

School Discipline for Students with Disabilities



Council for Children's Rights

Disclaimer

The information provided in this training does not, and is not intended to, constitute legal advice. Instead, all information is provided for general informational purposes only.

What We Do

- * Education Advocacy for Individual Families
 - * Individual representation for students and their legal guardians in need of legal assistance regarding special education, Section 504 Plans, and school discipline.
 - * Families can contact gethelp@cfcrights.org or 704-943-9609 for assistance.
- * Education Navigation
 - * A service centered on students involved in the juvenile court of Mecklenburg County that is intended to address issues related to their education rights, such as inappropriate disciplinary actions, inadequate IEPs or Section 504 Plans (or a total lack thereof), charter schools' failing to meet a student's needs, etc.
 - * Families can contact ELP@cfcrights.org or 704-943-9611 for assistance.
- * Systemic Advocacy
 - * As a small team, we cannot individually assist every family that needs support with education advocacy. By devoting time to strategically elevating significant issues affecting many students, our work can have a greater community impact.
- * Community Trainings
 - * We offer free trainings to community partners and parent groups. Our trainings cover a range of topics related to education advocacy.
 - * Interested parties can contact ELP@cfcrights.org or 704-372-7961.

Agenda

- * Three Quick Notes
- * Overview of Types of Education Interventions
- * Discipline for Any Student
- * Discipline for Students with an Individualized Education Program (IEP) or Section 504 Plan

Three Quick Notes!

Special Education, aka:

- * The terms “Individualized Education Program” (IEP), “Exceptional Children” (EC), and “Special Education” are often used to refer to the same thing and may be considered interchangeable for the purpose of this training
- * EC services = IEP services = Special Education

The Special Education Decision Maker (SEDM)

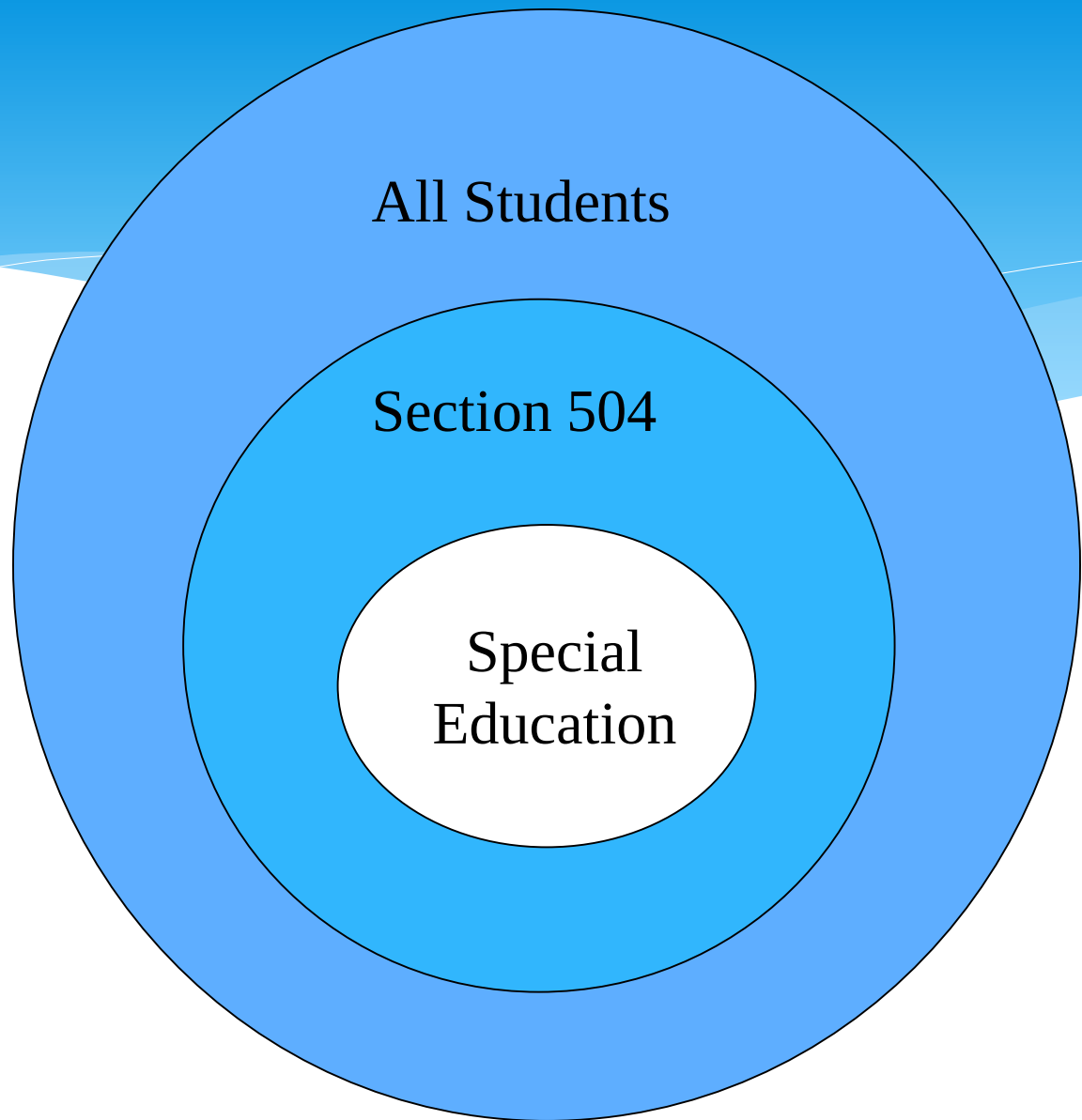
- * The SEDM is a required member of the IEP Team and exercises the student's special education rights, such as:
 - * Requesting an EC evaluation
 - * Consenting to EC services
 - * Utilizing dispute resolution strategies
- * Possible SEDM Candidates:
 - * Biological/Adoptive Parent
 - * Non-Therapeutic Foster Parent
 - * Former Guardian
 - * Kinship Placement
 - * Local Educational Agency (LEA)-Assigned Surrogate Parent
 - * Court-Appointed Special Education Decision Maker
- * For this presentation, we will refer exclusively to the SEDM, rather than any specific individual

Charter Schools

- * Everything discussed in this training applies to charter schools, as well as traditional public school systems
- * Charters must:
 - * Follow NC and federal law for special education and Section 504 Plans, and
 - * Follow NC law on school discipline

Overview of Types of Education Interventions

- * All Students:
 - * Multi-Tiered System of Support (MTSS)
- * Students with disabilities:
 - * Section 504
 - * Special Education



Multi-Tiered System of Support (MTSS)

A Regular Education Initiative

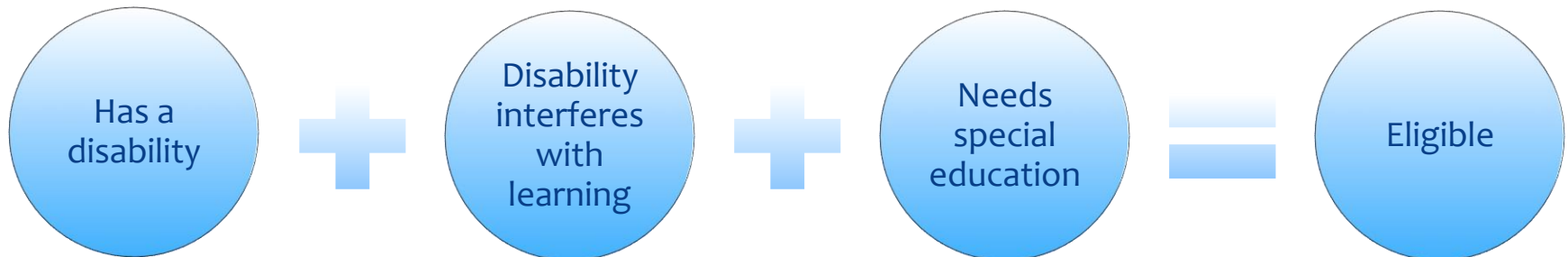
- * Tier 1
 - * All students receive the same academic instruction
- * Tier 2
 - * Tier 1 services, plus
 - * Small group intervention
 - * May include increased time for assignments or more narrowly focused instruction
- * Tier 3
 - * Tier 1 & 2 services, plus
 - * Intensive, individualized supports
 - * Likely includes progress monitoring, 1:1 instruction, and “wrap-around” services

MTSS

- * Key Components
 - * High quality instruction (Tier 1 - all students)
 - * Universal screening to identify students in need of supplemental support (Tier 1 - all students)
 - * Multiple tiers of academic and behavioral support that are progressively more intensive (Tier 2)
 - * Evidence-based interventions matched to student need (Tier 3)
 - * On-going progress monitoring of student performance (Response to Intervention (RTI))
- * Parent participation in this process is important to ensure the student receives the most appropriate supports possible

Who Gets Special Education?

- * To receive special education services, a student must:
 - * Be between the ages of 3 - 21,
 - * Meet criteria for at least one of the 14 disability eligibility categories, and
 - * Have a disability that:
 - * Adversely affects their educational performance, and
 - * Requires specially designed instruction



Who Gets Special Education?

Disability Eligibility Categories

1. Autism Spectrum Disorder
2. Deaf-Blindness
3. Deafness
4. Developmental Delay*
5. Emotional Disability
6. Hearing Impairment
7. Intellectual Disability
8. Multiple Disabilities
9. Orthopedic Impairment
10. Other Health Impairment
11. Specific Learning Disability
12. Speech or Language Impairment
13. Traumatic Brain Injury
14. Visual Impairment

*Developmental Delay is limited to students ages 3-7. 14

What is an IEP?

- * **Individualized Education Program**
- * The IEP document must include:
 - * Student's strengths, weaknesses, and needs
 - * Measurable goals for the student to achieve in the course of a year
 - * The accommodations, modifications, related services, and specially designed instruction necessary to help the student reach the IEP goals
 - * Where the services will be provided (i.e., regular education or special education setting)
- * IEPs are developed by the IEP Team, which includes the Special Education Decision Maker (SEDM)
- * Students with IEPs are entitled to a free appropriate public education (FAPE)

IEP vs. Section 504 Plan

- * IEP
 - * Each public school student who receives special education and related services must have an IEP
 - * Allows students to receive specialized instruction
- * Section 504 Accommodation Plan (Section 504 Plan)
 - * For a student with a disability who does not require specialized instruction, but needs accommodations/modifications to make sure they receive equal access to their education
 - * Broader definition of disability
- * If a student has an IEP, they do not require a Section 504 Plan

IEP vs. Section 504 Plan

IEP

- * Sam meets eligibility criteria as a student with a Specific Learning Disability. His IEP provides services with a special education teacher several times a week to address his individual goals in reading, writing, math, and organization. He also receives modified assignments, extended time on tests, and takes tests in a room with fewer students.

Section 504 Plan

- * Erin has severe Myopia (nearsightedness). Her Section 504 Plan requires seating near the teacher/board and all printed materials be presented in a larger font.

IEPs & Section 504 Plans

- * Annual Reviews:
 - * IEPs are required to be reviewed annually, and it is common for Section 504 Plans to be reviewed annually as well
- * Very important for the SEDM/legal guardian to attend IEP and Section 504 meetings and advocate for changes to help their student
- * SEDM/Legal guardian may request an IEP/Section 504 meeting at any time during the year
- * SEDM/Legal guardian should follow up with teachers to make sure services, accommodations, and modifications are being provided as written

School Discipline for Any Student

Impact of Suspensions

- * Suspensions don't work – for schools, teachers, or students
 - * Evidence does not show that they improve student behavior or school climate
- * Suspensions have negative consequences
 - * Lower academic performance
 - * Higher rates of dropout
 - * Future disciplinary exclusion
- * Suspensions have a disproportionate impact
 - * Students with disabilities and students of color are generally suspended/expelled at higher rates
- * NC law recognizes these harms

Suspension Is Not the Only Option

- * There are effective alternatives to suspension
 - * School-wide and individual evidence-based interventions can:
 - * Address the underlying cause of the behavior
 - * Reinforce positive behaviors
- * These interventions have been associated with:
 - * Increased academic engagement
 - * Increased academic achievement
 - * Reductions in suspensions and dropouts
- * Examples: conferences, counseling, peer mediation, restorative justice practices, instruction in social skills and conflict resolution, and academic interventions

Charlotte-Mecklenburg Schools (CMS) Level I Disciplinary Response Options

- * Parent contact
- * Conference (any combination of parent/student/school officials/counselors and teacher)
- * Referral to Student Services Team
- * Verbal warning
- * Temporary social restriction from peers
- * Return of property or restitution for damages
- * Suspension from bus
- * After-school detention or Saturday school
- * Behavior contract
- * Referral to Multi-Tiered System of Support Team according to the CMS process
- * In-school suspension
- * Confiscation of unauthorized items
- * School-based community service/work detail
- * Restorative Justice/Restorative Practice (i.e., peer jury, peer mediation, community service)
- * Service Learning
- * Referral to community agency
- * Revocation of school-related privileges
- * Disciplinary councils
- * Temporary termination from the school-based virtual learning environment
- * Education

Types of Suspensions

- * Bus Suspension
 - * Student attends school, but cannot ride bus to or from
 - * No formal right to appeal
- * In-School Suspension (ISS)
 - * Student attends school, but is sent to a separate classroom
 - * No uniform ISS curriculum between schools
 - * No formal right to appeal
- * Out-of-School Suspension (OSS)
 - * Student may not attend school or participate in school activities
 - * Right to appeal depends on length of suspension (short-term or long-term)

Short-Term Suspension

- * The student is suspended 10 days or less
- * Informal hearing with the principal:
 - * Explain why the student was suspended
 - * Provide the student an opportunity to tell their side of the story
- * No formal right to appeal
 - * School districts can add an appeal right
- * If requested by the parent/legal guardian, the student has the opportunity to take home textbooks, complete missed assignments, and make up tests

Long-Term Suspension

- * The student is suspended 11 days or more
- * If suspended in the 1st, 2nd, or 3rd quarters, it can last through the end of the school year
- * If suspended in the 4th quarter, it can last through the 1st semester of the next school year
- * Exception: 365-day suspensions for gun possession
- * Right to written notice of the suspension and the opportunity for a due process hearing

Long-Term Suspension Hearings

- * Student rights at the hearing:
 - * Representation by an attorney (at family's expense)
 - * Attend the hearing
 - * Review audio/video recordings of the incident and information that may be presented as evidence
 - * Question witnesses
 - * Present evidence
 - * Recording of the hearing
 - * Written decision
- * May appeal decision to the local board of education
- * May appeal local board of education's decision to superior court

Expulsion

- * The indefinite exclusion of a student from school enrollment for disciplinary purposes
- * Entitled to the same due process rights as long-term suspended students, with these additional protections:
 - * The student must be at least 14 years old
 - * The local board of education must conduct a hearing
 - * The local board of education must determine the student's continued presence constitutes a "clear threat to the safety of other students or school staff"

Request for Readmission

- * A student with a 365-day suspension or who has been expelled may request readmission after 180 days
- * A student shall be readmitted if can show that the student's presence no longer constitutes a threat to the safety of other students or staff

Alternative Education Services During Suspension or Expulsion

- * Students who are long-term suspended or expelled are to be offered alternative education services unless the superintendent provides a “significant or important reason” for not providing them
- * If the superintendent declines to provide the services, the student may appeal to the local board of education

Disciplinary Reassignment

- * Occurs when a student's school placement is changed to an alternative learning program or school
- * Not considered to be long-term suspensions by school districts
- * Procedures and appeal rights differ between school districts
- * The alternative school must meet the academic requirements of the standard course of study and provide the student the opportunity to make timely progress toward grade promotion and graduation

CMS: Turning Point Academy (TPA)

- * CMS's alternative school
- * Students are generally assigned to TPA for:
 - * Disciplinary reassignments
 - * Transfers into CMS from other alternative placements
- * 45 days is the minimum assignment
- * Course offerings and programs are not as inclusive as those in students' home schools
- * Enrollment can be challenging
- * Students attending TPA must wear a uniform

CMS: Discipline Team Meeting (DTM)

- * DTMs are often called when a disciplinary reassignment to Turning Point Academy is being considered
- * Must occur within 10 school days of the offense
- * The Discipline Team typically consists of the parent, principal, learning community administrator, and student
 - * Providers may attend
 - * Attorneys and non-attorney advocates may NOT attend
- * Learning Community Superintendent makes final decision about whether to impose additional consequences, suspension, or reassignment to an alternative school

CMS: Triage Meeting

- * A Triage Meeting is held to help the Learning Community Superintendent determine a student's school assignment
- * A Triage Meeting is held if a student:
 - * Enters CMS from 30+ days outside of a traditional school setting
 - * Enters CMS from an alternative setting
 - * “Alternative setting” includes:
 - * Detention/jail
 - * Alternative learning programs or schools
 - * Group homes
 - * Is charged with a crime that would be considered a felony if an adult
- * There is no right to “representative counsel”
- * The Learning Community Superintendent ultimately decides where the student is assigned
- * Assignment decisions may be appealed to the local board of education

Advocacy Tips – School Suspensions

- * Obtain paperwork associated with the suspension
- * Review the Code of Student Conduct
 - * Compare the suspension paperwork with the rule the student allegedly violated
 - * Review the disciplinary consequences allowed under that rule
 - * Review the suspension procedures
 - * CMS specific procedures:
 - * Superintendent review of suspensions for students in youngest grades (pre-K, K, 1st, and 2nd)
 - * Appeal process for suspensions of 3-10 days
 - * Short-term suspension centers
- * Request student's textbooks, missed assignments, materials for the assignments, and the chance to make up missed exams
- * Strongly consider utilizing any appeals processes afforded

“Early Pick Up”

- * Absent formal suspension, the school may not ask for the student to be picked up early for behavioral reasons
- * If the school makes this request:
 - * Ask if the student is suspended
 - * If so, ask for suspension paperwork
 - * If not, have the student remain at school
- * Fractional days of suspension are allowed

Law Enforcement Involvement in Suspensions

- * School Resource Officer (SRO): Sworn law enforcement officer assigned to a school
- * Many students face charges related to school incidents
- * Students should generally avoid making oral or written statements about incidents
- * Students should not be questioned without their parent/legal guardian present

School Discipline for Students with Disabilities

Change in Placement

- * Students with IEPs and Section 504 Plans are entitled to extra protections around school discipline
- * Services received through their IEP or Section 504 Plan are considered their “placement”
 - * Placement decisions are to be made by the IEP or Section 504 Team
- * The law considers exclusion from school for more than 10 cumulative days in one school year a “**change in placement**” requiring a specific type of meeting called a **Manifestation Determination Review (MDR)**
 - * Note: 10 cumulative days or less is not considered a change of placement, and school can follow normal disciplinary procedures
- * The purpose of this process is to avoid suspending students with disabilities for conduct substantially related to their disability

Example

- * Jay is a student with a Section 504 Plan. He was given an out-of-school suspension for 3 days in September. Is an MDR needed?
- * Jay is then suspended out-of-school for another 5 days in October. Is an MDR needed?
- * Jay is then suspended out-of-school for 2 days in November. Is an MDR needed?
- * Jay is then suspended out-of-school for 3 days in January. Is an MDR needed?
- * Jay is then suspended out-of-school for 1 day in March. Is an MDR needed?

Timing of the MDR

- * Once a student has been suspended more than 10 days in a school year, an MDR must be held with each suspension. This meeting:
 - * Must be held within 10 school days of the start of the suspension
 - * Takes place before a Discipline Team Meeting (DTM) or long-term suspension appeal
 - * Determines whether the problem behavior was a manifestation of the student's disability

Calculating Days of Suspension

- * Use the following when counting days of suspension during a school year for purposes of an MDR:
 - * Out-of-school suspensions (OSS)
 - * Including partial days
 - * Days of bus suspension, if transportation is a related service
- * Days of in-school suspension (ISS) only count if the student does not receive their special education services while in ISS

The MDR Questions

- * The IEP/Section 504 Team must consider these three questions:
 1. Was the conduct in question caused by the student's disability?
 2. Did the conduct have a direct or substantial relationship to the student's disability?
 3. Was the conduct the direct result of the school district's failure to implement the IEP/Section 504 Plan?
- * If the answer to all three questions is NO, the student may be disciplined like other students
- * If the answer to **any** of these questions is YES, the suspension must end, and the student must return to school
 - * The school must complete (or review if already developed):
 - * A Functional Behavioral Assessment (FBA)
 - * A Behavioral Intervention Plan (BIP)

Functional Behavioral Assessment (FBA)

- * The purpose of an FBA is to determine why the misconduct occurs (i.e., the function or purpose of the behavior)
 - * Examples: Getting attention from peers; escaping a difficult task
- * Best practices for components of an FBA:
 - * Identification of a specific problem behavior
 - * Observations to collect data about the behavior
 - * Interviews of the student, family, and school staff
 - * Identification of the antecedents and consequences surrounding the behavior
 - * Identification of the function of the behavior
- * SEDM/parent/legal guardian should request an FBA if there are problematic behaviors
- * Once complete, the FBA informs the creation or revision of the Behavioral Intervention Plan (BIP)

Behavioral Intervention Plan (BIP)

- * The purpose of the BIP is to put interventions and practices in place to reduce the likelihood that the behavior will occur again
 - * Alter the environment
 - * Minimize triggers
 - * Give the student alternative strategies
 - * Identify meaningful incentives or rewards
 - * Change the responses of adults
- * Interventions should serve the same function as the problematic behavior
- * Reviewed generally every 6 weeks

Examples of Interventions

- * Inform student 1:1 about the expectations of an activity at the beginning of the activity
- * Use a calm tone when an issue arises, and avoid engaging in verbal debates with student
- * Direct instruction in social skills
- * Provide student with choice of activity
- * Use First/Then language when presenting tasks
- * Allow student to use a pass to come to a trusted staff member when upset

Special Education Services for Suspended Students

- * If a student with an IEP is suspended for more than 10 school days within the same school year, the school system must provide an educational program and services to the student beginning on the 11th day of suspension or expulsion
- * Students are still entitled to a free appropriate public education (FAPE)
 - * Schools must implement the student's IEP and provide appropriate educational services that will allow the student to:
 - * Progress in the general curriculum, and
 - * Progress toward achieving the goals in the IEP
- * The IEP Team decides what services are needed

45-Day Exception

- * Regardless of whether the conduct was a manifestation, a student can be removed from school and placed in an interim alternative educational setting for up to 45 school days if they brought **drugs** or a **weapon** to school, or caused **serious bodily injury** by their conduct
- * The IEP Team determines the interim alternative educational setting
- * The student is still entitled to a FAPE

Advocacy Tips – Students with Disabilities and Behavioral Challenges

- * When a student with a disability is having behavioral challenges, it is important for the SEDM or parent/legal guardian to be proactive and organized:
 - * Request copies of all disciplinary referrals
 - * Keep careful track of suspension days throughout the school year to make sure MDRs happen as they should
 - * Request an IEP/Section 504 meeting to add supports:
 - * IEP goals and specially designed instruction
 - * Accommodations and modifications
 - * FBA and BIP

Preparing for the MDR

- * Invite service providers, or have them participate by phone or through a letter
- * Review the student's disciplinary history, school records, and assessments
- * Bring information about the student's disability
- * Carefully review the blank MDR form
- * Carefully consider whether the student should attend

Advocacy During the MDR

- * The MDR process is **NOT** about the student's knowing right from wrong
- * Redirect the following kinds of phrases:
 - * “They should know better”
 - * “They’re a good kid when they want to be”
- * Bring the IEP/Section 504 Team back to the specific questions asked by the form

MDR Form

MANIFESTATION DETERMINATION

I. Current Disciplinary Event

Describe the current disciplinary event, including administrative authority's written findings and any other details related to the event, as applicable:

Yes	No	Did the conduct in question:
		☐ Involve a weapon;
		☐ Involve drugs; and/or
		☐ Cause serious bodily injury?

MDR Form

II. Data Used to Consider Manifestation of Student's Disability

	Data Source	Date of Data Source
	IEP	
	Assessment/Evaluations	
	Medical Information (including diagnosis and medication)	
	Teacher Observations	
	Discipline Report(s) (current school year)	
	Functional Behavior Assessment	
	Behavior Intervention Plan	
	Other: _____	

Describe the specific information that is being considered from the data sources above.

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MDR Form

Describe the specific information that is being considered from the parent, including any outside evaluations.

MDR Form

Implementation of the IEP

Describe how the academic and behavioral goals on the child's IEP are being implemented:

Describe how the accommodations, modifications and supplementary services included in the child's IEP are being implemented:

Describe how the related services included in the child's IEP are being implemented:

MDR Form

Does the child have a Behavior Intervention Plan (BIP) based on a Functional Behavioral Assessment?

☐ Yes ☐ No If yes, summarize the BIP.

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Explain how and when the interventions and/or BIP were revised (if any were completed).

Date(s) of Revisions	Explanation of Revisions

MDR Form

Did the behavior patterns change over time (e.g. increase in frequency, duration, and/or intensity)?

☐ Yes ☐ No If yes, please explain.

Has this behavior or similar behaviors associated with the disability been exhibited this school year?

☐ Yes ☐ No If yes, describe the pattern of behavior.

MDR Form

III. Assessment of Manifestation Determination

Yes	No	Essential Questions
		Based on the above factors, was the conduct in question caused by the student's disability?
		Based on the above factors, did the conduct in question have a direct or substantial relationship to the student's disability?
		Was the conduct in question the direct result of the school district's failure to implement the IEP?
MANIFESTATION DETERMINATION		
		Is the violation of the student code of conduct a manifestation of the student's disability?

Contact the Education Law Program

- * Educational Advocacy for Individual Families
 - * GetHelp@cfcrights.org
 - * (704) 943-9609
- * Education Navigation
 - * ELP@cfcrights.org
 - * (704) 943-9611
- * Training Requests
 - * ELP@cfcrights.org
 - * (704) 372-7961

Helpful Resources

- * North Carolina Department of Public Instruction:
 - * <http://www.dpi.state.nc.us>
 - * Exceptional Children Division: <https://ec.ncpublicschools.gov/>
- * NC Policies Governing Services for Children with Disabilities
 - * <https://ec.ncpublicschools.gov/policies/nc-policies-governing-services-for-children-with-disabilities>
- * Exceptional Children's Advocacy Center:
 - * <http://www.ecac-parentcenter.org/>
- * LawHelpNC:
 - * <https://www.lawhelpnc.org/issues/education>
- * A Parent's Guide to Special Education in NC:
 - * <https://law.duke.edu.childedlaw/special-education-nc/>

Thank you for watching!
Please complete your post-
training survey.