

REGULATION **MONTGOMERY COUNTY PUBLIC SCHOOLS**

Related Entries: ACG, ACG-RA, IOB, JGA-RB, JGA-RC, JOA-RA
Responsible Office: Special Education and Student Services
Related Source: “Vocational Rehabilitation and Other Rehabilitation Services,” 29 USC §794, 34CFR§104 (2000); *Americans with Disabilities Act of 1990* (ADA); *Americans with Disabilities Act Amendments Act of 2008* (ADAAA)

Reasonable Accommodations and Modifications for Students Eligible Under Section 504 of the Rehabilitation Act of 1973

I. PURPOSE

- A. To provide procedures to identify, evaluate, and place students in general education who are eligible for accommodations under *Section 504 of the Rehabilitation Act of 1973* (Section 504) and the *Americans with Disabilities Act Amendments Act of 2008* (ADAAA)
- B. To clarify that the procedures described in this regulation apply to the participation of eligible students with disabilities in Montgomery County Public Schools (MCPS) preschool, elementary, and secondary general education programs and activities; including academic, nonacademic, and extracurricular activities
- C. To assure that no eligible student with a disability will, on the basis of that disability, be excluded from participating in, be denied the benefits of, or otherwise be subjected to discrimination in any service, program, event, or activity sponsored by MCPS

II. BACKGROUND

Section 504 and ADAAA are federal statutes designed to eliminate discrimination on the basis of a disability in any program or activity receiving federal financial assistance.

Section 504 requires schools to provide academic, nonacademic, and extracurricular services such as transportation, school counseling, school health services, physical education and athletics, as well as physical access to facilities, in such manner as is

necessary to provide students with disabilities an equal opportunity for participation in those services and activities.

III. DEFINITIONS

- A. An *accommodation* is any strategy, service, or facility modification that allows the student to access academic, nonacademic, and extracurricular activities comparable to those available to his or her nondisabled peers.
- B. An *adult student* is a student who is 18 years of age or older or a student who is married and therefore has the same rights as those granted to the student's parents or guardians.
- C. An *eligible student with a disability* is—
1. a student with a physical or mental impairment that substantially limits one or more major life activities;
 2. a student with a record of such an impairment; or
 3. a student regarded as having such an impairment.
 - a) A student meets the requirement of being regarded as having such an impairment if the individual establishes that he or she has been subjected to discrimination because of an actual or perceived physical or mental impairment. This does not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of six months or less.
 - b) A student who meets the definition of a student with a disability solely because he or she is regarded as having a disability need not be provided with reasonable accommodations or modifications to policies, practices, or procedures.

A student currently engaging in the illegal use of drugs is not an “eligible student with a disability” when the school system acts on the basis of such use. A student who has successfully completed a supervised drug rehabilitation program or is currently participating in such a program, or has otherwise been rehabilitated successfully and is no longer engaging in such use, is covered by this definition.

- D. *Major life activities* include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting,

bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

- E. *Mitigating measures* include but are not limited to, medication, medical supplies, equipment or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; learned behavioral or adaptive neurological modifications; or psychotherapy, behavioral therapy, or physical therapy.
- F. *Parent* includes a biological parent, adoptive parent, foster parent, guardian authorized to act as the child's parent, an appointed surrogate parent, an individual acting in place of a biological or adoptive parent (including a grandparent, step-parent, or other relative) with whom the student lives, or an individual who is legally responsible for the student's welfare.
- G. *Physical or mental impairment* means—
1. any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs) cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or
 2. any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- H. *Placements* are services and accommodations that a student with a disability must receive in order to obtain a Free and Appropriate Public Education (FAPE).
- I. The *Section 504 school-based team* consists of members who have knowledge of the student, the meaning of the evaluation data, the placement options, Section 504, and this regulation. At a minimum, the team will consist of the child's parent or, if an adult student, the child him/herself, one of the child's teachers, the counselor or the case manager, an appropriate professional who is qualified to

interpret the implications of evaluations, and a principal or principal's designee. This is usually the school-based Collaborative Problem Solving Team or the Educational Management Team.

J. *Substantially limits* means—

1. substantially limited in the ability to perform a major life activity as compared to most people in the general population;
2. an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active; or
3. the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures.

It may be useful in appropriate cases to consider, as compared to most people in the general population—

- a) the condition under which the individual performs the major life activity;
- b) the manner in which the individual performs the major life activity; and/or
- c) the duration of time it takes the individual to perform the major life activity, or for which the individual can perform the major life activity.

K. A *temporary impairment* is an impairment with an actual or expected duration of six months or less.

IV. PROCEDURES

A. Roles and Responsibilities

1. The MCPS Section 504 coordinator—
 - a) coordinates the efforts of MCPS to comply with and carry out its responsibilities under Section 504, and
 - b) is available to provide guidance and support in matters related to the rights of students with disabilities.

2. The principal—
 - a) ensures compliance with this regulation and Section 504;
 - b) maintains records in accordance with MCPS Regulation JOA-RA, *Student Records*; and
 - c) may designate responsibility for implementation of the individual Section 504 plans.
3. The school-based Section 504 coordinator—
 - a) oversees the implementation and other aspects of Section 504 at the school, and
 - b) enters and maintains a record of all students who have a Section 504 Plan and the review date in a systemwide database.
4. The case manager—
 - a) is identified by the Section 504 school-based team, and
 - b) coordinates implementation of the plan.
5. The teacher—

Must implement the applicable provisions of Section 504 for students for whom he or she is responsible.
6. Other staff, who may include but are not limited to counselors, administrators, school nurses, pupil personnel workers, related service providers, paraeducators, and school psychologists, may have additional responsibilities.

B. Locating and Identifying Students

1. The MCPS Child Find process will be used to identify students with disabilities who may be eligible for accommodations under Section 504.
2. Information about the school system's obligations under Section 504 will be disseminated at the beginning of each school year through appropriate MCPS publications.

3. If MCPS staff suspects a student may have a disability, a referral should be promptly made to the Section 504 school-based team.
4. A confidential folder is created when a student is being considered for eligibility under Section 504, and all documents related to Section 504 will be kept in the student's confidential file at the local school in accordance with MCPS Regulation JOA-RA, *Student Records*.

C. Eligibility

1. Written consent must be obtained from parents or adult students before the Section 504 school-based team may convene to conduct an evaluation.
2. In determining whether a student with a disability is eligible under Section 504, the school-based team reviews various sources of available information, including, but not limited to the following:
 - a) Aptitude and achievement tests
 - b) Report cards and teacher reports
 - c) Oral or written observations
 - d) Student attendance, educational, and health records
 - e) Evaluations of daily life skills
 - f) Medical, psychological, and developmental reports
 - g) Results of the Individualized Education Program team decision, if appropriate
 - h) Information from parents

The collection and review of information should not delay or limit the scope of coverage under Section 504.

3. If the Section 504 school-based team decides that further MCPS assessment is needed, the team notifies the parent or adult student and seeks prior consent for any testing; assures that all assessments conform to Section 504, MCPS, and test publisher standards relating to test selection, validation and administration; and reviews the results of the assessments.

4. The Section 504 school-based team determines whether the student with a disability is eligible by ascertaining—
 - a) whether the student has a physical or mental impairment and, if so,
 - b) whether the impairment substantially limits a major life activity.
5. A student with an impairment that is episodic or in remission is eligible if that impairment would substantially limit a major life activity when active.
6. The ameliorative affects of mitigating measures must not be considered when determining whether an impairment substantially limits a major life activity.
7. A student with a temporary and minor impairment is not eligible under Section 504.

D. Developing a Plan

1. If a student who is eligible under Section 504 requires accommodations, the Section 504 school-based team develops a written Section 504 plan.
2. The plan specifies the nature of the impairment, the major life activity affected by the impairment, accommodations necessary to meet the student's needs, and the person(s) responsible for implementing the accommodations.
3. The accommodations should be designed to afford the student with a disability the opportunity to receive the benefits from programs and activities to the same extent as students who do not have disabilities.

E. Implementation

1. The case manager will coordinate implementation of the plan and notify the appropriate staff of the contents.
2. A student's Section 504 plan will be reviewed at least annually, as determined by the Section 504 school-based team or requested by the parent(s), or before any significant change in the student's placement, including long-term suspension, recommendation for expulsion, or suspected non-eligibility for Section 504.

3. Section 504 student information will be provided when a student changes from one school to another within MCPS in accordance with MCPS Regulation JOA-RA, *Student Records*.

F. Disciplinary Removal, Suspension, or Expulsion

Any student eligible under Section 504 only may be removed from his or her educational program, consistent with procedures as set forth in MCPS Regulation JGA-RB, *Suspension and Expulsion*, and MCPS Regulation JGA-RC, *Suspension and Expulsion of Students with Disabilities*.

V. DUE PROCESS SAFEGUARDS

- A. MCPS will provide a FAPE to each eligible student with a disability within its jurisdiction by educating students with disabilities in their least restrictive environment.
- B. A nondiscrimination notice will be published annually in designated publications.
- C. A parent or adult student must be provided a copy of the MCPS Due Process Safeguards document by school staff. The following due process safeguards will be afforded to the parent or adult student:
 1. Written notice with respect to identification, evaluation, reevaluation, placement, or program decisions involving the student.
 2. The right to have identification, evaluation, placement, and program decisions made based upon information from a variety of sources and by persons who know the needs of the student, the meaning of evaluation data, placement, and program options.
 3. An opportunity to examine the student's educational records and obtain a copy of those records pursuant to law and MCPS Regulation JOA-RA, *Student Records*.
 4. The right to seek resolution of issues if dissatisfied with any decision regarding the identification, evaluation, placement, or program of the student.
- D. If the parent or adult student is dissatisfied with decisions regarding identification, evaluation, or educational placement, they may access any of the following:
 1. Review by the Department of Student Services (DSS)

Request, in writing, a review of the decision by contacting the MCPS Section 504 coordinator.

- a) If the parties are amenable, DSS will attempt to facilitate an agreement.
- b) If an agreement is not reached, a review will be undertaken by the MCPS Section 504 coordinator and a written decision will be rendered within a reasonable time.

2. Mediation

Request mediation through the Maryland Office of Administrative Hearings by contacting the MCPS Section 504 coordinator. Mediation allows for parents or adult students to be active participants while negotiating an agreement.

3. Hearing

Request a Section 504 hearing through the Maryland Office of Administrative Hearings by contacting the MCPS Section 504 coordinator. This hearing is conducted by an administrative law judge. The hearing provides opportunity for participation by the parent or adult student, representation by counsel, and the procedural rights set forth in the Maryland State Department of Education Parental Rights: Maryland Procedural Safeguards Notice.

4. Office for Civil Rights (OCR) Complaint

File a complaint within 180 days of an alleged discriminatory act with the OCR of the U.S. Department of Education if the parent or adult student believes the student has been discriminated against on the basis of disability in violation of Section 504.

Regulation History: New Regulation, September 5, 1996, formerly IOG-RB now ACG-RB; revised July 2, 2008; revised October 19, 2009; revised July 22, 2013; revised September 9, 2014.