F3 Law 20 YEARS

Manifestation Determinations . . . and More

What We'll Cover . . .

- Removals that Do and Do Not Trigger Obligation to Conduct Manifestation Determinations ("MDs"): A Brief Overview
- MDs: Procedural Compliance
- MDs for Students Who Are Not Yet Eligible for Special Education
- MDs: At the Meeting
- MDs: After the Meeting



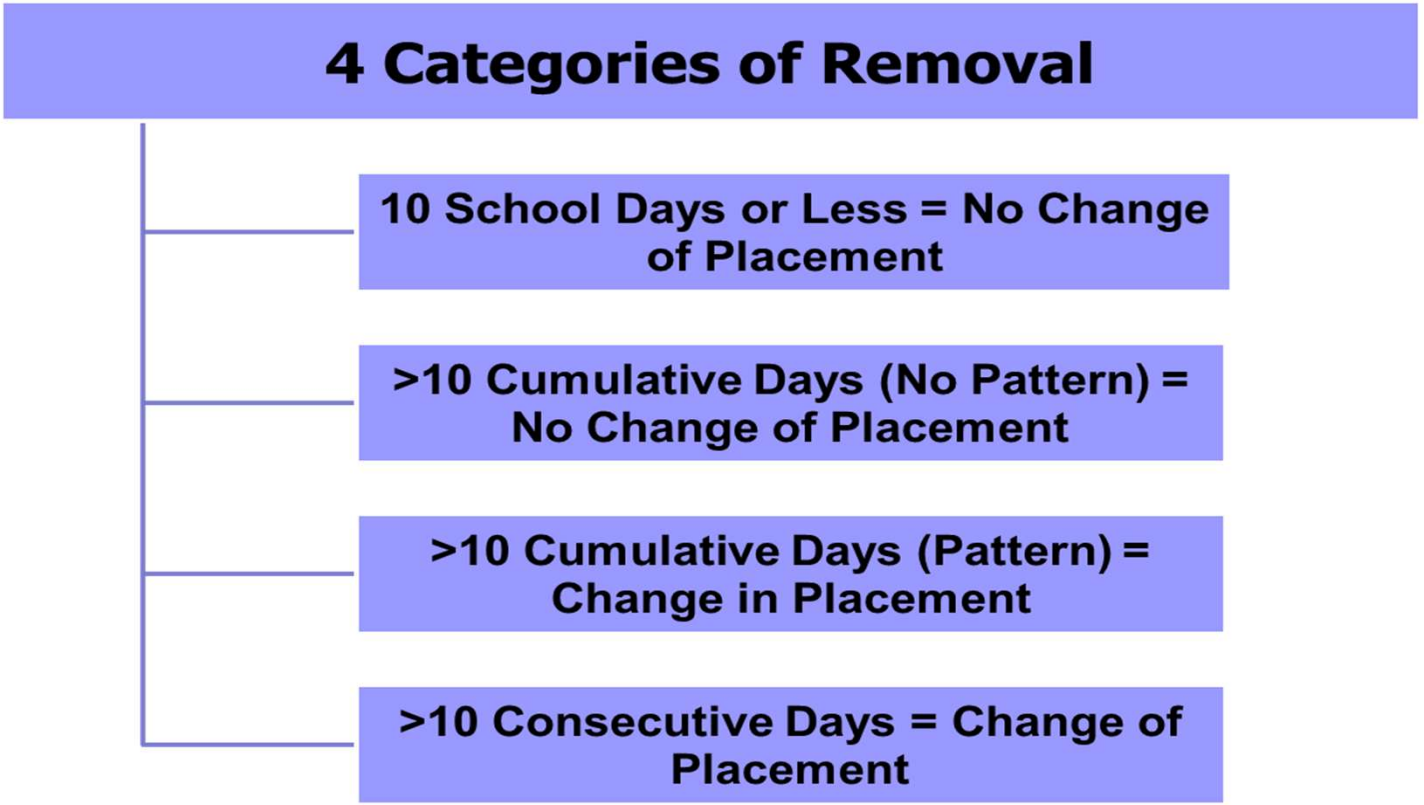
Removals that Do and Do Not Trigger MDs

Removals: A Quick Refresher

- MDs must be undertaken when district's proposed removal of student who violates code of student conduct amounts to change in placement
- "Removal" occurs when student cannot continue to:
  - Appropriately progress in general curriculum
  - Receive services specified in IEP; and/or
  - Participate with nondisabled students to extent student would have in student's current placement
- When does removal = change in placement?

(71 Fed. Reg. 46715 (Aug. 14, 2016))

Removals: A Quick Refresher



Removals: A Quick Refresher

- Beginning on 11th day of removal during term of "Type 3" and "Type 4" removals, district must provide:
  - Services to enable student to continue to participate in general education curriculum, although in another setting
  - Services to enable student to progress toward meeting IEP goals; and
  - Functional behavioral assessment ("FBA") and behavioral intervention services, as appropriate, designed to address behavior violation so that it does not recur

(34 C.F.R. § 300.530(d)(1)-(2); 34 C.F.R. § 300.530(d)(5))

Removals: A Quick Refresher

- Districts must hold MD review each time that student's removal constitutes change of placement, even in cases where the removal is made for violation of 34 C.F.R. § 300.530(g) (unilateral removals to IAES for up to 45 days for weapons, drugs or serious bodily injury)

(Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions (OSEP 2022) 81 IDELR 138)

Case Example

Ukiah Unified School District (OAH 2026)

- Second-grade Student was suspended for two days for throwing cushion at his teacher
- Parent immediately requested MD review, which District denied
- Parent requested IEP team meeting, but objected when District advised that meeting was not to be MD meeting
- Parent claimed District was obligated to hold MD review on Parent's request, even though special education director explained that two-day removal did not trigger MD obligation
- ALJ ruled in District's favor, agreeing that removal was not change of placement and stating that law does not require convening MD review merely because parent asked for one
- "[D]istrict thoroughly acknowledged and documented Parent's many, many requests for [an MD review]" and provided PWN in "abundance of caution"

(Student v. Ukiah Unif. School Dist. (OAH 2026) Case No. 2026040469, 126 LRP 18173)

Practice Pointer: Counting Days

- While it is important to keep accurate count of days that student is removed from school for disciplinary reasons, it is also important to recognize that some removals are not "disciplinary actions" and, therefore, do not count toward 10-day threshold that might trigger change of placement
  - Example: Removals of 11-year-old student from his classroom for counseling, a threat assessment, de-escalation of his behavior and participation in statewide assessments were not "disciplinary actions"

(Student v. Capistrano Unif. School Dist. and Journey Charter School (OAH 2014) Case No. 2014060007, 114 LRP 38670)

Practice Pointer: Nondisciplinary Removals

- On the other hand, change of placement resulting from a violation of student code of conduct does not have to be disciplinary in nature to trigger requirement to conduct MD
  - Example: Referral of middle school Student with ED to alternative school through SARB process after he missed 33 of 42 school days constituted change of placement based on student failing to adhere to code of conduct, thereby triggering obligation to conduct MD

(Student v. Rialto Unif. School Dist. (OAH 2014) Case No. 2014040982, 114 LRP 38497)



Procedural Compliance

Who Conducts the MD?

- District, parent and "relevant members of the child's IEP team"
- Technically, law creates a separate "MD team," since it does not require all members of IEP team to be present
- But limited case law interpreting IDEA treats meetings to conduct MDs as essentially IEP team meetings

(34 C.F.R. § 300.530(e)(1); Fitzgerald v. Fairfax County School Bd. (E.D. Va. 2008) 556 F. Supp. 2d 543, 50 IDELR 165)

Who Conducts the MD?

- Remember that all subsequent action following MD review is to be taken by IEP team as a whole
  - If behavior is manifestation of disability, IEP team must make decisions about any program revisions, FBAs or BIPs
  - If behavior is not manifestation of disability, IEP team may have to select appropriate IAES and services during suspension
- Practically, then, districts should consider conducting MD review in connection with IEP team meeting

Practice Pointer: Essential MD Team Members

- As is the case with IEP team meetings, if an essential member of MD team does not participate in MD review, an IDEA procedural violation occurs; accordingly, districts should take all necessary steps to secure the attendance of all relevant staff
  - Example: District denied FAPE by convening MD with general education teacher who was not Student's teacher; although teacher selected by district to participate had some knowledge of Student, she was not an appropriate teacher to attend meeting because she never implemented any portion of Student's IEP, nor was she aware of any information in IEP, except for what she was told about Student's disability

(Student v. Fresno Unif. School Dist. (OAH 2012) Case No. 2012020842, 112 LRP 24578)

When Must MD Meetings Be Held?

- MD must be accomplished no later than 10 school days of decision to change student's placement
- OSEP: IDEA does not require that MD meeting occur when disciplinary removal is being considered; rather, requirement to conduct MD is triggered on date that decision is made to implement removal constituting change of placement

(34 C.F.R. § 300.530(e)(1); Letter to Anonymous (OSEP 2005) 43 IDELR 249)

When Must MD Meetings Be Held?

- Districts often must balance between holding MD meeting on time and making sure parents fully participate
- Doug C. v. Hawaii Department of Education (9th Cir. 2013) stands for proposition that there may be circumstances in which ensuring parental attendance at required IEP team meetings takes precedent over compliance with legal timelines when analyzing the procedural aspects of FAPE
  - Does Doug C. apply to MD reviews as well?

Case Example #1

N.F. v. Antioch Unified School District (N.D. Cal. 2021)

- Student with ADHD, anxiety and XYY syndrome was initially suspended prior to winter break, with suspension lasting through holidays
- After break, student was removed for three more days, triggering requirement to hold MD review on January 18 (10 school days from initial removal in December)
- District allegedly provided one day notice to parents of MD review
- District held MD review without parents, found student's conduct to be manifestation of disability and returned student to prior placement

Case Example #1 (cont'd)

N.F. v. Antioch Unified School District (N.D. Cal. 2021)

- ALJ and District Court both rejected parents' claim that district improperly held MD review without them
- Parents' "lack of presence in the same room as [district] staff . . . did not deprive parents of any meaningful opportunity to participate in the determination of the basis for student's behavior"
- Even if procedural violation occurred, there was no denial of FAPE because results of meeting permitted student to return to classroom

(N.F. v. Antioch Unif. School Dist. (N.D. Cal. 2021) 78 IDELR 257, aff'd, (9th Cir. 2022), 81 IDELR 7)

Case Example #2

Parlier Unified School District (OAH 2016)

- Fifth grade Student with OHI was suspended for a total of 19 days—eight separate suspensions—between October 2015 and May 2016
- District attempted to hold MD review on two separate occasions prior to Student's 11th day of suspension, but, because Parent was not available or did not respond, meetings did not take place
- Ultimately, MD review was held on May 5, 2016, 15 school days after Student's 11th day of suspension

Case Example #2 (cont'd)

Parlier Unified School District (OAH 2016)

- ALJ found that District committed procedural violation by holding May 5, 2016 MD meeting five days late
- However, ALJ excused the violation, noting that Parent did not provide any evidence that the delay was prejudicial
- Citing to Doug C., ALJ stated that "[i]f [District] had to choose between proceeding with the meeting without Parent but meeting the procedural deadline, or including Parent in the meeting and missing the deadline by five days, [District] made the correct choice . . . ."

(Student v. Parlier Unif. School Dist. (OAH 2016) Case No. 2016080347, 116 LRP 42284)

Practice Pointer: Decision to Hold Meeting Without Parents?

- Districts should always try to secure parental presence and participation at MD meeting; but they also have IDEA responsibility to hold meeting within 10 school days of student's removal from educational placement for disciplinary reasons
- When parents do not attend meeting, districts must document every attempt to ensure their attendance and also document fully all team conclusions and rationale for subsequent discussion with parents
- Balance the following:
  - Obligation to ensure opportunity for parent participation
  - Provision of FAPE to student

Parental Notice

- For IEP team meetings, IDEA requires that district notify parents early enough to ensure that they will have an opportunity to attend, and must schedule meeting at mutually agreed upon time and place
- While IEP notice rules are not expressly applicable to MD meetings, they "provide guidance in evaluating reasonableness of notice of MD reviews to support meaningful parental participation in the process"
- MD meeting notice must inform parent of decision to change student's placement and must be accompanied by copy of procedural safeguards

(34 C.F.R. § 300.322(a)(1), (2); Ed. Code, § 56341.5, subds. (a)-(c); Student v. Fresno Unif. School Dist. (OAH 2012) Case No. 2012020842,112 LRP 24578)

Practice Pointer: MD Meeting Notice

- How much advance notice is enough?
- There is no definitive answer to that question in the law, but districts must provide adequate notice (time and content) to allow parents to be able to attend—and to prepare for—the meeting
  - Example: Because District "wanted to hold the MD team meeting within three school days of the changed placement, instead of within 10 school days as the law allows, District failed to ensure that Parents got the appropriate notice in a timely fashion"

(Student v. Fresno Unif. School Dist. (OAH 2012) Case No. 2012020842,112 LRP 24578)

MDs for Students Not Yet Eligible for Special Education

MDs for Students Not Yet Eligible for Special Education

- Parent of student who has not been determined to be eligible may assert any IDEA protections—including the requirement to conduct MD review for disciplinary removal resulting in change of placement—in circumstances when district had "knowledge" that student was with a disability before occurrence of behavior that precipitated disciplinary action

(34 C.F.R. § 300.534)

What Constitutes “Knowledge”?

- District deemed to have “knowledge” if:
  - Parent has expressed concern in writing to district supervisory or administrative personnel, or to one of student's teachers, that student needs special education and related services
  - Parent has requested assessment; or
  - Student’s teacher, or other district personnel, has expressed specific concerns about pattern of behavior demonstrated by student, directly to director of special education or to other supervisory personnel

(34 C.F.R. § 300.534)

What Constitutes “Knowledge”?

- Districts are not considered to have “knowledge” if parent has not allowed assessment or has refused services, or if student has been assessed but determined not to be eligible
- If district is not deemed to have “knowledge,” student may be subjected to disciplinary measures applied to students without disabilities who engage in comparable behaviors

(34 C.F.R. § 300.534)

Case Example

Vista Unified School District (OAH 2018)

- Student was placed in group home by juvenile court
- Numerous instances of misconduct (inappropriate touching, profanity, cutting classes, fighting)
- Disruptive incidents culminated in an assault on another student
- District recommended expulsion
- Parents claimed District had basis of knowledge of disability due to Student's pattern of behavior and that District should have conducted MD review

Case Example (cont'd)

Vista Unified School District (OAH 2018)

- ALJ found for District
- No evidence that any staff expressed concern about specific "pattern of behavior"
- Although Student engaged in several different behaviors, there was no consistent behavior or tendencies that amounted to a "pattern"
- Referral to general ed intervention program did not indicate basis of knowledge
- No evidence of any request for assessment

(Student v. Vista Unif. School Dist. (OAH 2018) Case No. 2017111058, 118 LRP 7001)



MDs: At the Meeting

Information to Consider

- MD team must consider all "relevant information," including:
  - Information in student's file, such as evaluations and diagnostics
  - Student's IEP and placement
  - Teacher observations
  - Relevant information provided by parent
- For students who have transferred from other districts (either intrastate or interstate), it is essential for MD team to obtain records, particularly concerning behavioral history
  - IDEA requires districts to promptly request student records from student's former district and requires former district to promptly respond to request

(34 C.F.R. § 300.534; 34 C.F.R. § 300.323(g))

Case Example

Bella Mente Montessori Charter School (OAH 2023)

- 8th-grade Student with ADHD was overheard saying he was going to “bring a gun to school and kill everyone and shoot the teacher's head off”
- Charter School police conducted search of Student's home and found dozens of weapons, list of student names, school’s address, and drawings of people with weapons
- Student was suspended and recommended for expulsion
- MD team based its conclusion on school psychologist's report that behavior was not manifestation of disabilities
- Parents contended that Charter School predetermined MD team’s findings

Case Example (cont'd)

Bella Mente Montessori Charter School (OAH 2023)

- ALJ agreed with Parents
- Student had only attended Charter School for 41 school days before making threat; Charter School staff had not had time to become familiar with Student's behaviors and how his disabilities might influence them
- School psychologist was not available at MD review to discuss report
- Parents did not have time to offer their information explaining Student's conduct "in the single hour" reserved for MD review
- ALJ: Advocate's sense that meeting was "kind of a fait accompli" [sic] was correct

(Student v. Bella Mente Montessori Charter School (OAH 2023) Case No. 2022110710, 123 LRP 6989)

Practice Pointers: Information to Consider

- Based on the available information, MD team should consider possible existence of other disabilities that might have been cause of conduct at issue
  - Example: ALJ overturned MD team's conclusion that Student's conduct (assaulting his girlfriend) was not manifestation of his hearing impairment or his ADHD because team failed to consider all relevant information in finding that Student's conduct was not manifestation of his disabilities, including Student's recent bipolar diagnosis and suicidal ideations

(Student v. Roseville Joint Union High School Dist. (OAH 2013) Case No. 2013080664, 113 LRP 44610)

Practice Pointers: Information to Consider

- It is essential to making correct MD decision that all information presented to team for consideration is accurate; relying on statement of only one witness about incident at issue, without corroboration, can sometimes be problematic
  - Example: Reliance on witness's statement that Student was involved in multiple drug sales proved to be inaccurate and led to ALJ's decision overturning MD team's determination that Student's conduct was not manifestation of his ADHD

(Student v. San Diego Unif. School Dist. (OAH 2009) Case No. 2009060881, 52 IDELR 301)

Questions to Answer

- MD team is required to find that student's conduct giving rise to change in placement is manifestation of his or her disability if conduct at issue either:
  - Was caused by, or had a direct and substantial relationship to, student's disability; or
  - Was direct result of district's failure to implement IEP

(34 C.F.R. § 300.530(e)(1))

1. Was Conduct Caused By—Or Did Conduct Have Direct and Substantial Relationship to—Student's Disability?

- Ask:
  - What is the disability?
  - How does disability affect the student?
  - What are facts of disciplinary incident?

1. Was Conduct Caused By—Or Did Conduct Have Direct and Substantial Relationship to—Student's Disability?

- Remember:
  - Consider how severe disability is for that student
  - Blanket decisions based on characteristics generally exhibited by other students with same disability are prohibited
  - MDs are not simple analysis of right or wrong
  - Direct causal relationship between behavior and disability must be established
  - When several factors contribute to misconduct, but disability is contributing factor, relationship between disability and misconduct is established

2. Was Conduct Direct Result of District's Failure to Implement Student's IEP?

- Ask:
  - What is the disability?
  - How does the disability affect student?
  - Was IEP being fully implemented?
  - If not, what portions were not being implemented?
  - What are facts of disciplinary incident?

2. Was Conduct Direct Result of District's Failure to Implement Student's IEP?

- Remember:
  - Examine any portions of IEP that were not implemented with fidelity
  - Analyze facts and effects of not implementing IEP to determine whether there was direct causal relationship between behavior and failure to implement

Case Example #1

Capistrano Unified School District (OAH 2026)

- Middle-school Student with ADHD was suspended (and later recommended for expulsion) after violently assaulting another student ("Student A")
- Two days before assault, Student was upset that Student A told other students that Student had stolen his bike helmet; Student told Student A he was going to "beat him up" if he did not stop calling Student "a thief"
- On day of assault, Student waited for Student A and told other students about impending fight
- At time of incident, District was in process of conducting FBA to assess and address Student's off-task behavior, including impulsivity and attention span
- District conducted MD review, finding no relation between incident and Student's ADHD
- Parents challenged MD team's findings

Case Example #1 (cont'd)

Capistrano Unified School District (OAH 2026)

- ALJ found for District
  - Student's attack on Student A was intentional act planned over course of two days, and assault was not result of distraction or impulsive behavior
  - School psychologist persuasively testified that Student's attention and executive functioning needs presented at school as task avoidance and difficulties with work completion, not planning and carrying out fights
  - School nurse: Recent change in medication would not cause behavioral changes
  - No evidence that Student's conduct was direct result of failure to implement IEP; whether District should have offered Student BIP earlier was not relevant to question
  - No evidence that MD team predetermined its findings merely because assistant principal had recommended expulsion, since expulsion and MD involved different decision-makers, took place at different times, and required different inquiries

(Student v. Capistrano Unif. School Dist. (OAH 2026) Case No. 2026010230, 126 LRP 5134)

Case Example #2

Atascadero Unified School District (OAH 2025)

- High school Student with ED exhibited tendency to fight when dysregulated, which had appeared by second grade
- By high school, Student had been involved in gang activity; placed in RTC; was arrested and placed on probation; and spent time in Juvenile Hall
- District assessment indicated that Student had difficulty with self-control of emotions and described Student as having “catastrophic” reactions to everyday occurrences
- On first day of returning to District high school, Student engaged in fight with another student (“E.G.R.”) and was recommended for expulsion
- MD team found that Student’s behavior was not manifestation of his ED
- Parent disputed MD team’s conclusion at due process

Case Example #2 (cont'd)

Atascadero Unified School District (OAH 2025)

- ALJ overturned MD team's finding, ruling that evidence supported Student's engagement in fight had direct and substantial relationship to his ED
  - Two campus supervisors were most important witnesses, but no evidence that their understandings of fight were adequately conveyed to the MD team
  - MD team had no knowledge of angry exchange between Student and E.G.R. less than 20 seconds before the fight began, in which E.G.R. cursed at Student, triggering response
  - ALJ: Even if fight was not spontaneous, student with ED can plan event and engage in it as result of ED
  - Evidence showed that Student did not attack E.G.R. at direction of gang, as District contended
  - ALJ: Incident, in response to vulgar verbal provocation, was similar to, and consistent with, many historical instances of violence rooted in Student's ED

(Student v. Atascadero Unif. School Dist. (OAH 2025) Case No. 2025010625, 125 LRP 9765)

Case Example #3

Kern High School District (OAH 2024)

- 10th-grade Student, eligible under OHI (ADHD), also had medical diagnosis of autism
- Student was suspended for making terrorist threat against school officials or school property
  - At end of baseball practice, Student accessed teammate's backpack, using teammate's cellphone to call 911 to report active shooter at neighboring high school
  - Police report concluded that two student witnesses observed Student removing cellphone from his teammate's bag and making the call
- Subsequent MD review concluded that Student's conduct was not caused by or had a direct or substantial relationship to Student's disability

Case Example #3 (cont'd)

Kern High School District (OAH 2024)

- ALJ upheld MD team's conclusion
  - Parents provided no evidence that District failed to consider any recent mental health changes, hospitalizations, periods of emotional and behavioral dysregulation, or new diagnosis made through Student's personal medical providers
  - ALJ rejected Parents' assertion that some peers thought his behavior was a joke
  - Calculated behavior had "nothing more than an attenuated relationship to his [ADHD]"
  - Student' mental health clinician also credibly testified that opportunistic nature of Student's actions were inconsistent with behaviors expected of someone with autism
  - District, including baseball coach, appropriately implemented IEP and BIP, which called for maintaining supervision of Student

(Student v. Kern High School Dist. (OAH 2024) Case No. 2024060613, 124 LRP 29282)

Case Example #4

Santa Paula Unified School District (OAH 2020)

- Student with SLD had history of aggressive behaviors
- IEP team developed social-emotional goal and offered 30 minutes of weekly counseling
- Student was suspended for participating in physical altercations, vaping, and assaulting/injuring another student
- District proposed expulsion
- MD team determined Student's conduct was not caused by, and did not have direct and substantial relationship to, her disability

Case Example #4 (cont'd)

Santa Paula Unified School District (OAH 2020)

- ALJ overturned MD team's finding
- No evidence that team ever considered question of whether Student's conduct was direct result of failure to implement Student's IEP; there was no reference to any such discussions in MD report
- Evidence established that individual counseling services were not being implemented between time Student enrolled in District and incident
- ALJ also found that IEP team incorrectly concluded that conduct for which Student's expulsion was not related to Student's disability
- Student's disability included diagnosed social emotional dysfunction that manifested in altercations with classmates; District improperly used Student's SLD identification "to circumvent a determination of whether her known social emotional dysfunction manifested in the assault for which she was being disciplined"

(Student v. Santa Paula Unif. School Dist. (OAH 2020) Case No. 2020050048, 77 IDELR 85)

Practice Pointer: "Snapshot" Rule

- ALJs will review the determinations of IEP team in light of what was objectively reasonable given information possessed by team at time of meeting
- OAH has stated "it makes sense to apply the [Adams snapshot] rule" to MDs
- Therefore, MD team's findings should not be called into question based on subsequent events or new information that may come to light

(Adams v. State of Oregon (9th Cir. 1999) 195 F.3d 1141; Student v. High Tech Middle North County (OAH 2014) Case No. 2014080899, 114 LRP 53441)

Practice Pointer: IEP Implementation

- When several factors contribute to student's misconduct, even if only one factor is failure to implement IEP, relationship between student's disability and misconduct is established
- Importance of fully implementing student's IEP and providing all services determined necessary for FAPE cannot be understated

Documenting the Meeting

- At minimum, it is essential to document the following items in any MD review:
  - When team convened
  - Who was present and whether parents attended
  - What conduct was at issue
  - What decision was made
  - What information team relied upon in making decision
- Failure to document these items can lead to due process order requiring MD be repeated



MDs: After the Meeting

If Behavior Is Manifestation of Disability

- If MD team concludes that conduct is manifestation of student's disability, IEP team must:
  - Conduct FBA (unless FBA already conducted), and implement BIP (or if BIP has already been developed, review it and modify it, as necessary)
  - Return student to placement from which student was removed, unless IEP team agrees to change of placement as part of modification of BIP
  - Take immediate steps to remedy IEP implementation deficiencies, if needed
- Law provides no instruction on how soon district must return student to placement from which student was removed, but IEP teams should be aware that failure to do so as quickly as possible can possibly result in denial of FAPE

(34 C.F.R. § 300.530(e)(f))

Practice Pointer: How Soon Is Now?

- Law provides no instruction on how soon district must return student to placement from which student was removed, but IEP teams should be aware that failure to do so as quickly as possible (usually the following school day) can possibly result in denial of FAPE
  - Example: District committed procedural violation by not returning Student to his placement until five days after it had found that Student's conduct was manifestation of his disability; however, such violation did not rise to level of denial of FAPE because Student continued to receive benefit of his ABA home program and did not lose significant instructional time

(Student v. Bellflower Unified School Dist. and Bellflower Unif. School Dist. v. Student (OAH 2013) Case Nos. 2012060009 and 2012060628, 113 LRP 13663, aff'd, (C.D. Cal. 2014) 63 IDELR 4)

If Behavior Is Not Manifestation of Disability

- If MD team concludes that conduct is not manifestation of student's disability:
  - Student is subject to same sanctions for misconduct as nondisabled students
  - Student must continue to receive FAPE
  - IEP team should take steps to address student's behavior

(34 C.F.R. § 300.530(e),(f); 71 Fed. Reg. 46721 (Aug. 14, 2006))

Right to Challenge MD Findings

- Parents who disagree with any decision regarding MD may request expedited due process hearing
- OAH will schedule hearing within 20 school days of date complaint was filed
- ALJ must make finding within 10 school days after hearing
- Resolution meeting must occur within seven days of receiving notice of due process complaint unless parents agree otherwise
- Time limit does not apply if parties agreed to mediation

(34 C.F.R. § 300.532)

Take Aways . . .

- To reach sound decisions and avoid unnecessary conflicts, it is essential that relevant staff be trained and aware of important fundamentals of the MD process
- Districts need to ensure that MD review is meaningful, which will require that MD team have comprehensive understanding of student and student's disabilities
- Communication with parents throughout MD process is vital, but if parents object to team's findings, team should remind them of their options to challenge decision

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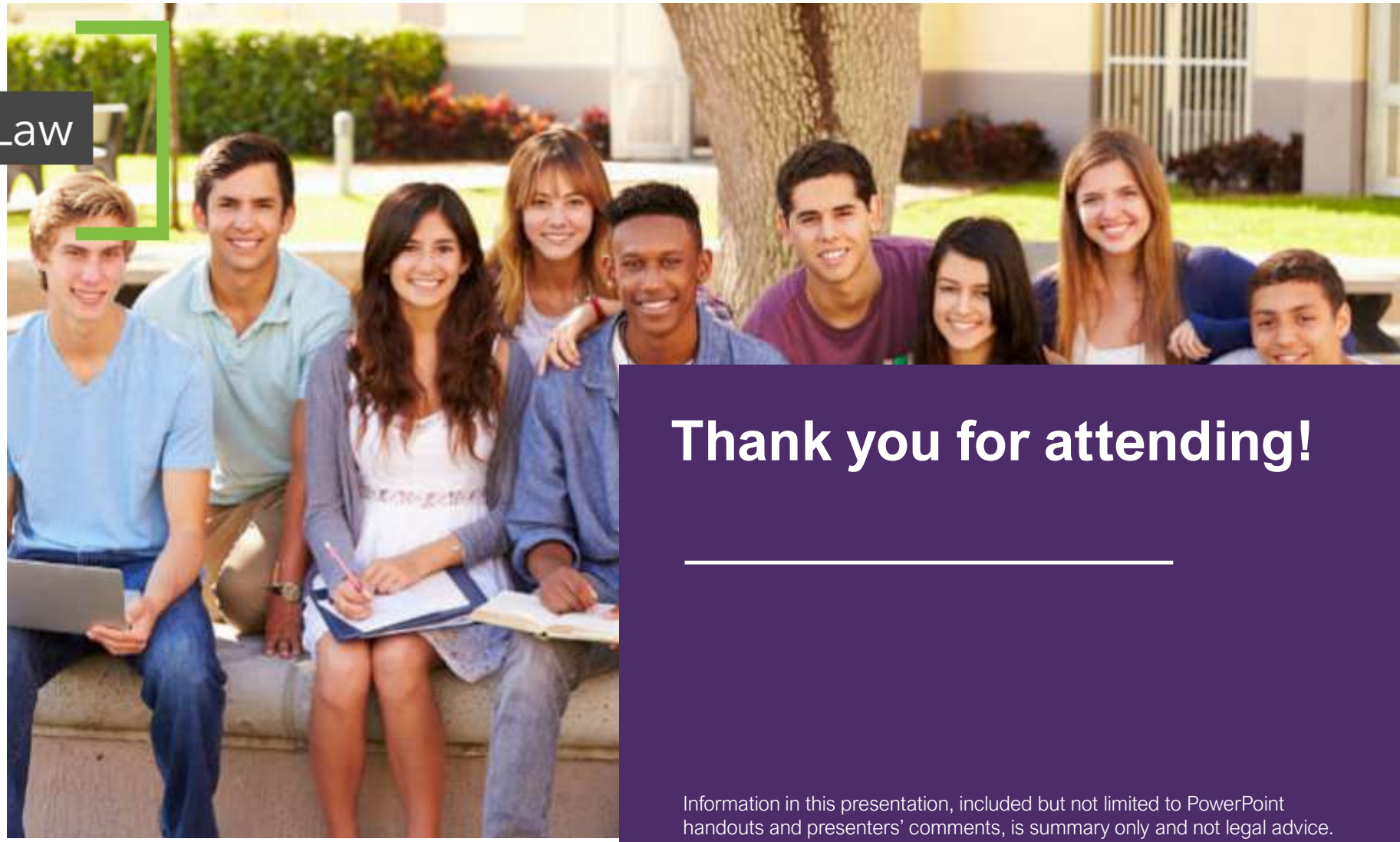

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