

STANDARD OPERATING PROCEDURES MANUAL

STUDENTS WITH DISABILITIES SUBJECT TO DISCIPLINE: AN OVERVIEW

Students with IEPs or 504 plans (referred to collectively as students with disabilities or SWDs) who are subject to discipline are afforded specific protections under federal and state law and regulations and DOE policy. In general, school staff should implement behavioral interventions and supports prior to and in connection with disciplinary action. If disciplinary action is warranted, a Manifestation Determination Review (MDR) must be conducted in certain circumstances to ensure that a SWD is not being disciplined for behavior (i) that has a direct and substantial relationship to the student's disability and/or (ii) that is a direct result of a school's failure to implement the student's IEP.

This section addresses:

- a) The circumstances under which an MDR must be conducted for a SWD;
- b) How to schedule an MDR meeting and notify parents of such meeting;
- c) The procedural requirements for conducting an MDR meeting;
- d) The steps that a school must take following an MDR; and
- e) How SOHO,¹ the DOE's system of record for suspensions and removals, supports schools in complying with the procedural requirements of conducting an MDR.

I. Disciplinary Removals

A SWD cannot be removed from his/her classroom for disciplinary reasons except as a result of a teacher removal, principal's suspension or superintendent's suspension. (There are procedural due process requirements that must be followed when these disciplinary removals are imposed.)²

Unless a student has been removed prior to the suspension hearing or a principal's suspension conference,³ the student must remain in his/her classroom setting and may

¹ SOHO stands for "Suspensions and Office of Hearings Online."

² Superintendent's suspensions, principal's suspensions and teacher removals are referred to collectively herein as "disciplinary removals." For more information regarding how these disciplinary removals are effectuated, see Chancellor's Regulation A-443.

³ A student may be removed prior to a principal's suspension conference only if the principal/designee has determined that the student's continued presence in school poses a continuing danger or an ongoing

not be removed until after the suspension hearing/conference and associated MDR have taken place.

All teacher removals, principal's suspensions, and superintendent's suspensions must be entered into SOHO at the time the decision is made to impose discipline. When the school enters information into SOHO, SOHO will guide the user through the procedural due process requirements for SWDs, including the process to determine whether an MDR must be held and if so, the timing of the MDR.

An MDR must be conducted when a SWD is subject to a "disciplinary change of placement." A disciplinary change of placement occurs whenever a student is removed from his/her current educational program for more than 10 consecutive school days in a school year or for more than 10 cumulative school days in a school year as the result of a "pattern of removals." The purpose of the MDR is to determine whether the behavior that led to the disciplinary removal or the proposed disciplinary removal was caused by or had a direct and substantial relationship to the student's disability and/or was the direct result of a failure to implement the student's IEP.

II. Students Requiring MDRs

An MDR must be conducted for any student with an IEP or 504 Plan who is subject to a disciplinary change of placement, as defined in this section. If a student does not have an IEP, but the DOE is "deemed to know" that the student is a student with a disability under the IDEA, the student is entitled to the same due process protections as a student with an IEP who is subject to disciplinary removal (see Section VIII).

III. Disciplinary Change of Placement

A disciplinary change of placement occurs if a SWD is removed from his/her current education program:

- For more than 10 consecutive school days as a result of a superintendent's suspension; or
- For more than 10 cumulative school days in a school year as a result of multiple disciplinary removals that constitute a "pattern of removals," as defined below.

The principal/designee must enter all disciplinary removals into SOHO at the time the decision is made to impose, or seek to impose, discipline. SOHO is programmed to calculate the total number of days of removal⁴ in a school year and to notify the principal

threat of disruption. With respect to superintendent's suspensions, students charged with certain offenses must remain in school in their classes pending the suspension hearing unless the principal/designee believes that the students' continued presence in school poses an immediate or continuing danger to persons or property or an ongoing threat of disruption to the academic process. Students charged with other more serious infractions will be assigned to an alternative site prior to the hearing unless the principal decides that the student will remain in school pending the hearing. Students charged with the most serious infractions must be assigned to an alternative instruction site prior to the hearing.

⁴ A disciplinary removal of a SWD for any portion of a day is counted as a disciplinary removal for a full day for the purposes of determining the number of days of removal.

by email when the imposition of discipline will result in a disciplinary change of placement.

A. *Pattern of Removals*

There are two types of patterns of removals that may result from the imposition of discipline: Presumptive patterns and Non-presumptive patterns.

i. Presumptive Patterns of Removals

As a matter of DOE policy, a pattern of removals is presumed and an MDR is required whenever a SWD will be removed from his/her educational placement for more than 10 cumulative school days in a 40-school-day period as the result of the imposition of at least three disciplinary removals of 10 days or less. Such a pattern is referred to as a “presumptive pattern of removals.” When a disciplinary removal is entered into SOHO and that removal will result in a presumptive pattern of removals, SOHO is programmed to notify the school by email that an MDR is required. In these instances, the principal/designee does not have to decide whether a pattern of removals will occur if discipline is imposed. It is presumed to occur and an MDR must be held.

ii. Non-presumptive Patterns of Removals

If the imposition of a disciplinary removal will result in the SWD being removed for more than 10 cumulative school days in the school year and does not result in a presumptive pattern of removals, the principal/designee must determine whether a non-presumptive pattern of removals will occur if the discipline is imposed. Once an SWD has been removed for more than 10 cumulative school days in the school year, the non-presumptive pattern determination must be made for every subsequent removal that is less than 10 cumulative school days, regardless of whether prior removals have been determined to constitute a change of placement or of the determination(s) reached in prior MDRs.

In determining whether a non-presumptive pattern of removals will occur the principal/designee must consider:

- Whether the behaviors underlying the prior and proposed disciplinary removals are substantially similar, including prior behavior(s) that resulted in positive manifestation determinations during the current school year; and
- If those behaviors are substantially similar, whether the imposition of the removal will result in a pattern of removals, taking into account the nature of the behavior and such additional factors including the temporal proximity of the prior and proposed removals to one another, the length of each removal, and the total amount of time the student will have been removed) to determine whether a non-presumptive pattern of removals exists.

SOHO will prompt the school to answer questions, as described in more detail in iii(a), when the principal/designee enters the disciplinary removal into SOHO.

To help the principal/designee, the following information regarding each prior disciplinary removal is available in SOHO:

- The number of days of removal for each disciplinary action;
- The date each removal was imposed;
- The infraction code(s) associated with each disciplinary removal; and
- A link to the associated Online Occurrence Reporting System (OORS) report for each disciplinary removal.

iii. **Determining Whether a Disciplinary Removal will Result in a Non-Presumptive Pattern of Removals**

a. **Principal's Suspension/Teacher Removal**

The following sets forth the SOHO-assisted process for determining whether the imposition of a teacher removal or principal's suspension will result in a non-presumptive pattern of removals.

The principal/designee must enter the number of days of a teacher removal or of a proposed or imposed principal's suspension into SOHO. SOHO will calculate the cumulative number of days of removal for the student for the school year.

If the number of days of the proposed removal, when aggregated with prior removal(s), results in more than 10 cumulative days of removal in the school year, and a presumptive pattern of removals will not occur, SOHO will prompt the principal/designee to make a non-presumptive pattern of removals determination by answering the following question(s):

1. *Is this behavior substantially similar to the student's behavior in the previous incident(s) that resulted in disciplinary action (removal/suspension) this school year, taking into account what happened in the incidents and the surrounding circumstances, including but not limited to, the precipitating events, the location and time of the incidents and the participants?*

If the principal/designee responds "NO" to this question, a pattern of removals will not occur and an MDR will not be required.

If the principal/designee responds "YES" to this question, the principal/designee will be asked to consider additional factors in determining whether a pattern of removals will occur if the discipline is imposed. The following will appear in SOHO:

2. *In addition to considering the similarity of behaviors, you must determine whether there is a pattern of removals by considering additional factors such as:*

- (a) *Whether the length of this disciplinary action is similar to the length of the prior disciplinary action(s) imposed this school year;*

- (b) Whether the student has been removed from his regular class for a significant number of days due to disciplinary action(s) this school year; and*
- (c) Whether this disciplinary action is close in time to the prior disciplinary action(s) this school year (prior teacher removal(s) and/or suspension(s)).*

The principal/designee must consider these factors and determine whether a pattern of removals will occur if the teacher removal or principal's suspension is imposed and enter his/her decision into SOHO.

If the principal/designee determines that there is a pattern of removals, SOHO will send an email to the school advising that because the imposition of this discipline will result in a disciplinary change of placement, an MDR must be conducted.

b. Superintendent's Suspensions of 10 Days or Less

The following sets forth the SOHO-assisted process for determining whether the imposition of a superintendent's suspension of 10 days or less will result in a non-presumptive pattern of removals.

Whenever a superintendent's suspension has been authorized for a SWD, there is the possibility of a disciplinary change of placement following the hearing. Therefore, as soon as the suspension is authorized, SOHO schedules the MDR and notifies the school by email of the date for the MDR. If the charges are sustained at the suspension hearing or a plea of no contest is entered, the suspension hearing office will enter the proposed disposition into SOHO.

- If the proposed disposition is a suspension for more than 10 consecutive school days or will result in a presumptive pattern of removals, the MDR must be conducted, as originally scheduled by SOHO. The principal will receive an email reminding the principal of the original deadline for conducting the MDR.

If the proposed disposition is for less than 10 days, but the imposition of the discipline will result in more than 10 cumulative school days of removal and will not result in a presumptive pattern, the principal/designee will be required to make a non-presumptive pattern of removals determination in SOHO. SOHO will send an email to the principal directing the school to go to the "MDR queue" in SOHO and make a non-presumptive pattern of removals determination as set forth in iii(a) above.

- If the principal/designee determines that there is a non-presumptive pattern of removals, an MDR must take place after the suspension hearing or no contest plea (and the principal will receive an email reminding the school of the deadline).
- If the principal/designee determines that no pattern exists, an MDR is not required and an email will be sent to the school notifying the principal of the cancellation of the MDR.

IV. Timeframes and Notification Requirements

The timeframes and notification requirements for MDRs are set forth below. Timeframes for scheduling MDRs differ depending upon the type of disciplinary removal.

Parents must receive written notification of the MDR. This notice must inform the parent of:

- The date of the meeting;
- The purpose of the meeting;
- The names of all individuals whom the principal/designee expects to attend; and
- The parent's right to request that additional members of the school-based or district Committee on Special Education (CSE) participate.

Parent notification letters for MDRs are available in SOHO. Schools are required to use these letters to notify the parent of the removal/suspension and the MDR meeting. For superintendent's suspensions, the suspension hearing office will notify parents in writing of the suspension and the MDR date. Copies of these letters are available in SOHO.

A. Superintendent's Suspension that Results in a Disciplinary Change of Placement

Whenever a superintendent's suspension has been imposed for a SWD, SOHO automatically schedules an MDR for two school days after the hearing date and notifies the school by email of the date of the suspension hearing and the MDR.

The MDR will be canceled by SOHO if, following the suspension hearing or a plea of no contest:

- The charges are dismissed; or
- The imposition of the discipline will not result in a presumptive or non-presumptive pattern of removals.

The suspension hearing office will notify the parent in writing of the suspension and the date of the suspension hearing and the required information about the MDR, described above. The suspension hearing office will also notify the parent of any hearing postponements or rescheduled or canceled MDRs.

B. Principal's Suspension that Results in a Disciplinary Change of Placement

The MDR must be scheduled to occur no later than five school days after the date scheduled for the principal's suspension conference. SOHO will automatically notify the school that an MDR must be scheduled by that date.

The school must notify the parent in writing of the suspension and the MDR by sending the principal's suspension/MDR notification letter found in SOHO. This notice must be sent in a manner which assures receipt within 24 hours of the decision to suspend.

C. *Teacher Removals that Result in a Disciplinary Change of Placement*

The MDR must be scheduled to occur no later than five school days after the date the teacher removal was imposed. SOHO will automatically notify the school that an MDR must be scheduled by that date.

The school must notify the parent in writing of the MDR by sending the teacher removal/MDR notification found in SOHO on the same date the removal is imposed. The notice contains the required information about the MDR, as described above.

V. *Conducting an MDR Meeting*

An MDR Worksheet must be completed by the MDR Team. The MDR Worksheet can be found in the MDR queue in SOHO or at http://ats.nycboe.net/Safety/soho/Suspension_Documents/MDRWorksheet.pdf. The steps that must be followed in conducting the MDR are set forth below. This section also provides some procedural guidance to the MDR team on the factors to consider in making a MDR determination.

A. *Confirm that an MDR is needed*

Confirm that the student has an IEP or 504 Plan.

B. *Ensure that the Required Members of the MDR Team are in Attendance*

The following people must participate in the MDR in person, unless otherwise indicated (this group is referred to herein as the MDR Team):

- A representative of the school district knowledgeable about the student and the student's behavior;
- The parent (the parent may participate in person or by phone);⁵ and
- Other members of the district or school-based CSE as determined by the school district and/or the parent (e.g., student's special education teacher).

It is recommended that at least two school staff members attend the MDR meeting. School staff who attend must be knowledgeable about the student's behavior and disability (e.g., psychologist, social worker, guidance counselor).

⁵ If the parent has been provided with notification as set forth above in Section IV and does not attend the meeting or participate by phone, the meeting may still take place.

C. Review of Required Documentation

The MDR Team must review all relevant information in the student's file, which at a minimum must include:

- IEP or 504 Plan;⁶
- Functional Behavioral Assessment (if available);
- Behavioral Intervention Plan (if available);
- Teacher observations;
- The OORS report (and any OORS reports for prior related incidents);
- Relevant evaluations; and
- Information provided by the parents.

D. Review of Documents and Determination of Background Information

The MDR Team must review the documentation noted above and discuss the student's behavior and disability in order to help determine whether behaviors identified in the IEP, the FBA, or the BIP are similar to or related to the behavior which is the subject of the MDR. The questions on the MDR Worksheet are intended to guide the MDR team through this analysis.

In reviewing the documents the MDR team should consider the following:

- The nature and inherent characteristics of the student's disability;
- Whether, at the time of the incident, the student was receiving all of the services set forth in the IEP, and if not, which aspects of the IEP were not fully implemented;
- The behavior that led to the discipline under review;
- Whether there was a history of prior behavioral concerns for the student, and if so, whether the concerns included behavior similar or related to the behavior under review;
- If there was a history of prior behavioral concerns, were they identified in the current IEP, and if so, how;
- Whether the student's prior behavior warranted an FBA;
- If an FBA was warranted, whether it was completed and what behavioral concerns were identified;

⁶ If the MDR Team is conducting the MDR based on a 504 Plan, the underlying documentation from the 504 Plan should also be considered, if relevant.

- If an FBA was completed, whether the behavioral concerns identified related to the behavior under review;
- Whether a BIP was developed;
- If a BIP was developed, whether it identifies behaviors related to the behavior under review, and if so, what those behaviors and corresponding interventions were and whether the BIP was implemented; and
- Whether there was a triggering event or circumstance that preceded the behavior under review, and if so, what the trigger was.

E. Making a Determination

Using the information learned from a review of the documents and discussion during the meeting, the MDR Team must answer the following two questions:

1. *Was the conduct in question caused by or did it have a direct and substantial relationship to the student's disability?*

A determination must be made as to whether there is a causal link between the conduct for which the student was suspended and the student's disability. The MDR Team must consider all of the student's special education needs, whether or not commonly linked to the disability category in which the student has been classified. Although the primary focus of the MDR should be on the behavior subject to disciplinary action, the MDR Team must also examine any triggering events or circumstances that may have occurred immediately prior to the behavior subject to disciplinary action. In addition, the MDR team must analyze the student's behavior across settings and across time when determining whether the conduct in question is a direct result of the disability.

2. *Was the conduct in question a direct result of the DOE's failure to implement the student's IEP?*

The MDR team must consider whether a part of the IEP was not implemented, and if so, whether implementation of that part of the IEP would have prevented this conduct or made it less likely to occur.

- If the MDR Team agrees that the answer to either one or both of these questions is "YES," the behavior IS a manifestation of the student's disability.
- If the answer to both questions is "NO," the behavior IS NOT a manifestation of the student's disability.

F. Enter Meeting Information into SOHO

Enter the following information in the student's MDR record found in the MDR queue: (1) the date the MDR was held; (2) the participants; and (3) the meeting outcome.

If the school has completed a paper copy of the MDR Worksheet, the MDR Team must enter all information from the MDR Worksheet into SOHO and maintain the paper copy at

the school. Alternatively, the MDR Team may enter and complete the MDR Worksheet directly into SOHO at the meeting.

VI. Required Steps Following the MDR Meeting

A. Determination of a Manifestation

If the MDR Team finds that the action for which the student was subject to discipline was a manifestation of his/her disability, the student must be immediately returned to school, except as set forth below.

If a student's misconduct is found to be a manifestation of the student's disability, the student may still be assigned to an Alternate Learning Center (ALC) for up to 45 school days, if charges involving the following offenses were sustained at a superintendent's suspension hearing:

- **Weapons**: The student brought or possessed a weapon⁷ in school, on school premises, or at a school function under the jurisdiction of the school or DOE.
- **Drugs**: The student knowingly possessed or used illegal drugs or sold or solicited the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of the school or DOE.
- **Serious bodily injury**: The student inflicted serious bodily injury on another person at school, on school premises, or at a school function, meaning bodily injury which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

The following steps must also be taken if the MDR Team concludes that the action is a manifestation:

- If the student does not already have one, an FBA must be conducted and, if appropriate, a BIP must be developed and implemented immediately.
- If an FBA has already been conducted, it must be reviewed to determine whether a new FBA is needed and whether a BIP should be created. If a BIP has already been developed, it must be reviewed and modified as necessary to address the behavior that resulted in the removal.
- If the student's IEP is not fully implemented, steps must be taken immediately to remedy the deficiencies.

B. Determination of No Manifestation

If it is determined that the student's behavior was not a manifestation of his/her disability, the disciplinary removal may be imposed.

⁷ A weapon for these purposes does not include a pocket or other knife with a blade of less than two and one-half inches in length.

The following additional steps must be taken:

- At the next CSE meeting, the school-based or district CSE must determine whether the student's behavior necessitates conducting an FBA and/or developing or reviewing a BIP.⁸ If the student requires an FBA, one must be conducted, and a decision must be made as to whether the student requires a BIP. If the student requires a BIP, it must be developed and implemented immediately. If the student already has a BIP, it must be reviewed to determine if a new FBA is needed to gather new data or if changes need to be made to the BIP.
- The FBA and BIP must be forwarded to the student's suspension site upon completion.

C. For Either Outcome

Regardless of whether the behavior is found to be a manifestation of the student's disability, if any member of the MDR Team determines that the educational or related service needs of the student warrant a change in the student's program or a reevaluation of the student, the member must submit a request for a reevaluation or an IEP review immediately following completion of the MDR.

VII. Order from Impartial Hearing Officer to Place a Student in an ALC

In exceptional cases the DOE may also seek an order from an impartial hearing officer to place a student in an ALC for up to 45 days when maintaining the student in his/her current educational placement is substantially likely to result in injury to the student or others.⁹ The order may be sought without seeking disciplinary action.

An MDR must be conducted within 10 days of the placement of the student in the ALC. The student may remain in the ALC regardless of the determination of the MDR Team.

VIII. "Deemed to Know"

Prior to taking any disciplinary action against a student without an IEP, school officials must determine if the DOE is "deemed to know" that the student is a student with a disability under the IDEA.

The DOE is "deemed to know" that a student is a student with a disability under the IDEA if, prior to the conduct at issue:

⁸ If the student is attending an ALC, the school should work with the ALC staff to gather the relevant information to create or update the FBA/BIP.

⁹ The DOE may request that the impartial hearing officer extend the student's placement in the ALC for additional 45 day periods if returning the student to his/her current educational placement is substantially likely to result in injury to the student or others.

- The parent expressed concern in writing¹⁰ to a school-based administrator, the district CSE or a teacher of the student advising that he/she thinks his/her child may have a disability;
- The parent has requested in writing⁹ to the school principal or the district CSE an evaluation of his/her child to determine whether the student is a student with a disability (request for an initial evaluation); or
- A teacher of the student, or other DOE employee, has expressed concerns in writing directly to the school principal or district CSE about a pattern of behaviors demonstrated by the student.

The DOE is not deemed to know, and a student is not presumed to have a disability, if:

- The parent declined to consent to an evaluation, has not produced the student for an evaluation or has revoked or withdrawn consent;
- The parent refused to allow the provision of special education services; or
- The student was evaluated and determined not to be a student with a disability under the IDEA.

If it is determined that the DOE is “deemed to know” that a student is a student with a disability under the IDEA, the school must follow protocols to obtain parental consent. Upon receipt of consent, the school must conduct an expedited evaluation within 15 school days. If the parent fails to provide consent after outreach by the DOE, the case is closed, and the student is not a “deemed to know” student.

If, following the expedited evaluation, it is determined that the student is a student with a disability under the IDEA, an MDR must be conducted. Because there was no IEP at the time of the behavior, the MDR team will only need to determine whether the behavior on which the disciplinary action is based is a manifestation of the student’s disability and not whether the conduct in question is a direct result of the DOE’s failure to implement the student’s IEP. If a student was not removed prior to a principal’s suspension conference or superintendent’s suspension hearing, the student may not be removed until after the evaluation (and if required, the MDR).

¹⁰ A written concern or request may be made orally only if the parent does not know how to write or has a disability that interferes with his/her ability to prepare a written statement.