

Manifestation Determination Review Supplemental Guide

Last Revised November 2024

1. ***What is a student's educational placement?***

A student's placement means the student's educational program, not the particular institution where that program is implemented. In other words, a student's placement refers to the special education and related services that the student receives, not the location or setting of those services. See *White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 379 (5th Cir. 2003).

2. ***When is a student removed from the student's educational placement?"***

To determine whether a student has been removed from the student's educational placement, local education agencies (LEAs) should ask the following questions:

- Has the student's access to the general education curriculum changed?
- Has the student's access to the special education and related services listed in the student's individualized education program (IEP) changed?
- Has the student's access to non-disabled peers as listed in the student's IEP changed?

If imposing disciplinary measures will cause the answer to any of those questions to be yes, then the student has been removed from his or her current placement.

3. ***Is a student removed from the student's educational placement" if the student is issued an in-school suspension?***

If the student has access to the general education curriculum, to the special education and related services listed in the student's IEP, and to non-disabled peers as listed in the student's IEP, then it is possible that the student has not been removed from his or her current educational placement by being placed in an in-school suspension setting. Nonetheless, LEAs should be cautious about not conducting a manifestation determination review (MDR) when a student receives a lengthy in-school suspension or series of in-school suspensions. Specialized instruction is grounded upon a solid foundation of general instruction, and the student may not be receiving an equivalent education in the in-school suspension classroom that the student would have received in the student's regular classroom. For that reason, it is best practice to conduct an MDR when a student is issued an in-school suspension.

4. ***Should partial day removals be considered in calculating when an MDR is required to be conducted?***

The United States Department of Education has not clearly stated how partial days should be considered in calculating when an MDR is required. The best practice is to calculate removals on a class-by-class and service-by-service basis. For example, if a student with a disability is removed from more than 10 consecutive speech sessions for violating the code of conduct, LEAs should strongly consider conducting an MDR even if the student has not been removed from more than 10 consecutive full school days.

5. ***What are examples of when an MDR is required to be conducted and when an MDR is not required to be conducted?***

Example 1: A student with a disability receives a five-day suspension from riding the bus because the student was involved in a fight on the bus. It is the student's first suspension of the school year. The student's IEP includes transportation services. In this example, the Individuals with Disabilities Education Act (IDEA) does not require the student's LEA to conduct an MDR because the student has not been subjected to a change of placement. The student's access to related services included in the student's IEP has changed, but the student's access to those related services has not been changed for more than 10 consecutive school days or for more than 10 non-consecutive school days during this school year.

Example 2: A student with a disability receives a 30-day suspension from riding the bus because the student has been involved in a fight on the bus. The student's IEP includes transportation services. In this example, the IDEA requires the student's LEA to conduct an MDR because the student has been subjected to a change of placement. The student's access to related services included in the student's IEP has changed, and the student's access to those related services has been changed for more than 10 consecutive school days.

Example 3: A student with a disability receives an out-of-school suspension for 10 days for inappropriate contact with another student. The student has already received an out-of-school suspension for five days this school year for inappropriate contact with a different student. The student typically receives specialized instruction in a general education classroom, but the student received one-on-one instruction from a teacher during both suspensions. In this example, the IDEA requires the student's LEA to conduct an MDR because the student has been subjected to a change of placement. The student's access to non-disabled peers has changed, and the student's access to non-disabled peers has been changed for more than 10 school days during the same school year for substantially similar behavior.

Example 4: A student with a disability receives an in-school suspension for 10 days for inappropriate contact with another student. The student has already received an in-school suspension for five days this school year for inappropriate contact with a different student. The student typically receives specialized instruction in a general education classroom, but the student receives specialized instruction in the in-school suspension classroom during both suspensions. Non-disabled peers are routinely in the in-school suspension classroom at the same time. In this example, the IDEA may not require the student's LEA to conduct an MDR because the student may not have been subjected to a change of placement, but it is best practice to do so regardless.

6. *What offenses are all LEAs required to consider as zero-tolerance offenses?*

Pursuant to Tenn. Code Ann. § 49-6-3401(g)(2), all LEAs are required to consider the following four offenses as zero-tolerance offenses under state law:

- (a) The student brings a firearm to school or is in unauthorized possession of a firearm on school property.
- (b) The student commits aggravated assault or commits an assault that results in bodily injury upon any teacher, principal, administrator any other employee of an LEA, or a school resource officer.
- (c) The student is in unlawful possession of any drug, controlled substance analog, or legend drug on school grounds or at a school-sponsored event.

(d) The student threatens mass violence on school property or at a school-related activity.

7. What offenses are all LEAs and public charter schools allowed to consider as special circumstances under the IDEA?

Pursuant to 34 C.F.R. § 300.530(g), all LEAs and public charter schools are allowed to consider the following three offenses as special circumstances under IDEA:

- (a) The student carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of an LEA.
- (b) The student has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an LEA.
- (c) The student knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an LEA.

8. Is an MDR required when a student with a disability commits an offense that constitutes a special circumstance under IDEA?

Yes. Although the LEA or public charter school may remand a student with a disability who commits an offense that constitutes a special circumstance under IDEA to an interim alternative educational setting (IAES) for up to 45 school days regardless of the outcome of the MDR, the student's LEA or public charter school must still conduct an MDR within 10 school days of any decision to change the student's placement due to the student violating the code of conduct. See USDOE Q&A, Question E-1.

9. Why is it important to distinguish between a zero-tolerance offense under state law and a special circumstance under the IDEA?

If a student with a disability commits an offense that constitutes a special circumstance under IDEA, LEAs and public charter schools can remand the student to an IAES for up to 45 school days regardless of the outcome of the MDR.

If a student with a disability commits an offense that constitutes a zero-tolerance offense under state law or local board policy but does not constitute a zero-tolerance offense under IDEA, LEAs and public charter schools can only remand the student to an IAES if the misconduct was not a manifestation of the student's disability.

Please note the special circumstances exception under IDEA is not intended to be used as a punitive measure against students with disabilities. Instead, the special circumstances exception is intended to provide LEAs time to develop and implement a plan for returning the student to the student's previous educational placement. For example, LEAs should utilize the time to review and revise the student's IEP as appropriate or to conduct a functional behavior assessment (FBA) and develop or revise a behavior intervention plan (BIP). LEAs should not have a policy or procedure that requires all students with disabilities who are remanded to an IAES to stay in the IAES for the full 45 school days.

10. What are the key differences between the zero-tolerance offense for possession of a firearm and the special circumstance for possession of a weapon?

The definition of a weapon under IDEA is much broader than the definition of a firearm under state

law. For example, knives, scissors, cigarette lighters, or baseball bats would all likely meet the definition of a weapon under IDEA but would not meet the definition of a firearm under state law.

Example: A student with a disability brings a BB gun onto the school’s football field after practice. This would likely constitute a special circumstance under IDEA because a BB gun is a device capable of causing serious bodily injury but would not constitute a zero-tolerance offense under state law because a BB gun does not expel a projectile by the action of an explosive. Because possession of a BB gun constitutes a special circumstance under IDEA, the LEA or public charter school could remand the student to an IAES for up to 45 school days regardless of the outcome of the MDR.

11. *What are the key differences between the zero-tolerance offense for committing bodily injury and the special circumstance for committing serious bodily injury?*

There are two key differences. First, the definition of a serious bodily injury under IDEA is a significantly higher threshold than the definition of a bodily injury under state law. While there is no definition of a serious bodily injury in the IDEA, courts have generally held that an injury must have a very high level of pain and must result in ongoing treatment to be a serious bodily injury. Second, the student must inflict injury upon another person to be a special circumstance under IDEA, but must inflict injury upon a “teacher, principal, administrator, any other employee of an LEA, or a school resource officer” to be a zero-tolerance offense under state law.

Example: A student with a disability is involved in a fight with another student. The other student suffers a broken nose as a result of the fight and misses two days of school. This would likely not constitute a special circumstance under IDEA because a broken nose that results in the other student missing two days of school likely does not meet the threshold of a serious bodily injury. This would not constitute a zero-tolerance offense under state law because the student inflicted injury upon another student, not a “teacher, principal, administrator, any other employee of an LEA, or a school resource officer.”

12. *What are the key differences between the zero-tolerance offense and the special circumstance for possession of drugs?*

The special circumstance under IDEA includes “selling or soliciting the sale of a controlled substance,” whereas the zero-tolerance offense under state law only includes possession of the drugs or controlled substance.

Example: A student with a disability offers to sell drugs to another student while at a school football game. The student with a disability states he will deliver the drugs to the other student’s house if the other student agrees to pay him now. This would constitute a “special circumstance” under IDEA because the student is soliciting the sale of a controlled substance but would not constitute a zero-tolerance offense under state law because the student is not in possession of the drugs at the time the sale was solicited.

13. *If an LEA or public charter school is required to conduct a threat assessment for a student with a disability, what services, if any, is the student’s LEA or public charter school required to provide during*

the pendency of the threat assessment?

A student with a disability continues to have the right to a free and appropriate public education (FAPE) and to the IDEA's procedural safeguards during the pendency of a threat assessment. LEAs and public charter schools are encouraged to expedite threat assessments for students with disabilities to ensure that the student is not removed from the student's educational placement as a result of the threat assessment. If the threat assessment results in the student being excluded from educational services for more than 10 consecutive school days, the student has the right to an MDR. If the student is excluded from educational services for more than 10 consecutive days, the student's IEP team should consider whether the student needs compensatory services.

14. Does the IDEA prohibit LEAs or public charter schools from reporting crimes committed by students with disabilities to law enforcement?

No. Many offenses that constitute a special circumstance under IDEA or a zero-tolerance offense or state law will also constitute a crime under state law. Nothing in IDEA prohibit LEAs or public charter schools from reporting crimes committed by a student with a disability to appropriate authorities. See 34 C.F.R. § 300.535(a).

If an LEA or public charter school reports a crime committed by a student with a disability, it must ensure that copies of the student's special education and disciplinary records are transmitted for consideration by the appropriate authorities to whom the crime is reported, provided that the records are transmitted in accordance with the Families Education Rights and Privacy Act (FERPA). See 34 C.F.R. § 300.535(b)(1).