



## Discern when behavior has direct tie to student's disability

Sometimes a student's challenging behavior is clearly unrelated to his disability. For example, a student's specific learning disability would likely not trigger his decision to bring a gun to school.

Other times, the issue of whether a student's difficult behavior is a manifestation of his disability is not so clear-cut.

The key question for [manifestation determination review](#) teams to answer is whether the child's conduct was caused by or had a direct and substantial relationship to his disability. [34 CFR 300.530](#) (e)(1)(i).

### Manifestation of disability

Behavior must be found to be a manifestation of a child's disability if the conduct in question was caused by or had a direct and substantial relationship to the child's disability or if the conduct was the direct result of the district's failure to implement the IEP. [34 CFR 300.530](#) (e)(1).

"This question is the one that causes the most heartburn for teams," said Reagan Sauls, an attorney at Parker Poe Adams & Bernstein LLP in Atlanta, Ga. "I would say that in 50 percent of the cases, you have to pull at all the different threads to determine whether or not the conduct is a manifestation of a student's disability."

IEP team members who contribute to an MDR should be clear on what to consider to help determine a behavior's connection to a student's disability. You don't want to mistakenly discipline a student whose behavior is linked to his disability. Adopt the tricks below to determine when a student's conduct has a direct and substantial relationship to his disability.

### Investigate student's past behavior

Explore whether the student has engaged in similar behavior in the past, Sauls said. Does he have a [behavioral intervention plan](#) related to the conduct? Does he have IEP goals related to the behavior? "A teacher may say the behavior hasn't been an issue before," she said.

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## Clarify what disability usually looks like

Look at the student's IEP and talk with everyone who interacts with her to better understand how her disability regularly appears in school, Sauls said. For example, a student with [ADHD](#) may not necessarily be impulsive. Instead, her teacher may say that she has executive functioning issues and struggles to stay focused and organized. So her decision to bring a vape pen to school may not be related to her ADHD. "Is it a typical teenager making bad decisions and showing a lack of judgment or is it impulsivity with ADHD?" she said. "You have to look at the background of the student's behavior and what their disability looks like to make that decision."

Sometimes, the student with a disability simply made a bad choice, just like any other student her age, said Lyndon Nguyen, an attorney at Nguyen Law PLLC in Boise, Idaho. "They should just deal with the normal consequences of the bad decision," he said.

## Explore intention

It's also important to look for any evidence of the student choosing to engage in the behavior, Sauls said. For example, if the student sent text messages the day before to peers that he planned to bring his vape pen to school, he clearly didn't bring it to school on an impulse. "You have to have a bigger conversation about the circumstances around the conduct violation," she said.

## Weigh parents' input

Consider all the information parents share at the [MDR](#), including any new evaluations or behaviors they're seeing at home, Sauls said. But recognize that if the behavior that happened at school is not happening at home, it may not be related to the disability. "If the behavior was really the direct result of the disability, wouldn't this be happening across the board?" she said. "Wouldn't this be happening in more than one class or at home? Maybe not, but maybe you need to get more information." Conduct an [FBA](#) to parse out what may and may not be related to the disability, Sauls said.



If you don't conduct an FBA, you may inadvertently spur the student to continue to engage in challenging behavior, Nguyen said.

### **Make decision**

If you don't reach a consensus after going through these steps and the district decides the behavior was not directly and substantially related to the student's disability, make sure you give parents [prior written notice](#) and information on their rights, Sauls said. "It happens sometimes," she said, "but I would say it's pretty uncommon for a team not to reach some kind of consensus about whether the behavior has a direct and substantial relationship to the student's disability."

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