



Unravel patterns in removals before initiating Section 504 MDR

A student with a Section 504 plan was suspended for 10 days early in the school year. Now he faces more short-term removals. His district doesn't check to see if his removals constitute a pattern.

OCR believes that a pattern of short disciplinary removals that total more than 10 cumulative days in a school year can constitute a "significant change in placement." *Broward County (FL) Sch. Dist.*, [36 IDELR 159](#) (OCR 2001); and *Rutherford County (TN) Schs.*, [62 IDELR 271](#) (OCR 2013). Section 504 coordinators must remind teams that they should consider whether a pattern exists in a student's removals before embarking on a manifestation determination review after a student has already accumulated 10 removals.

"A lot of districts skip over the pattern-analysis process and jump straight to the manifestation determination review," said Patrick Andriano, a school attorney at Sands Anderson PC in Richmond, Va. "But if they do that, they're conceding that the child has experienced a change in educational placement when, if they would do the pattern analysis correctly, that might not be the case. Don't skip over the pattern-analysis process."

Take these three steps to avoid violating Section 504 when a student has accumulated 10 removals and is facing more.

1. Conduct pattern analysis.

The team should look to school administration to immediately conduct a pattern analysis to determine if the student's short-term removals constitute a pattern and a change in placement, Andriano said.

"It should not require much time to look at existing records to determine whether the series of short-term removals equal or constitute a pattern," he said. "If the determination is no, there is no reason to do the MDR."

If a pattern exists, additional removals would create a change of placement necessitating an MDR, Andriano said.

2. Promptly conduct MDR.

Conduct the MDR as promptly as possible, Andriano said. Remember, MDRs must be conducted in substantially the same way under Section 504 as they are under the IDEA. Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the child's MDR team must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information the parents provide to determine if the conduct was caused by, or had a direct and substantial relationship to, the child's disability or if the conduct was the direct result of the district's failure to implement the IEP. See [34 CFR 300.530](#) (e).

"In the absence of timelines under Section 504, we know OCR will often look at IDEA timelines," he said.

3. Involve parents in MDR.

At the same time, work with parents if the time frame for the MDR doesn't align with their schedules, Andriano said. OCR has indicated that a manifestation determination team should include a parent. *Newton County (GA) Sch. Dist.*, [116 LRP 1171](#), 9 GASLD 22 (OCR 2015). Suggest they attend virtually if they can't attend in person.

"I think virtual meetings are here to stay," he said. "MDRs aren't lengthy meetings anyway. You're reviewing the Section 504 plan and looking at the discipline history and going through the two questions. I recommend a virtual MDR if the parents agree to it. That is another way to conduct it much quicker."

Don't wait until the end of the 10 school days to conduct the MDR if you can help it, Andriano said.

If you do, you may end up in a situation similar to that in *Blackstone Valley Regional Vocational Technical School*, [122 LRP 3419](#) (SEA MA 01/21/22). The district failed to timely hold an MDR after the student, who already had 10 days of suspension, was suspended again.

"Make sure you're scheduling at a mutually agreeable day and time," he said. "Otherwise, you have to call the parents and say, 'Sorry you're not available; we're holding it tomorrow.' That's not going to go well for the district. Parents have to have an opportunity to provide their input into the MDR."

Just inform parents who try to take the conversation beyond the duties of the MDR team that other issues can be discussed at the next Section 504 team meeting, Andriano said. The Section 504 team can explore options, such as interventions to prevent the behavior from reoccurring.

"MDR teams must stick to what the purpose of the meeting is," he said.

See also:

- [Dos, don'ts for conducting MDRs involving students with ED](#)
- [SmartStart: Manifestation Determinations Under Section 504](#)
- [Navigating Manifestation Determination Reviews to Avoid Compliance Pitfalls](#), presented by Terry J. Harmon, Esq.

For more stories and guidance on this topic, access the [COVID-19 Roundup](#).

Mark your calendar: Attorney Alefia Mithaiwala will present the session [One Acronym, Two Meanings? A Compare and Contrast of the Delivery of FAPE Under the IDEA vs. Section 504 at LRP's National Institute on Legal Issues of Educating Individuals with Disabilities](#)®, April 24-27, 2022, in Louisville, Ky.

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