

# **Manifestation Determination Review Module 1**

[00:00:00.83] BILL BROWN: This training is going to be on the Manifestation Determination Review process, otherwise abbreviated as MDR. And here in module one, we're going to look at the basic policies and procedures around the manifestation determination review process. The purpose of the manifestation determination review process is to determine if the student's conduct was a manifestation of the child's disability or a result of the failure to implement the student's IEP.

[00:00:33.01] When looking at patterns of behaviors for specific students, there's two different approaches or processes you can look at. The first is a disciplinary removal, and the disciplinary removal is usually for a violation of the code of conduct that is imposed by administrative staff within the school environment where the parents don't have a choice related to that removal. The other process you can look at if you're seeing a pattern of behavior is the traditional IEP placement meeting, which is a totally separate process from the disciplinary removal.

[00:01:05.90] So if you gather that student's IEP team, you can review their patterns of behavior and then you can make determinations about, is the IEP, FBA, and BIP appropriate for the student? Do we need to adjust services? You could also look at, is the school setting currently an appropriate placement for this particular student, or should we look at an alternative placement, or a placement that has higher levels of resources?

[00:01:32.63] So these are two separate processes. So when looking at student behavioral patterns, you need to decide which process we're going to go down. That discipline removal-- and this is where your manifestation determination review process is going to kick in, and that's what we're going to talk about throughout the rest of this webinar-- or holding an IEP meeting and determining whether the placement is appropriate for that student.

[00:01:57.96] When a decision is made to effect a disciplinary change in placement for a student with a disability who violated a code of conduct, the public agency must conduct a manifestation determination review meeting within 10 school days of that decision. A disciplinary change in placement occurs when a student is removed for more than 10 consecutive school days or is subjected to a series of removals that constitutes a pattern. With that series of removals, if they total more than 10 school days in the school year, those all count.

[00:02:32.47] So it can be 10 consecutive, or it might be one day here, one day there, two days here. You add up all those individual days, and that's what constitutes a series of removal where you add up those 10 days and each of those 10 day time periods is conducted within the context of a school year, not a calendar year. If the child's behavior is substantially similar to the behavior and previous incidents that resulted in that series of removals-- so this kind of gets back to that concept of function of behavior.

[00:03:04.36] Do we have a similar function of behavior when we're looking at these different patterns? Such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another need to be taken into

consideration. So we're not only looking for those 10 consecutive days, but we're looking for patterns that would add up to those 10 days.

[00:03:28.18] The national practice is to not take up the argument related to the patterns of behavior, although some schools have challenged this particular practice. What constitutes a pattern of removals is decided on a case by case situation, and these decisions are usually made in court systems or through the dispute resolution process. The danger you run into when looking at patterns of behavior is let's say you got the student to stop hitting and they started kicking.

[00:03:58.42] We got them to stop kicking and then they started spitting. We got them to stop spitting and they started tearing up materials. All of these individual different behaviors could be defined as different patterns of behavior, but the root cause might be the exact same function. They're all attention seeking behavior. So when we got rid of hitting to get attention, they did kicking to get attention. When we got rid of kicking, they did spitting to get attention.

[00:04:23.65] So it's really about that core function of the behavior when you're talking about those patterns of regulation. And so the national practice is just to not take up that argument on the pattern of behavior, but just to count all those behaviors towards that 10 day time period because it's kind of a guessing match as to the interpretation that will be put in place if it ends up in a case of law or a dispute resolution.

[00:04:53.12] Is there a law that requires that a functional behavior assessment be done? There is, and you're looking at that law on your screen right now. I'm going to read that to you. The reauthorization of IDEA in 2004 included language that required schools to conduct a functional behavior assessment when a child with a disability has been removed from his or her current educational placement for more than 10 days.

[00:05:17.72] However, for students at risk for suspension or those suspended for less than 10 days, school districts should complete a functional assessment and develop a behavior support plan to prevent future suspensions. Additionally, Colorado House Bill 12-1345 states that a student cannot be removed from the teacher's classroom for the remainder of a term, which is typically allowed after three incidents of disruptive behaviors unless a behavior support plan has been developed and implemented.

[00:05:51.66] The behavior support plan is recommended to be developed and implemented after the first incidence of removal for disciplined behaviors, but must be developed after the second incident of removal for disruptive behaviors that results in a student being removed from the classroom. Parents and guardians are required to be notified throughout this process and should be included in the development of the behavior support plan.

[00:06:16.42] So basically to paraphrase or summarize this particular law is that the only place in the regulations where a functional behavior assessment and a behavior intervention plan is required is through the manifestation determination review process. Colorado is what they consider a local control state. As a local control state, that means each school district or BOCES gets to determine their own-- set their own policies and procedures, which is their interpretation of the state and federal regulations.

[00:06:48.09] And with those interpretations, they can narrow the guidelines if they would like. So a lot of districts will have local policies and procedures that adds in additional requirements for when you do a functional behavior assessment and a behavior intervention plan, such as it is common across a lot of different school districts to have policies that state that if you're doing an IEP in the area of a serious emotional disability that you need to conduct a functional behavior assessment as part of that evaluation process, which is perfectly OK under the local control guidelines.

[00:07:27.69] With the manifestation determination review process, the first 10 days of suspension or removal are the same as general education students. Removal means that the parents do not have a choice. The removal is imposed by the school system. After those 10 days, a manifestation meeting must be held. Parents must get notice and an opportunity to bring support. The regulations say you have to provide parents with reasonable notice. The regulations don't define what reasonable notice means.

[00:08:00.06] Kind of a basic general understanding of that reasonable notice is typically interpreted as being three days or more. So if it's going to take me three days to hold that manifestation determination meeting and I need three days for that scheduling process because if my special education director is involved I have to get on their schedule, I have to make sure I have my school administrator's schedule, I have to make sure I'm getting on the parent's schedule, but the parents have time to invite an advocate or outside mental health provider.

[00:08:30.43] You're going to give them that time period to do that. As a result of that delay in that manifestation determination review from the incident to allow for scheduling, best practice is to start that MDR process after five days of removal. If you start the MDR process after five days of removal, then it gives you time to set up that particular meeting.

[00:08:53.54] So if they have a, say, a five day suspension where at five days of removal they can be out of school while we're in the process of scheduling that manifestation determination review meeting to determine whether the behavior is or is not related back to the behavior. If I wait until we've reached 10 days of removal, then I can't-- then I should not remove the student from the school until we have that manifestation termination review meeting, which means while that meeting is being scheduled the student is going to be in the classroom.

[00:09:25.06] If you do remove the student beyond that 10 days while we're waiting on that manifestation termination review process, then you might have to make up those services for that particular student during those days of removal. And then made up services are going to go back to providing the special education services, and we're going to talk about how do we make those services up here in a minute. Who needs to participate in the manifestation determination review process?

[00:09:53.39] Your local educational agency or your school administration needs to be part of that process. Your parents need to be part of that process, and relevant IEP team members need to be part of that process. Your entire IEP team does not need to be in attendance, just relevant members of the IEP team need to be in attendance. Relevant members can be suggested by parents and who they feel from the IEP team they would like to have in attendance.

[00:10:23.21] It can also be the school administration who suggests relevant members of the IEP team to be in attendance as well. Is the general education teacher required to be there? That would be an it depends question. If that general education teacher is the one that has all the information on the particular incident that happened, you're going to want them at that particular meeting.

[00:10:49.02] In general, you don't have to have a representative from general education, but like I just mentioned, if they're the ones that have that key information because it happened in their classroom, you probably want them to participate in that particular process. With the manifestation determination review process there are two questions that need to be asked and answered, which is the main focus of this particular meeting. The first question, was the conduct caused by or did it have a direct and substantial relationship to the student's disability?

[00:11:21.18] This question is really asking it is, was the behavior that the student is being disciplined for related to their disability? If the behavior is part of their identified disability, we're providing services and we're programming for that particular behavior, then we don't want to punish the student related to their disability. And if these behaviors are related to the disability and we remove them, then that punishment might be considered related to disciplining them for their disability the other question that you want to ask is, was the conduct the direct result of the district's failure to implement the IEP?

[00:12:00.00] Was the behavior result of failure to implement the IEP? An example of this might be maybe the student has on their IEP mental health services, and they're supposed to see the mental health person 30 minutes every week. Maybe the mental health person was out sick and so they missed one week of services. Then the question is, because that one week of services was missed, that the students-- was the student's behavior a result of that missing service that was put in place?

[00:12:30.91] If that student's behavior is a direct result of that missed service, then we do have to answer no to this particular question. Other examples of areas you might look at is, does the student have a behavior intervention plan? If they do have a behavior intervention plan, was the behavior intervention plan implemented with fidelity and followed for the student? If it was not, then we would answer no to this question as well.

[00:12:58.22] Questions that are not part of the process that often get asked at the manifestation termination review are, did the student know the difference between right and wrong, and was the behavior a choice based situation? These questions typically come from that differentiation that we make when you're looking at a serious emotional disability IEP and you're trying to separate out that emotional disability from social maladjustment, because when you're looking at students who are socially maladjusted, some of the things you look at is do they know right and wrong, is it a choice based behavior.

[00:13:34.22] And I think that's where these questions come from and frequently get applied to the manifestation determination review process, even though they're not actually part of that particular process. The problem with these particular questions is, did the student know the difference between right and wrong? They might know the difference between right and wrong

when they're calm, but when their emotion kicks in and they have that high emotional presence or that high emotional behavior, then that ability to discern right and wrong might leave them or they might-- because their emotional system or their survival system disconnects them from their prefrontal cortex so they don't have that access to that information of, is this right or is this wrong.

[00:14:17.46] So you really got to look at this in the context of emotion and emotional impulsivity. Was the behavior choice based? Again, when you add that emotional component, with that emotional component, if they're kicking in the survival system, this may be an automated behavioral response where they're engaging in it not by choice but because this is part of that survival mechanism that keeps them safe. Because in a survival situation you don't want to think about or process those particular behaviors because by the time you do, it might be too late to make that decision.

[00:14:54.12] When schools do look at a planned pattern of behavior or calculated behavior in a court system, this can be seen as not part of that disability if it is a planned behavior or calculated behavior. In these situations this would not be considered to be a manifestation of the student's disability. So schools can't consider whether or not the behavior that they're looking at was planned out and calculated when they're making their determination.

[00:15:27.68] Student Services are not directly linked to IEP qualification area, but are based on the identified needs of the student as indicated through the IEP assessment. Sometimes when you're looking at the manifestation determination review process, staff think that this might apply if the student has an IEP in the area of a serious emotional disability, and they think it may not apply if they have an IEP in the area of a specific learning disability.

[00:15:57.00] Because if their disability is a specific learning disability, it's academic in nature and that whole IEP is written around those academics, and they think, well, we might not need to do that manifestation determination review. Because IEPs are need based, meaning that we provide services based on the student's need, not based on what area they qualify for, you can have a student who has a specific learning disability and has behavioral needs or behavioral issues.

[00:16:26.14] So, if on the eval page we noted for the student with a specific learning disability that they have behavioral problems that are resulting in them not being able to access their general education and environment and we're programming and planning for that or they have an FBA or BIP in that, then you would go ahead and do that manifestation termination review. So that manifestation determination review process is not limited to any one particular IEP qualification category and applies to all IEP qualification categories.

[00:17:02.53] If the behavior is a manifestation of the student's disability, the IEP team must conduct a functional behavior assessment and implement a behavior intervention plan, or if an FBA and a BIP already exists, then they need to review that behavior intervention plan, and then the child needs to be returned to the placement from which they were removed. Except in special circumstances, and we're going to cover those special circumstances on another slide.

[00:17:34.50] The special circumstances that we were referring to is a 45 day placement in an alternative facility can occur if the conduct involved drugs, weapons, or serious bodily injury. And we're going to take a look at what the definition of serious bodily injury is. The term serious bodily injury means bodily injury which involves a substantial risk of death, extreme physical pain, protracted or obvious disfigurement, or protracted loss of impairment of the function of a bodily member, organ, or mental faculty.

[00:18:15.37] I just mention this because bodily injury goes way beyond or is way more serious than a bite mark or a bruise or some type of abrasion. If the behavior is not a manifestation of the student's disability, school personnel may apply the relevant disciplinary procedures in the same manner and duration as it would be applied to children without disabilities, except with the children with a disability must still receive their IEP services in order to have FAPE, a free and appropriate public education.

[00:18:51.28] So this means that you gotta find a way to provide those services in that absence for the student. Compensatory services have to be provided for IEP goals for days missed beyond that 10 day time period. So once we're beyond that 10 day time period, we just have to find a way to make sure they're still getting their OTPT mental health or educational services, even if they're removed for a period of time. So this is what we mean by compensatory services for students.

[00:19:24.84] The child needs to continue to participate in general education curriculum, although in maybe a different setting or alternative setting. The child needs to be allowed to continue to progress towards meeting their goals and their IEP. And they can include the completion of an FBA and BIP as appropriate. If there is a lack of unity related to that decision making, meaning the IEP team cannot come to consensus, then that final decision falls to the LEA or the school administrator that is participating in this manifestation determination review process.

[00:20:02.35] Parents cannot veto or override that particular decision, however, if they want to, they can express or complete a dissenting opinion saying they do not agree with the outcome. But the final say is always going to go back to that administrative unit and whoever that administrator is representing that administrative unit. Informal removals count towards that 10 day time period, and informal removals look differently or can be referenced differently. It might be that a school calls a parent to pick up the student every day or most days.

[00:20:38.56] Early pick up is typically counted toward that 10 day time period. It may not be labeled as a suspension or it might be presented to the parent that if you come pick up your child then we won't suspend them. The key here to this process is if the parent feels like they don't have a choice in the matter or if the school is imposing this informal removal, then it's going to count towards that 10 day time period.

[00:21:04.63] If the school will not allow the student to return to school due to a behavior issue but doesn't label a suspension, it can still count. If the student sends a student home for violating school policy but does not label it as a suspension, it can still count. So again, it comes back to

that caveat that says the parents feel like they don't have a choice in coming to get their child. If that's the case, then it's a school imposed removal.

[00:21:30.89] Regardless of the label or whether it's labeled as a suspension or not it still counts towards that 10 day time period. When counting toward that 10 day time period, the regulations indicate that any portion or partial part of the day counts as a full day. And so this really comes back to that concept of needing to have local policies and procedures and what defines your day. Kind of what defines that would be how often do you take attendance.

[00:21:59.27] If you're taking attendance AM and PM, which is common in elementary schools, then if you send them home the last 10 or 15 minutes of the day, it would count for that entire PM attendance period. If you're doing attendance by period then it would be whatever period that they're missed. Sometimes schools keep track of the exact minutes, sometimes look at what portion or part of the day was missed, and they do that based on their local policies and procedures. Zero tolerance rules do not apply to the manifestation determination review process if that behavior is found to be a part of the student's disability.

[00:22:40.30] Do in-school suspensions count towards that 10 day time period? The answer to this question is, it depends. If your in-school suspension system allows the student to participate in general education curriculum and if their IEP services are provided and they're participating in in-school suspension with non-disabled students. When all three of these criteria are met, then it does not count towards that 10 day time period.

[00:23:10.30] But again, they have to be able to participate in general education curriculum, have their IEP services provided and be with non-disabled students. If any one of those criteria are not met, then an in-school suspension does count towards that 10 day time period. Do bus suspensions count towards that 10 day time period? This is another it depends question.

[00:23:35.17] If the student has transportation listed as a related service on their IEP, then this might count towards that 10 day time period because we are suspending them from the services that we are providing to them, even if the parent brings them to school, because they're not allowed to ride the bus. So you need to look at, do we have transportation as a related service on their IEP? Even if transportation is not a related service on their IEP but the bus is the only means or method the student has of getting to school, and if that suspension from the bus prevents them from attending school, that could also count towards that 10 day time period.

[00:24:19.73] So when we're looking at buses, it's really important that you have a good communication line between your bus and your bus supervisors and your school staff and your school supervisors and both know about the student suspensions and where we're at in that 10 day process. And also you might want to take in consideration if you're writing a behavior intervention plan and there are problems on the bus, that behavior intervention plan may need to include interventions for the bus.

[00:24:51.77] Do half days or shortened days or shortened schedules count towards that 10 day time period? This is an it depends answer as well. It could be considered that if we put them on a shortened schedule or half days, that this changes their placement or it changes their least

restrictive environment. By having them in school less time they might go from 80% in general education to 40% to 79% or less than 40% with that, and this also depends on, is this half day or shortened schedule being determined by school administration and as part of a disciplinary procedure or process?

[00:25:33.35] Then that's more likely to count towards that 10 day removal period. If this is done through your IEP team and your IEP team is doing it not for disciplinary reasons but your IEP team is looking at it for treatment reasons as to what is going to make the student be more successful and they design a program that puts them on half or shortened schedules, as long as there is a plan to get them back to full time attendance in that and that there's criteria for that, then that might not count towards that 10 day time period.

[00:26:13.08] Again, it just depends on whether you're looking at it from a IEP, what's in the best interest of the student, or are you looking at it from a student discipline perspective. Sometimes there might be a threat assessment team, and that threat assessment team says the student is unsafe to be in the building. And so they say they can't come in because of the outcome of that threat assessment team. That could constitute a change in placement. So if the threat assessment team determines they can't be in school, that is basically the same thing as your school administrative saying they can't come for discipline reasons.

[00:26:52.87] A threat assessment team cannot override an IEP team. So in these particular cases or instance, the IEP team will override the assessment team, and the IEP team needs to assess the threat and the danger and make a determination about appropriate student placement in these cases. This wraps up the first part of your manifestation termination review training. If you have any questions, you can reach me, Bill Brown, at brown\_w@cde.state.co.us, or you can give me a call at 720-603-3000.