

## Handling a Manifestation Determination Review (MDR)

A "How To" for Attorneys

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When a child with a disability engages in behavior or breaks a code of conduct and the school proposes to remove the child, the school must hold a hearing to determine if the child's behavior was caused by his disability. This hearing, a Manifestation Determination Review (MDR), is a process to review all relevant information and the relationship between the child's disability and the behavior.

Consequences for problem behaviors should not discriminate against a child based on his disability. Yet, schools continue to suspend and expel students with disabilities for behavior caused by their disabilities.

Based on practical experience, Attorney Bill Brownley provides a "how to" guide attorneys (and parents) can use during the review to determine if the child's conduct was "caused by, or had a direct and substantial relationship to the child's disability." (Wrightslaw: Special Education Law, 2nd Edition <<http://www.wrightslaw.com/bks/selaw2/selaw2.htm> , p. 264). This guide describes how strategy, preparation, and documentation demonstrate a connection between the behavior and the disability, keeping the issue out of the hands of the school's disciplinary officer.

### The First Step

A client calls. A Manifestation Determination Review (MDR) is scheduled in 10 days. Parents often repeat what the school has told them, "It is not a big deal." Yes, it is a big deal.

It is your last best chance to keep the issue out of the school disciplinary officer's hands.

1. The first thing you need to do is make sure your client understands the importance of the review.

### Your Next Steps

2. Make sure you know the correct date and time of the review. Get a delay if necessary to allow time to prepare.

Most school systems have a separate discipline process that will be pushing the school to move as fast as possible with the MDR. If necessary, agree to do a timeline waiver with both the parents and the school. Your request for a waiver should allow you time to prepare, not delay the review indefinitely.

This statement has always worked for me when requesting a delay. "Obviously this is an important issue for this child, and I am sure you want him to

have the benefit of effective counsel and his full due process rights. I am only asking for a short delay." When it does not work, I follow-up with a letter.

3. Request the discipline referral packet (or the equivalent document) that is being sent to the discipline hearing office. It will have witness reports and other important information. You probably have not yet seen this information, but you are entitled to it. You want to know everything the school is reporting.

4. Now that you have gained some time, prepare. Determine what the child's disability is. This is not necessarily what Mom and Dad say it is. It is the disability shown on the child's eligibility documents, the evaluation results, and in the IEP.

5. Read every document used to support eligibility. Read the child's Present Levels of Academic Achievement and Functional Performance. Read everything you can about the disability and what the manifestations are.

Obtain quotes from reputable sources (e.g. DSM IV) about the disability and the manifestations.

Is there is a Functional Behavior Assessment (FBA)? A Behavior Intervention Plan (BIP)? Are they pertinent? Did the school follow them? If not, you may have a winning case on these grounds.

Some parents do not have copies of these documents. Others do not know they exist. You may need to request, in writing, the FBA and BIP from the school. Get a copy of each and review them.

6. Map these documents with the actions stated in the school's complaint. Do they match? If yes, you have a winner. If not, you may need something else to win the day.

7. Prepare handouts of the information you want the team to have. For example; quotes from the eligibility document or the evaluations used to create eligibility. Backup your information with quotes from reputable sources describing behavioral manifestations.

Use the descriptions of the claimed behavior from school personnel. Do these descriptions line up with the other expert information you have?

8. Go to the meeting with a tape recorder. I am usually not a fan of taping, but in this case it is useful. I will explain why later.

9. A school psychologist usually attends these meetings. Determine who the psychologist is. Schools consider this person the expert on behavior. If you can win the psychologist over, you will win. If the psychologist sides with you, so will everyone else. If he does not side with you, you can discredit or marginalize his "expertise." If you discredit the psychologist to the others on the team, you are far more likely to win.

10. Build your case from the ground up. Do not rush to the conclusion because you know what the conclusion should be. Follow the primrose path; get the team to say yes.

\* Start by seeking agreement about the child's disability. Use the school's experts and quotes from documents to establish the disability. Get the school, especially the school psychologist, to vocalize that they agree. Ensure everyone has copies of your prepared handouts. You want to educate them to your way of thinking. To schools, paper has power. If they have no documentation, they will defer to the psychologist or the most dominant personality on their side.

\* Use well regarded reference material from a reputable university or perhaps a teacher's organization. Get the school to agree that your outside sources are valid ones. Ask the school psychologist, "You agree that the DSM IVs are the accepted means of defining and diagnosing this disability, don't you?"

\* Distribute your handouts that list the behavioral manifestations of the disability.

\* Read the list with everyone. Ask if they have questions.

\* Review the behavior in question from the school reports. Match this behavior with the behavioral manifestations explained in your handouts.

\* Distribute documentation that matches the behavior with the disability.

\* Remind the team that the child's fate rests in their hands. When the decision making actually begins, poll each member of the team for their opinion. Ask them to justify their opinion.

\* Remind the team they are on tape. School teams want to hide in the anonymity of a "group" decision. They are far more reluctant to go on the record individually in a negative way, particularly on tape with a lawyer. Tip: Start the polling with someone you know to be sympathetic. The first answer is sometimes like a snowball.

\* Hopefully, you win.

### A Practical Example

Many kids have ADHD and often kids with ADHD have behavior problems and discipline issues. Using the "how to" guide above, we won a case for a child with ADHD. The strategy we used is a good example of what to do.

1. Get the eligibility file. Use information from the psych report that established eligibility. Point out the report was used to establish disability. The report will often cite the DSM IVs.

2. Get the DSM IV's for ADHD. They list 14 symptoms or "manifestations " of ADHD.

3. Prepare copies of the DSM list as handouts for the team. If you can, suggest that the psychologist read the 14 symptoms for the team.

4. Match the child's behavior to the symptoms on the list. Believe me, with 14 symptoms to match, you can find one to use. It is difficult for the school to prove the child pre-planned his actions.

5. Sometimes the psychologist will say something like, "yes but I really don't think this is ADHD". Don't let him get away with that. Ask the psychologist to explain, in detail, why he does not think this is ADHD. I doubt he will be able to. Ask questions. If the psychologist fumbles responses and fails to answer, more than likely his opinion is incorrect. At

least, the team will think he is wrong as they review the information you've prepared in your handouts.

6. The school leader may attempt to cut you off or end the discussion. Explain that you are trying to make sure a careful and thorough examination is completed for the child's benefit. Remind the team that the meeting is on tape. Does the school really want to end that examination? This makes great fodder for a DP, if you should have to go that far.

7. We won our case. We polled the team. In this example, each member agreed with us except the psychologist. School team members later told me in private it seemed as if the psychologist did not know what he was talking about. It appeared he " had it in for the kid."

Preparation and documentation in the handouts we used provided a basis on which the team could make a winning judgment.

The Brownley Law Group

The Brownley Law Group <[http://brownleylaw.com/about\\_brownley\\_law.htm](http://brownleylaw.com/about_brownley_law.htm)> is a small group of dedicated professionals in the Washington, DC metropolitan area, with a personal interest in special education, and a genuine desire to help other parents of children with learning disabilities.

Bill Brownley <[http://brownleylaw.com/about\\_brownley\\_law.htm](http://brownleylaw.com/about_brownley_law.htm)> is a successful attorney with extensive experience in all forms of negotiation and trial work. He has served as general counsel to a number of public and private corporations, including Telos, The Financial News Network (now CNBC), United Press International, and The Learning Channel.

Vanessa Forbes Brownley <[http://brownleylaw.com/about\\_brownley\\_law.htm](http://brownleylaw.com/about_brownley_law.htm)> has served as the PTA section head for special education in their local school, where she managed to significantly increase the funding for special education during her tenure. She also provided video-based educational opportunities for the teaching staff as well as learning and reading resources for parents and children with special education needs.

Bill and Vanessa Brownley are parents of a son with dyslexia. Read their story <<http://brownleylaw.com/our-story.htm>> .

"It is often easier to become outraged by injustice half a world away than by oppression and discrimination half a block from home." Carl T. Rowan

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