Manifestation Determination Reviews (MDRs) Under IDEA: Modern Standards, Process, Data Bases, Expedited Hearings, Caselaw Examples

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Why the IDEA Discipline Rules Exist

- First, federal courts started finding that expulsion of students with disabilities from school for behaviors related to disability was inherently discriminatory and in violation of IDEA.

  See, e.g., *Stuart v. Nappi*, 443 F.Supp. 1235 (D.Conn. 1978); *Doe v. Koger*, 551 IDELR 515 (N.D.Ind. 1979); *S-1 v. Turlington*, 552 IDELR 267 (5th Cir. 1981); *Kaelin v. Grubbs*, 554 IDELR 115 (6th Cir. 1982); *School Bd. of Prince William v. Malone*, 556 IDELR 406 (4th Cir. 1985); *Doe v. Maher*, 557 IDELR 353 (9th Cir. 1986).

- USDOE went on to adopt that position (see *OCR Staff Memorandum*, 16 IDELR 491 (OCR 1989)).

Why the IDEA Discipline Rules Exist

- Then, OCR issued guidance under § 504 indicating a series of short-term removals (each ≤ 10 consecutive school days) that exceeds 10 total school days could create a "pattern" that collectively amounts to a disciplinary change in placement.

  OCR Policy Memorandum: 00168 (October 28, 1988)(setting forth factors to be considered in determining whether there is a "pattern of exclusions"—(1) length of each removal, (2) proximity to one another, and (3) total amount of exclusion); see also *OCR Memorandum*, 307 IDELR 07 (OCR 1989). At times, in light of IDEA regulations, similarity of behaviors is an additional factor. *See* 34 C.F.R. § 300.536(a)(2)(ii).

Why the IDEA Discipline Rules Exist

- The guidance limiting accumulations of short-term removals was necessary to prevent schools from engaging in excessive use of short-term removals, which can compromise a student's ability to receive FAPE.

  Still echoing that policy priority, USDOE's commentary to the 2006 IDEA regulations stated that "discipline must not be used as a means of disconnecting the child with a disability from education." 71 Fed. Reg. 46715 (August 14, 2006)

Why the IDEA Discipline Rules Exist

- Thus, the early cases and guidance identified the following major policy concerns with respect to discipline of students with disabilities:

1. Long-term disciplinary removals (>10 consecutive school days) for behavior related to disability violate IDEA (and constitute impermissible disability-based discrimination); and
2. Excessive short-term disciplinary removals jeopardize a student's right to a FAPE.

Why the IDEA Discipline Rules Exist

- The first policy point is the origin of the manifestation determination review (MDR) requirement of IDEA and § 504

  Intended to prevent discriminatory application of local rules or state laws mandating or allowing long-term disciplinary removals.

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

Basic IDEA Rule (cont.)

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

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); *see also* July 2022 OSEP Discipline Guidance, at Question C-3.

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 “mandatory” under district policy or State law

When is the MDR Required?

- **Pattern of Removals**—When a series of 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

When is the MDR Required?

- **Pattern of Removal Factors (after total of 10 school days of cumulative removals)**

  Similarity of behaviors

  Length of each removal

  Total removal amount

  Proximity of removals to one another

  34 C.F.R. § 300.536(a)(2)

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

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

See Conference Committee Report 108-779 (108th Cong—November 17, 2004) at p. 225; *see also* 71 Fed. Reg. 46720.

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 team
- School and parent are supposed to mutually determine who the “relevant” IEP team members are

MDR Decision-Makers

- The flexibility has created potential for legal arguments and problems:

  ***Fitzgerald v. Fairfax County Sch. Bd.*, 50 IDELR 165 (E.D.Va. 2008)**—Parents don't have equal right to determine MDR members

  ***Philadelphia City Sch. Dist.*, 47 IDELR 56 (SEA Pennsylvania 2007)**—Parents not allowed opportunity to mutually pick members

  ***Cherry Creek Sch. Dist. #5*, 56 IDELR 149 (SEA Colorado 2011)**—No notice to parents of right to mutually select MDR members

MDR Decision-Makers

- **Bottom Line**:

  This is the reason many schools conduct MDRs in properly convened IEP team meetings

  But, IEP meeting notice timeframe can create some inconvenience (if campus is out of short-term removal days)

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)).
- In cases where school claims parent agreement to IAES placement, is there evidence of coercion?

Return to Placement Link if behavoir 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)

“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

“Stay-Put” Exception

- An expedited hearing in these situations is mandatory, and the parties cannot agree to extend the expedited deadlines. See ***Letter to Snyder*, 67 IDELR 96 (OSEP 2015).**

See 34 C.F.R. § 300.532(c).

Expedited Hearings

- **34 C.F.R. § 300.532**

  Hearing must occur within 20 school days.

  Hearing officer must issue decision within 10 school days after the hearing.

  Resolution meeting must take place within 7 days of the notice of DP request, unless waived in lieu of mediation.

  Hearing proceeds unless there is resolution within 15 days of notice of hearing.

Expedited Hearings

- Disclosure timeframe (5 business days before start of hearing) applies. ***Letter to Gerl*, 51 IDELR 166 (OSEP 2008).**
- Sufficiency objection process does not apply. ***Dispute Resolution Procedures*, 61 IDELR 232 (OSEP 2013).**
- It may be prudent to bifurcate hearings where there are removal/discipline issues, as well as FAPE issues. ***Letter to Snyder*, 67 IDELR 96 (OSEP 2015).**

Expedited Hearings

- Also apply to situations where schools seek a 45-day removal of a student due to substantial likelihood of injury. 34 C.F.R. § 300.532(b)
- For timeline application in unusual situations, see ***Letter to Cox*, 59 IDELR 140 (OSEP 2012)(summer days); Letter to Fletcher, 72 IDELR 275 (OSEP 2018)(hearing requests late in school year).**

Modern MDR Forms

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)

Modern MDR Forms

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

Either MDR form or meeting notes/minutes *should* contain some articulated reasoning behind the committee's MDR determination.

Manifestation Determination Review (MDR) Meetings

MDR question on failures to implement the IEP

- Difficult standard to meet—”Direct result”
- Situations can include failure to implement BIP

Manifestation Determination Review (MDR) Meetings

See, e.g., ***Ysleta Ind. Sch. Dist*., 81 IDELR 119 (SEA Texas 2022),** where a high school student with ADHD and ODD was involved in an altercation with another student and security officers and an SRO became involved.

After the student shoved an officer, he was handcuffed, and later, when he continued to threaten the officers and resisted arrest, he assaulted and officer, was tased twice and charged with felonies.

Manifestation Determination Review (MDR) Meetings

***Ysleta Ind. Sch. Dist.*, 81 IDELR 119 (SEA Texas 2022)**

Team reasoned that the assault on the officer was planned, as indicated by his verbal threat to assault them if arrested.

The HO held that although the BIP was initially implemented, it should have been re-implemented when the SRO was present, to allow the student his cool-down opportunity.

Manifestation Determination Review (MDR) Meetings

***Ysleta Ind. Sch. Dist.*, 81 IDELR 119 (SEA Texas 2022)**

Thus, the HO held that the assault was related to a failure to re-implement the BIP despite the fact the student was being detained by a local law enforcement officer at the time.

Special Circumstance Offenses

- **Offenses Involving Drugs, Weapons, Serious Bodily Injury (34 C.F.R. § 300.530(g))**
- **Implications of Provision**—Up to 45-day removal to interim alternative setting (IAES) allowed even if behavior related to disability

  Removal can be longer if behavior not related to disability and longer removal allowed under local code of conduct.

Special Circumstance Offenses

- **Drugs**—Likely covers possession, use, distribution, under the influence offenses involving either illegal drugs or controlled substances.

  Includes vaping of cannabis/THC oils.

- **Weapon**—Anything that can cause serious bodily injury or death, except pocket knives of less than 2.5 ins. in blade length. 18 U.S.C. § 930(g).

Special Circumstance Offenses

- **Serious Bodily Injury**—Injury that creates a substantial risk of death, or disfigurement, loss of function, loss of limb, or extreme physical pain. 18 U.S.C. § 1365(h).

  An exceedingly high standard. Very few cases exist that have approved a removal for serious bodily injury under this provision.

Special Circumstance Offenses

- In cases where the school seeks only 45 or less days of removal, is not an MDR dispute moot since whether the behavior was related or not the school can remove the student up to 45 school days for either drugs, weapons, or serious bodily injury offenses?

  That was the position of a New Jersey federal court in the case of ***A.P. v. Pemberton Township Bd. of Educ.*, 45 IDELR 244 (D.N.J. 2006).**

Special Circumstance Offenses

See also, ***R.S. v. Corpus Christi ISD*, 109 LRP 73736 (SEA TX 2008)**(challenge to MDR moot in case of 30-day IAES removal for controlled substances use and/or possession).

Also ***Lewisville Ind. Sch. Dist*., 58 IDELR 149 (SEA Texas 2011)**(noting that even if behavior were related, school had authority for 45-day removal).

Special Circumstance Offenses

Question—If the length of IAES placement was 45 school days or under, rendering the MDR challenge moot, why a full evidentiary hearing?...

IDEA Hearing Officers' Authority on Local Disciplinary Action

- Can an IDEA HO rule on an LEA's underlying factual disciplinary findings, beyond hearing claims of inappropriate MDR or discipline placement?

  In ***Poteet Ind. Sch. Dist*., 29 IDELR 423 (SEA Texas 1998)**, the parent of a teen with SLD asked the HO to overturn the school's factual finding that the student was in possession of marijuana. The HO held that "the IDEA due process hearing is not the proper forum for such a challenge and the HO will not substitute her judgment for that of the school administration…."

IDEA Hearing Officers' Authority on Local Disciplinary Action

The HO's position is that the IDEA due process hearing is intended to address compliance with IDEA requirements, not provide an alternate regular mechanism to challenge local disciplinary factual findings of guilt under local codes of conduct and State law.

But, in ***Letter to Ramirez*, 60 IDELR 230 (OSEP 2012)**, OSEP took the position that because § 300.530 refers to violations of a local code of conduct, "there may be instances where a HO, in his discretion, would address whether such a violation occurred."

IDEA Hearing Officers' Authority on Local Disciplinary Action

"The IDEA and its implementing regulations neither preclude nor require that a HO determine whether a certain action by a student with a disability amounts to a violation of the school district's Student Code of Conduct."

Note—The commentary to the regulations, however, emphasizes that the unique circumstances involved in discipline incidents "is best determined at the local level by school personnel who know the individual child and all the facts and circumstances regarding a child's behavior." 71 Fed. Reg. 46714.

IDEA Hearing Officers' Authority on Local Disciplinary Action

Along the lines of the OSEP letter, in ***District of Columbia v. Doe*, 54 IDELR 275 (D.D.C. 2010)**, the court upheld an HO's holding altering a school's local disciplinary finding involving a 6th-grader with ADHD who was fighting at school. While LEA officials determined the student should serve 45 days in an IAES, the HO reduced the term to 11 days, because the offense "consisted of nothing more than being a 'nuisance.'"

IDEA Hearing Officers' Authority on Local Disciplinary Action

The court upheld the HO's modification of the local decision because the HO found that while the IAES "may be able to provide [Doe] with educational benefit,… it was not appropriate." Thus, the court interpreted the HO's holding as requiring modification of the local findings to protect the student's right to FAPE

Note—The HO specifically found that the IAES was capable of providing FAPE, but that he simply thought the disciplinary sanction was too severe ("not warranted").

IDEA Hearing Officers' Authority on Local Disciplinary Action

In a recent Texas decision, however, the HO held she had no jurisdiction to entertain a claim that the student's threat to commit a shooting at school was not a violation of the code of conduct. "The IDEA does not allow a hearing officer to consider or determine an appeal of a finding that a student violated a district's Student Code of Conduct." ***E.G. v. North East ISD*, 151-SE-0222 (SEA TX 4/1/22).**

She noted that application of a code of conduct was not an issue of identification, evaluation, placement, or provision of FAPE, which are the areas of DP hearing jurisdiction. Citing *Danny K. v. Dept. of Educ. Hawaii*, 57 IDELR 185 (D.Hawaii 2011).

IDEA Hearing Officers' Authority on Local Disciplinary Action

Note—The HO does not consider or mention OSEP's *Letter to Ramirez*, which consists only of persuasive, and not controlling, authority.

IDEA Hearing Officers' Authority on Local Disciplinary Action

Similarly, in the recent case of ***Torres v. Sampson County Bd. of Educ*., 82 IDELR 86 (E.D.N.C. 2022)**, a federal court held that the District had a viable claim that the IDEA HO lacked authority to reject disciplinary factual findings made by local school administrators.

There, the administrators found that the student had engaged in a "sexual assault," but the HO instead characterized the behavior as a less serious offense.

IDEA Hearing Officers' Authority on Local Disciplinary Action

But, in ***A.G. v. Success Academy Charter Schs*., 73 IDELR 146 (E.D.N.Y. 2018)**, a federal court held that a parent had a right to raise an IDEA claim that school administrators exaggerated a student's behavior to claim "serious bodily injury" took place.

IDEA Hearing Officers' Authority on Local Disciplinary Action

Conclusion—IDEA HOs inclined to overrule local disciplinary factual findings under an expansive view of their IDEA authority have support for such actions.

Schools may not be able to effectively argue that IDEA limits HOs to claims involving IDEA compliance, and that they lack jurisdiction to hear challenges to underlying disciplinary findings under local school policies.

Practically, it appears that IDEA HOs have not been keen on taking advantage of this potential extension of their jurisdiction, as there are few cases of overruling of local disciplinary findings.

Students Suspected of Having a Disability

Students suspected of having disability are entitled to IDEA discipline protections pre-eligibility (really goes back to IDEA 1997…), if school has a "basis of knowledge" student is disabled

Criteria for "basis of knowledge" of disability is included in provision

See 34 C.F.R. § 300.534

Students Suspected of Having a Disability

Bases of Knowledge:

Parent expressed concerns to administrators or teachers that student may need sp ed

Parent requested sp ed evaluation

Staff expressed concerns about student's pattern of behavior to sp ed director or supervisory personnel

See 34 C.F.R. § 300.534(b)

Students Suspected of Having a Disability

Exceptions:

Parent refused consent for sp ed evaluation or placement

Student was evaluated but did not qualify

In these situations, discipline may proceed under regular policies

See 34 C.F.R. § 300.534(d)(1)

Students Suspected of Having a Disability

If parent requests evaluation during discipline, and the bases of knowledge do not apply, the LEA must expedite the evaluation.

During this time, student remains in the disciplinary placement.

See 34 C.F.R. § 300.534(d)(2)

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.

Letter to Nathan, 73 IDELR 240 (OSEP 2019)

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.

More from Letter to Nathan

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.”

East Stroudsburg Area School District, 73 IDELR 272

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.

Continued.

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.

OSEP allowance for MDR

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).

More on 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), past disciplinary records, parent input, staff input

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...

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).

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.

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

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.”

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

- 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."

Other cases hold that failing to consider all the 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.

Other cases hold that failing to consider all the existing disabilities, whether qualifying or not, invalidates the MDR (continued)

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."

More cases hold that failing to consider all the 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."

In re: Student with a Disability, 114 LRP 39929 (SEA Virginia 2014.)

After a 7th-grade special education 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.

More re: Student with a Disability, 114 LRP 39929 (SEA Virginia 2014.)

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?

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 6th-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.

A Key Factor is the relative reliability of the additional diagnosis (continued)

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.

Modern MDs in Action: Impulsivity Claims

***Z. H. v. Lewisville Independent Sch. Dist.*, 65 IDELR 106 (E.D.Tex. 2015)**

6th-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

Modern MDs in Action: Impulsivity Claims

***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

Impulsivity Claims

***Southington Bd. of Educ*., 113 LRP 42841 (SEA CONN 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

Impulsivity Claims

***San Diego USD*, 109 LRP 54649 (SEA Cal. 2009)**

Student claims possession of pills was impulsive and related to ADHD

Student had texted and talked to another about sharing the pills at school

HO upheld school's no-link finding based on the student's long-term arrangements

Impulsivity Claims

***C.D. v. Atascadero Unified Sch. Dist.*, 83 IDELR 80 (C.D.Cal. 2023)**

High school student with ID, ADHD, processing disorders, and speech impairments decided to get near a construction area at school.

When staff intervened with BIP strategies, he refused to leave, indicating he ”felt safe” and put on his glasses.

Impulsivity Claims

***C.D. v. Atascadero Unified Sch. Dist.*, 83 IDELR 80 (C.D.Cal. 2023)**

When a teacher followed him at a distance walking to the office, he quickly walked backward and pushed his back and backpack forcefully against a teacher, twice pinning her to the wall.

MDR found the behavior was not related to his disabilities, and he was suspended long-term.

Impulsivity Claims

***C.D. v. Atascadero Unified Sch. Dist.*, 83 IDELR 80 (C.D.Cal. 2023)**

HO found the behavior was not related and the Court agreed.

Court found student could have been aggressive anytime during the incident, but did it only when preferred staff were not present.

He also appeared to understand the hazard of being close to the construction, as he put on his glasses due to flying materials.

Impulsivity Claims

***C.D. v. Atascadero Unified Sch. Dist.*, 83 IDELR 80 (C.D.Cal. 2023)**

He also used language indicating he understood the risk, but wanted to remain, and was not agitated.

”Aggression toward Ms. Hale was not impulsive, and Student processed the situation and understood it.”

Thus, Court found his behavior was a choice, and not related to his disabilities.

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”

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

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”

Fitzgerald v. Fairfax County Sch. Bd., 50 IDELR 165 (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

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

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

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

More on 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.”

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

While a key resource, IEP teams cannot simply rely on the opinion of school psychologists, as they can be incorrect...

Here, psychologist 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

More on Jay F. v. William S. Hart Union High Sch. Dist., 74 IDELR 188 (9th Cir. 2019)

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

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

Modern MDs in Action: Valid Impulsivity Claims

- ***In re: Student with a Disability*, 52 IDELR 239 (SEA West Virginia 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

Modern MDs in Action: Valid Impulsivity Claims

- ***District of Columbia Pub. Schs.*, 114 LRP 3336 (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

Modern MDs in Action: Faulty MDRs

- ***Choctaw-Nicoma Pub. Schs.*, 122 LRP 46405 (SEA OK 2022)**

  Student with ADHD and a private diagnosis of ODD engaged in incident where he refused to follow instructions and went to the restroom despite being told to go to class.

  Campus imposed a 48-day removal.

  Assessment data and history of past behaviors amply noted non-compliant and defiant behaviors.

Modern MDs in Action: Faulty MDRs

- ***Choctaw-Nicoma Pub. Schs.*, 122 LRP 46405 (SEA OK 2022)**

  MDR nevertheless found the behavior was "premeditated" and not related to disability.

  HO disagreed, finding that the IEP team did not acknowledge its own extensive data on the student's pattern of behavior over time.

  "It is almost as if the carefully collected information was ignored."

Modern MDs in Action: Faulty MDRs

- ***Choctaw-Nicoma Pub. Schs.*, 122 LRP 46405 (SEA OK 2022)**

  Note—Indeed, a student's pattern of past behavior over time can be a significant indicator of whether the behavior is or is not related to disability.

Modern MDs in Action: Faulty MDRs

- ***Choctaw-Nicoma Pub. Schs.*, 122 LRP 46405 (SEA OK 2022)**

  The Conference Committee report on IDEA 2004 provides guidance that Congress intended that manifestation determination reviews "analyze the child's behavior as demonstrated across settings and across time when determining whether the conduct in question is the direct result of the disability." *Committee Report*, at 224. The USDOE commentary to the regulations in fact quotes this very language. *See* 71 Fed. Reg. 46,720.

Modern MDs in Action: Faulty MDRs

- ***Bristol Township Sch*. Dist., 67 IDELR 9 (E.D.Pa. 2016)**

  Student with ADHD allegedly assaulted a teacher.

  In conducting the MDR, the team apparently looked only at whether ADHD is *generally* related to aggressive behavior, and did not get into the details of the specific incident, according to the sp ed supervisor.

Modern MDs in Action: Faulty MDRs

- ***Bristol Township Sch*. Dist., 67 IDELR 9 (E.D.Pa. 2016)**

  Court found that (1) the team did not discuss whether the student in fact assaulted the teacher as alleged, and (2) the MDR was faulty in not examining the actual incident and whether it was related to ADHD.

Modern MDs in Action: Faulty MDRs

- ***Bristol Township Sch*. Dist., 67 IDELR 9 (E.D.Pa. 2016)**

  Notes—But, the decision indicates that the team correctly found that the student did not have a history of aggressive behavior, which is normally a significant factor in the analysis.

  And, why would the IEP team have to engage in a guilt or innocence discussion? Is that not the job of campus administrators in the regular discipline due process?

Modern MDs in Action: Faulty MDRs

- ***Fortuna Union High Sch*., 76 IDELR 55 (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

Modern MDs in Action: Faulty MDRs

- ***Fortuna Union High Sch*., 76 IDELR 55 (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 antidepression meds

Modern MDs in Action: Faulty MDRs

- ***Killeen ISD*, 120 LRP 1224 (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

Modern MDs in Action: Faulty MDRs

- ***Killeen ISD*, 120 LRP 1224 (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.

Modern MDs in Action: Faulty MDRs

- ***Letter to McWilliams,* 66 IDELR 111 (OSEP 2015)**

  IEP teams conducting MDRs also have to address whether the behavior was the "direct result" of a failure to implement the IEP.

  But, if there is no BIP in the IEP, can a parent claim that the failure to implement a BIP resulted in the behavior? The Michigan SEA apparently said no.

Modern MDs in Action: Faulty MDRs

- ***Letter to McWilliams,* 66 IDELR 111 (OSEP 2015)**

  OSEP, however, indicated that if there was a failure to develop a BIP based on a pattern of behavior that impeded learning or that of others, a parent could argue that failure to implement a BIP resulted in a student's misbehavior.

Modern MDs in Action: Weapons Cases

- ***North Zulch ISD* (SEA TX 2021)**

HO found student's possession of a weapon was not related to his ADHD or SLDs.

Previous behaviors had been problems staying on task and impulsivity.

HO found that given the disciplinary history, the IEP team's determination of no-link was sound.

Moreover, the weapon met the definition of "weapon" in the statute.

Modern MDs in Action: Weapons Cases

- ***North Zulch ISD* (SEA TX 2021)**

  Note—Again, since the school only imposed a 45-day removal, why was the MDR challenge not moot, since the school could have imposed that length of removal even if the behavior was related to disability?

Modern MDs in Action: Weapons Cases

- ***Columbia Borough SD*, 115 LRP 10010 (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"

Columbia Borough SD (SEA PA 2015)

HO found link, ordered student back to school from IAES

Question—Had student served 45 days in IAES? Could he not have been placed 45 days regardless of MDR finding?...

Pittsburgh Sch. Dist., 115 LRP 17342 (SEA Pennsylvania 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.