student’s education in a variety of ways, particularly for special education students.

If you are asked to pick your student up from school for behavioral problems, it is important that the school clarifies in writing if the student is being suspended, expelled, or subject to an emergency removal. School removals can trigger procedural safeguards for students with disabilities, so knowing the difference is critical.

What?	Suspension	Expulsion	Permanent Expulsion	Emergency Removal
Why?	Violation of school policy or behavior	Violation of school policy or behavior, including bringing a weapon to school	Conviction of certain criminal offenses when the student is over 16	The student's presence poses an immediate danger to any person or property or is disruptive to the educational process.
How Long?	10 days or less	Up to 80 days, or up to 1 year	Permanent	24 hours or less
Student Rights	<p>Must be allowed to make up assignments missed while out of school, and should receive at least partial credit for these assignments</p> <p>Must be provided a prior written notice of suspension and given the opportunity to meet with an administrator to explain their actions</p> <p>Students who are suspended in-school must be given a properly supervised learning environment</p> <p>Students on an IEP must still be provided a Free and Appropriate Public Education [FAPE] when suspended for 10 days or more in a single school year. This includes continuing services and progress towards IEP goals, even if it must be provided in a different environment</p>	<p>If more than 20 days, district must provide information about services/programs to improve student behavior.</p> <p>Students on an IEP must still be provided a (FAPE) when expelled for 10 days or more in a given school year.</p>	Same as Expulsion rights	Parent/guardian must be notified immediately of a removal, limited only to the time in which the student's presence actively poses an immediate threat





## How are suspension/expulsion different for students in special education?

If a student on an IEP or a student with a disability protected by Section 504 of the Rehabilitation Act is suspended:

1. For more than 10 school days in a row, or
2. For more than 10 school days in a single school year, if the behaviors that led to the suspension are substantially similar, then the district must hold a **manifestation determination review** (MDR). At the MDR, the IEP team should decide if the student's behaviors are substantially related to the student's disability, due to the student's disability, or due to the district not properly implementing the student's IEP. If any of these factors are met, then the school cannot remove the student from school for more than 10 days. The school must instead amend the IEP or develop a behavior plan to support the student in school. For more information on manifestation determination reviews, see Disability Rights Ohio explanation provided in this newsletter.



## What if I believe my student was improperly suspended, expelled, or removed?

When a student is suspended or expelled, the district must give the student an opportunity to appear at an informal hearing before the principal, assistant principal, superintendent, or superintendent's designee. The student may use this hearing to challenge the reason for the suspension/expulsion or explain their actions.

If you believe the district violated special education law by not having a manifestation determination review, or by having an improper manifestation determination review, you have several options to resolve the dispute. One option is filing a complaint with the Ohio Department of Education and Workforce (DEW). DEW has 60 days upon receiving a complaint to resolve the issue.

Another option for resolving special education-related disputes is to file for expedited due process. This complaint procedure is specifically for disagreements about placements related to disciplinary removal or MDR's. Once a complaint is filed, the district and parent will have a resolution meeting within 7 calendar days (unless both agree to waive the meeting). Within 20 calendar days there will be a hearing with a hearing officer. This officer then has 10 school days to issue a decision on the dispute.

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## MANIFESTATION DETERMINATION REVIEW (MDR)

**NOTE:** Since attorneys are able to make legal statements, OCECD again has deferred to Disability Rights Ohio, a recognized legal agency in Ohio for this section of the newsletter.

[Disability Rights Ohio - Manifestation Determination Review](#)

April 26, 2023 by Taylor Giordullo / [special education](#)





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# MANIFESTATION DETERMINATION REVIEW

## What is a Manifestation Determination Review?

A Manifestation Determination Review (MDR) is a meeting to determine whether or not a student's behavior that has resulted in a potential suspension or expulsion is due to their disability. It is a required procedure under the Individuals with Disabilities Education Act (IDEA) if the student is expelled or suspended for more than 10 consecutive days.

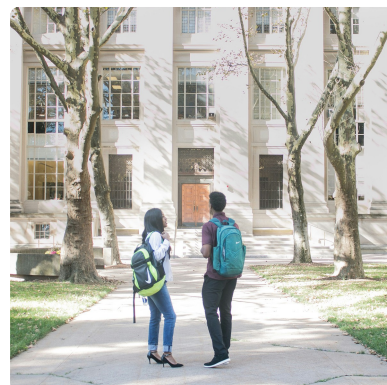


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## When is a school required to provide an MDR?

A school is required to provide an MDR when a disciplinary action results in a change of placement for the student. Change of placement means that the student is expelled or suspended for more than 10 consecutive school days. A school is not required to provide an MDR if the removal period is less than 10 consecutive school days.

An MDR must be conducted within 10 days of the decision to change the student's placement.



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## How does the school determine whether the behavior was a manifestation or not?

The MDR is conducted by members of the IEP team. If either of the following two standards were met, then the conduct is determined to be a manifestation of the student's disability:

1. If the conduct was caused by, or substantially related to, the student's disability;
2. If the conduct was the direct result of failed implementation of the student's IEP.



If the first standard is met, then the IEP team must consider if the student needs a Functional Behavioral Assessment (FBA) or a Behavioral Intervention Plan (BIP). If these have already been conducted, the team should consider any updates that need to be made.

If the second standard is met, then the school has an affirmative obligation to correct issues with the student's IEP implementation, and make sure the student is receiving all the services outlined. If neither of these standards are met, then the student's behavior was not a manifestation of their disability. This means that the school can carry out disciplinary procedures in the same manner it would for a student without a disability.

A school may remove a student or change placement even if the behavior was a manifestation of the disability in select circumstances. These include if the student brings a weapon, possesses drugs, or inflicts serious bodily injury on school property or at a school function.

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### **Can you request an MDR before a school is required to provide one?**

Yes. An MDR can be requested even if the discipline has not resulted in a change of placement for the student. For example, if the student was suspended for two days, the school is not legally obligated to conduct an MDR. However, an MDR can be requested if the disciplined conduct was related to the student's disability. This can be a good opportunity to amend a student's Individualized Education Program (IEP) or Behavioral Intervention Plan (BIP) to address the student's needs.

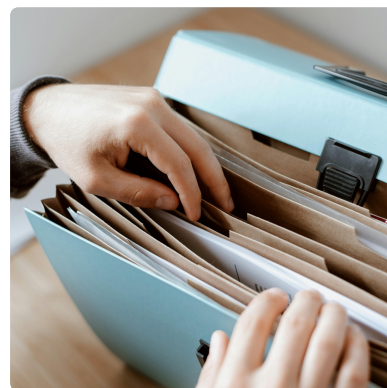


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### **How can you prepare for an MDR?**

When attending an MDR, you should bring relevant documents and information about the student's disability and behavior.

Before the meeting, you should review any documentation relevant to the disciplined conduct, such as a written suspension letter and details about the rule the student violated. It is also beneficial to have a medical provider attend or write a letter to explain how the disciplined behavior is related to the student's disability. If the student in question is older, it might also be a good idea to have them attend the MDR.



A parent should prepare notes for what they would like to say during the meeting. These notes should include reasons why the parent believes the behavior was related to or caused by the disability or issues the parent has with the school's implementation of the IEP.

An MDR is a more formal proceeding, so the parent should plan accordingly. It is important to be on time and dress appropriately.



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## What happens if the school does not hold an MDR?

A school is unable to expel or suspend a student with a disability for more than 10 school days if it does not hold an MDR. If the school does not conduct an MDR when necessary, it is a violation of special education law. If the school fails to provide a required MDR, the parent can pursue a special education dispute resolution option. See [www.disabilityrightsOhio.com](http://www.disabilityrightsOhio.com) for more details.

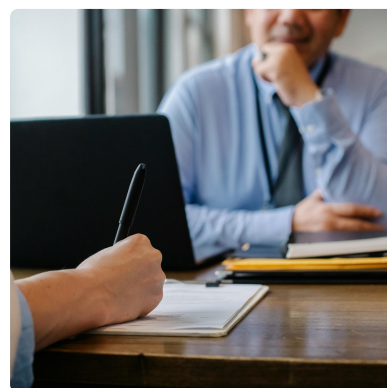


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## What happens if you do not agree with the MDR determination?

You can appeal a manifestation determination by filing a due process complaint.

If the school determined that the behavior was not a manifestation of the student's disability, and the student is suspended or expelled for more than 10 days, you can file for expedited due process. After the complaint is filed, a district hearing must be held within 20 school days. Then, the hearing officer must make a determination within 10 days of the hearing. Additionally, a resolution meeting must be held within 7 days of receiving notice of the due process complaint unless the parents agree to a different timeframe.



If a parent thinks it unlikely that the hearing officer will determine the behavior was related to the student's disability, they can still appeal the suspension or expulsion. In this case, the basis of their appeal will not be on their student's disability.

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## CONCLUSION

As mentioned in our previous newsletter, teaching positive behavior strategies and providing mental health services as consistently as educators teach reading and other academic content is the ultimate goal for implementing PBIS, FBAs, and BIPs in Ohio schools. Thank you for joining us to learn more on this topic. Be on the lookout for our Spring 2024 newsletter where we will continue this conversation by discussing informal removals, Ohio behavioral health services, Ohio's current funding for student wellness and success, and information about Pearson behavior toolkits and assessments

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# Resources

## WHERE TO ASK FOR HELP in OHIO

Ask school for names of behavior support personnel and intervention specialists,

### Board Certified Behavior Analysts [BCBA]

[www.bacb.com](http://www.bacb.com)

**DISABILITY RIGHTS OHIO** for legal assistance Web: [www.disabilityrightsohio.org](http://www.disabilityrightsohio.org) Toll free 800-282-9181 or 614-466-7264 Kristin Hildebrant, Esq.; [khildebrant@disabilityrightsohio.org](mailto:khildebrant@disabilityrightsohio.org) ext. 109. Kristin is a special education attorney.

**Disability Rights Ohio** is pleased to announce that **Emily Durell, attorney at law**, assists with families in **Delaware, Fairfield, Franklin, Licking, Madison, Pickaway, and Union counties at no cost**. The quickest way for parents to have a case opened with Emily is to fill out the DRO intake form online (<https://www.disabilityrightsohio.org/intake-form>) or calling 614-466-7264 or 1-800-282-9181, pressing option 2, and leaving a voicemail, 9-noon and 1-4.

**Contact DRO via mail:** 200 Civic Center Dr, Suite 3, Columbus, OH 43215

[www.disabilityrightsohio.org/resource-center](http://www.disabilityrightsohio.org/resource-center) has many resources on special education topics.

### Ohio Coalition for the Education of Children with Disabilities

[www.ocecd.org](http://www.ocecd.org)

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Ohio Dept. of Education. Office of Integrated Student Supports, coordinates resources for positive and safe schools, such as programs related to safety, anti-bullying, mental and behavioral health, positive behavioral intervention supports (PBIS), and trauma-informed care.

[Integrated Student Supports | Ohio Department of Education](#)

[Brittany.miracle@education.ohio.gov](mailto:Brittany.miracle@education.ohio.gov)

### Contact Information

#### PBIS GENERAL INFORMATION

Office of Whole Child Supports

[PbisOhio@education.ohio.gov](mailto:PbisOhio@education.ohio.gov)

#### Ohio Department of Education

25 South Front Street, Mail Stop 409

Columbus, Ohio 43215-4183

614-644-6830

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#### [Ohio State University. Nisonger Center Behavior Support Services](#)

<https://nisonger.osu.edu/clinics-services/child/behavior-support-services/>



## NATIONAL RESOURCES

### Center for Parent Information & Resources [CPIR]

<https://www.parentcenterhub.org/pbs-resources/>

[EmpoweringParents.com](https://www.empoweringparents.com/). <https://www.empoweringparents.com/> "You can't punish your child into good behavior." A company dedicated to empowering parents with the tools to manage the most challenging behavior problems in children ages 5 to 25.

[National Education Association. Positive Behavioral Interventions and Supports: a multi-tiered Framework that works for every student 6/23/20.](#)

[PACER.org](https://pacer.org).

[PACER: Functional Behavior Assessment and Intervention resources:](#)

[PACER: Examples of positive behavioral intervention strategies](#)

[Positive Behavioral Interventions and Supports \[PBIS\]](#)

[Understood.org](https://www.understood.org). [www.understood.org](https://www.understood.org) Types of behavior assessments:

<https://www.understood.org/en/school-learning/evaluations/types-of-tests/types-of-behavior-assessments>

[Wrightslaw.com](https://www.wrightslaw.com). Functional Behavior Assessment and Behavior Intervention Plan

<https://www.wrightslaw.com/info/discipl.index.htm>

[Handling a Manifestation Determination Review: A "How To" for Attorneys - Wrightslaw](#)

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## OCECD PUBLICATIONS

**Behavior-Focused IEPs English and Spanish**

[English](#) | [Spanish](#)

**Positive Behavioral Interventions and IDEA 2004:**

**opportunities for parenting and teaching**

[English](#) | [Spanish](#)

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