

RESOLUTION AND COMPLIANCE UNIT

MONTGOMERY COUNTY PUBLIC SCHOOLS, ROCKVILLE, MARYLAND

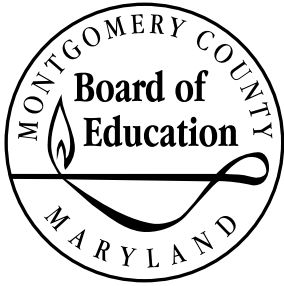
HANDBOOK FOR
Implementing
Section 504

OF THE *Rehabilitation Act of 1973*

2017-2018



ROCKVILLE, MARYLAND



VISION

We inspire learning by providing the greatest public education to each and every student.

MISSION

Every student will have the academic, creative problem solving, and social emotional skills to be successful in college and career.

CORE PURPOSE

Prepare all students to thrive in their future.

CORE VALUES

*Learning
Relationships
Respect
Excellence
Equity*

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Handbook for Implementing Section 504 of the *Rehabilitation Act of 1973*

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Thanks to the many MCPS staff members and our school health services partners who contributed to the development of this manual. Their ideas, comments, and suggestions were invaluable.



Handbook for Implementing Section 504 of the Rehabilitation Act of 1973

MISSION STATEMENT

The Mission of the Department of Special Education Services (DSES) is to provide, implement, and monitor the delivery of a seamless continuum of services for students with disabilities from birth through age 21, to prepare for career, college, and community readiness.

INTRODUCTION

Equal opportunity for qualified students with disabilities is an objective of Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act Amendments Act of 2008. This goal translates into the provision of accessibility; the provision of benefits, services, and aids that are equally effective for disabled and nondisabled people; and the provision of programs and activities that are otherwise free from discrimination based on disability.

Equal opportunity, and not merely equal treatment, is essential to eliminating discrimination. Identical treatment will not, in some cases, afford disabled people the adjustments or accommodations required to achieve equal opportunities to work, learn, or receive services.

Federal laws ensure that qualified individuals with disabilities do not experience discrimination. Because Montgomery County Public Schools (MCPS) receives federal funds, the school system is subject to the provisions of the Rehabilitation Act of 1973. In particular, MCPS is subject to the following provision of this law, commonly known as Section 504:

No otherwise qualified individual with an disability in the United States... shall, solely by reason of his impairment/ disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

This handbook explains the process for eligibility by which students might qualify for protections and/or accommodations under Section 504. Regulations to help school systems implement Section 504 were developed by the U.S. Department of Education. These regulations provide the legal basis for this handbook.

The manual is written in the spirit of the MCPS mission that “[e]very student will have the academic, creative problem solving, and social emotional skills to be successful in college and career.”

Consistent with this mission, in 2017, the Board of Education of Montgomery County adopted comprehensive updates to *Policy ACA, Nondiscrimination, Equity, and Cultural Proficiency*, which confirms the Board’s commitment to:

Establish and promote a framework that prepares all students to live and work in a globally minded society, and fosters a positive learning environment that embraces all unique and individual differences.

For students with disabilities such as those who qualify under Section 504, a high-quality education may need to include supports or accommodations that go beyond those provided to their nondisabled peers, in order to prevent any discrimination on the basis of a disability.

The future of our schools depends on the ability of a well-trained, committed, and caring workforce. All instructional staff must be equipped to use a wide repertoire of instructional strategies to respond appropriately to diverse student needs.

DETERMINING A STUDENT'S ELIGIBILITY UNDER SECTION 504

Overview

This section provides guidelines for MCPS staff members in determining whether a student is eligible for protection and/or accommodations under *Section 504 of the Rehabilitation Act of 1973*. Definitions related to eligibility determinations are provided, as are the legal requirements for conducting a Section 504 evaluation.

Referral Process

A student who has a suspected disability but who has not been identified under the *Individuals with Disabilities Education Act* (IDEA) may be referred for a Section 504 evaluation by the school and/or by the student's parents/guardians.¹ Upon receipt of a referral, a Section 504 evaluation meeting is scheduled and the parents/guardians are notified.

A confidential folder should be established at this time. All documents related to Section 504 will be kept in the student's confidential file, in addition to any records included in the online Section 504 platform used by MCPS.

The Section 504 Decision-making Team

Section 504 regulations require that decision making under Section 504 be conducted by a "group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and placement options."

In MCPS, responsibility for conducting Section 504 evaluations (and other Section 504 decision making) has been assigned to school-based Section 504 teams.

When Section 504 eligibility is being considered, principals are responsible for staffing the Section 504 team with individuals who meet the Section 504 requirements. Membership of the team will vary depending on whether the student is suspected of qualifying based on a physical or mental impairment. For example, the school nurse and occupational or physical therapist could be recommended members when a physical or medical impairment is being considered. The school psychologist may be a recommended member when a mental or emotional impairment (including attentional impairments) is being considered.

Preparing for a Section 504 Evaluation Meeting

When a Section 504 evaluation has been requested, a meeting should be scheduled within 30 days of the request and the parents/guardians should be provided

with notice of the meeting date and time. The student's school files should be made available to participants for review prior to the meeting. If the parent/guardian provides non-MCPS external assessment documentation that requires review by an MCPS professional, the appropriate professional should complete *MCPS Form 336-68, Team Consideration of External Reports*.

New information provided at the meeting: If the parent/guardian provides new information, which cannot be formally reviewed by a MCPS professional at the meeting, permission to exchange information is obtained at the meeting and another meeting is scheduled within a reasonable time frame.

Conducting the Section 504 Evaluation Meeting

When evaluating a student under Section 504, the Section 504 team is required to consider information from a variety of sources, including parental/guardian input and student input, if appropriate. The Section 504 team reviews existing student information such as aptitude and achievement tests; report cards and teacher reports; observations; educational and health records; evaluations of adaptive behavior; and medical, psychological, and developmental reports. The team provides the parent/guardian with an opportunity to discuss the student's physical or mental impairment and explains and follows the Section 504 eligibility requirements.

In order to be found eligible under Section 504, there must be evidence that—

1. The student has a physical or mental impairment²;
2. The physical or mental impairment affects a major life activity; and
3. The physical or mental impairment substantially limits a major life activity; the substantial limitation is determined by comparing the student's performance on the major life activity with that of their nondisabled peers.

Determining whether the student has a physical or mental impairment

Section 504 defines a "physical or mental impairment" as "any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities." 34 C.F.R. § 104.3.

¹If a student is eligible under IDEA, the student is entitled to receive special education services through an Individualized Education Program (IEP) and should not have both an IEP and a Section 504 Plan. However, the IEP should address any accommodations necessitated under Section 504 if, for example, an autistic student also has diabetes. Please see U.S. Department of Education, Office for Civil Rights, *Frequently Asked Questions About Section 504 and the Education of Children with Disabilities*, Question 36.

²Please refer to the complete definition of "disability" reflected in the Glossary and to the examples in the U.S. Department of Education, *Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools*.

The Section 504 team considers available documentation concerning the student's disability. If the team determines that additional information may be necessary to make a determination, the team may determine that assessments are necessary and must seek written authorization from the parent/guardian using [MCPS Form 336-31, Authorization for Assessment](#). [MCPS Form 270-2a, Authorization for School Psychologists Section 504 Attentional Disorders Assessment](#) is completed if the team is considering whether the student has attentional problems, and there is no outside diagnosis. Documentation of an outside diagnosis can include formal assessments, letters from physicians, and notes on prescription pads. The team should obtain disclosure from the parent/guardian to gather additional information regarding the outside diagnosis by completing [MCPS Form 336-32, Authorization for Release/Exchange of Confidential Information](#).

Please note that there is no legal requirement under Section 504 that the student must have a negative educational impact as result of having a physical or mental impairment, in order to qualify under Section 504.

Determining whether a major life activity is affected by the impairment

The list of "major life activities" under Section 504 includes, but is not limited to, "caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, standing, lifting, bending, reading, concentrating, thinking, and communicating." 34 C.F.R. § 104.3 and 29 C.F.R. §1630.2. Major bodily functions are also major life activities under the law, and these major bodily functions include functions of the bowel, bladder, and brain; normal cell growth; and the immune, endocrine (for example, thyroid, pituitary, and pancreas), respiratory, reproductive, circulatory, digestive, and neurological systems.

Please note that more than one major life activity can be implicated by the student's impairment and should be noted.

The team considers available documentation concerning the implications for the student's impairment and completes the Section 504 Eligibility form in the online Section 504 platform.

Determining whether the physical or mental impairment substantially limits a major life activity of the student

The Americans with Disabilities Act Amendments Act of 2008 (ADAAA) revisions require that the consideration of a substantial limitation be "broadly interpreted." The basic definition of disability has not changed, however. These ADAAA revisions also apply

to Section 504. A student must still have an impairment that substantially limits a major life activity. The impairment, however, does not have to prevent or severely restrict the student from performing the major life activity.

The Section 504 team considers available documentation concerning the major life activity in question and what limitations have an impact on that activity. It is important for the team to keep in mind that the student's performance on the major life activity is compared with the performance of the student's non-disabled peers.

In determining whether an individual is substantially limited in a major life activity, it may be useful to consider, as compared to the student's nondisabled peers, the conditions under which the individual performs the major life activity; the manner in which the individual performs the major life activity; or 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.

Consideration of facts such as condition, manner, or duration may include, but are not limited to, consideration of the difficulty, effort, or time required to perform a major life activity; pain experienced when performing a major life activity; the length of time a major life activity can be performed; or the way an impairment affects the operation of a major bodily function.

Ameliorate Effects of Mitigating Measures

The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures such as:

1. 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, or oxygen therapy equipment and supplies. The term "low-vision devices" means devices that magnify, enhance, or otherwise augment a visual image;
2. Use of assistive technology;
3. Reasonable accommodations or auxiliary aids or services; or
4. Learned behavioral or adaptive neurological modifications.

The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity. The term "ordinary eyeglasses or contact lenses" means lenses that are intended to fully correct visual acuity or eliminate refractive error.

It is also important to note that the non-ameliorative effects of mitigating measures (such as negative side effects of medication or burdens associated with following a particular treatment regimen) may be considered when determining whether an individual's impairment substantially limits a major life activity.

If a student meets all of three requirements under "Conducting the Section 504 Evaluation Meeting," without regard to mitigating measures, then the student is eligible for a Section 504 Plan.

Special Considerations

1. **Attention Deficit Hyperactivity Disorders:** When considering whether a student has attention deficit hyperactivity disorder, a school psychologist should be a member of the team. The school psychologist should also assist the team in completing [MCPS Form 270-2A, Authorization for School Psychologists Section 504 Attentional Disorders Assessment](#), unless the parent/guardian provides documentation of an outside diagnosis. The team may be required to obtain additional data to be reviewed at a subsequent Section 504 meeting. For additional information, please refer to the July 26, 2016, [U.S. Department of Education, Office for Civil Rights, Dear Colleague Letter and Resource Guide on Students with ADHD](#).
2. **Temporary and episodic disabilities:** Under Section 504, the proper eligibility inquiry is not whether a disability is temporary or permanent. The issue of whether a temporary physical or mental impairment is significant enough to be a disability must be addressed on a case-by-case basis, taking into consideration the duration (expected duration) of the impairment and the extent to which it actually limits a major life activity of the student. An episodic disability or a disability in remission also qualifies for eligibility under Section 504, if it would substantially limit a major life activity when active.
3. **Highly able students:** Because a student is highly able and enrolled in Advanced Placement, Honors, Magnet programs, or the International Baccalaureate diploma program classes does not automatically preclude Section 504 eligibility. Highly able students may have physical or mental impairments that substantially limit a major life activity. Any accommodations provided to such students should "level the playing field," not provide the means by which the student becomes eligible for Advanced Placement or Honors courses. A highly able student should not be automatically denied accommodations under Section 504. This student might be eligible if the student's disability restricts the student from accessing any MCPS or MCPS-sponsored program or activity.
4. **Students attending private schools:** MCPS Section 504 teams should evaluate students in private schools at the parents'/guardians' request. The Section 504 team completes the Section 504 evaluation for Section 504 eligibility, but does not create a Section 504 Plan, regardless of the eligibility outcome. If the student enrolls in MCPS, a Section 504 Plan would be developed, where the student is found eligible for accommodations.

Parents/guardians are welcome to take their evaluation paperwork back to their private school.

5. **Medical conditions:** Depending on their severity, medical impairments (for example, life-threatening allergies, asthma, and diabetes) may be considered a disability under Section 504. While most students with medical conditions may have an Individual Health Care Plan (IHCP), a Section 504 Plan differs from an IHCP in that it provides guidelines for changes in the classroom and in other locations or activities that achieve the goal of providing a safe education as well as antidiscrimination protections for the student. The Section 504 Plan is an additional step in school planning between the school, the student, and the student's family when standard MCPS policies and procedures do not meet a student's medical and/or other unique needs. For additional information on students with diabetes, please refer to [Maryland State School Health Services Guideline, Management of Diabetes in Schools](#), issued May 2017.

Determining whether the student requires accommodations

Not every student who qualifies as having a physical or mental impairment under Section 504 will require accommodations to receive a free and appropriate public education (FAPE). However, even if accommodations are not required, the student will be eligible for the nondiscrimination protections under Section 504 and the team should complete the Section 504 eligibility form in the online Section 504 platform accordingly, indicating the rationale for the team decision and data supporting such decision.

If a student is not found eligible under Section 504, the Section 504 team makes appropriate recommendations to address the student's identified needs and must document this information in the Section 504 eligibility form in the online Section 504 platform. In such circumstances, parents/guardians must be provided with a copy of the MCPS brochure, *Due Process Safeguards Information: Section 504 of the Rehabilitation Act of 1973*.

DEVELOPING A SECTION 504 PLAN FOR ELIGIBLE MCPS STUDENTS

Overview

This section provides guidelines for developing a Section 504 Plan. When a student is determined eligible under Section 504, the Section 504 team considers the student's need for accommodations to receive a free and appropriate public education (FAPE) and develops a Section 504 Plan, if appropriate. This legally binding Plan outlines the accommodations for the unique needs of a student as a result of their impairment. The Plan is a statement of the required accommodations and services that MCPS will provide to the student.

The Section 504 Team

The principal is responsible for staffing the school's Section 504 team with individuals who meet the Section 504 requirements. Section 504 regulations require that decision making under Section 504 be made by a "group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and placement options." The Section 504 team should include—

- principal or designee;
- at least one teacher who is or who will be working with the student;
- additional staff members who may be appropriate, such as the school psychologist, school counselor, pupil personnel worker (PPW), school nurse, and any other persons responsible for the plan's implementation. For example, if the student's impairment is asthma, the school nurse should be a required member of the team;
- the parent/guardian also is invited to participate in the development of the Section 504 Plan; and
- the student, if appropriate.

Preparation for Developing the Section 504 Plan

In preparation for developing the plan, the team should review the student's Section 504 evaluation and other current information, including, but not limited to—

- report card data;
- teacher reports;
- school-based testing;
- curriculum-based assessments;
- formal evaluations;
- current health records and/or medical updates;
- documentation of response to academic and/or behavioral interventions
- grade-level team meetings and consultations;
- oral and written documentation of observations;
- parental input (*MCPS Form 336-39, Parent Report*, can be used, when relevant); and
- student input, if appropriate.

Writing the Section 504 Plan

If the Section 504 team determines that there is sufficient information available to develop a Plan, the Section 504 team may proceed with development of the plan after determining eligibility. A Section 504 Plan should be developed no later than 30 calendar days after the student has been found eligible under Section 504, unless the Section 504 team determines that additional assessments/evaluations are necessary. The additional assessments/evaluations should be completed within 60 calendar days of the date the student has been determined eligible under Section 504.

Beginning September 5, 2017, the team completes the Section 504 Plan in the online Section 504 platform. The names and titles of each participating team member must be listed on this form. Any additional meeting notes should be recorded where designated on the Section 504 Plan.

Background Information

The date on which the student was determined eligible by a Section 504 team should be recorded on each plan. The plan should identify the following:

- Specific impairment identified at the eligibility meeting.
- Major life activity that is substantially limited by the impairment.
- Educational needs identified at the evaluation team meeting.

Section 504 Plan

The Plan may include accommodations, program modifications, instructional approaches, the use of supplemental services, and transportation that afford the student an opportunity to benefit from programs and activities to the same extent as students without disabilities. Any recommended accommodations should do the following:

- Relate to the area of impairment.
- Reflect the unique needs of the student.
- Enable the student to have an opportunity equal to that of their nondisabled peers to learn (or otherwise perform, depending on the disability);
- Be reasonable for the student to have equal access to the curriculum and equal opportunity to demonstrate achievement.
- Be specific enough in description to indicate when and where the Plan is to be implemented (location) and indicate the person(s) responsible for implementation.

Accommodations need to be directly related to the student's impairment. *Additional accommodations not related to the impairment should not be incorporated in the Section 504 Plan but may be provided by the teacher(s) as a matter of best practices.*

When developing a Section 504 Plan, the Section 504 team must recommend accommodations that are supported with documented evidence of need, based on the substantial limitations of the student's mental or physical impairment on a major life activity.

Also, the Section 504 team should identify testing accommodations that are provided on a regular instructional basis and determine whether the accommodations should be provided during any county or state assessments. Accommodations must be related to the area of the student's mental or physical impairment.

Concluding the Meeting

The Section 504 team concludes the meeting by doing the following:

- Identifying a review date, within one year.
- Identifying a case manager (e.g., classroom teacher, school counselor, team leader).
- Obtaining a signature from the parent/guardian indicating that they have participated in the meeting.
- Providing parents/guardians with the Due Process Safeguards Information, located at the end of the Section 504 Plan.

After the meeting, the case manager is responsible for distributing copies of the Plan to all persons responsible for implementing the accommodations. The case manager may complete *MCPS Form 270-2d, Distribution of Section 504 Plan* to indicate that all persons responsible received their copy of the Section 504 Plan. Please note that this also may include school nurses and related service providers, where appropriate.

SECTION 504 PROGRESS REVIEW AND REEVALUATION

Overview

The Section 504 team should conduct an annual reevaluation of each Section 504-eligible student to evaluate the appropriateness of services, accommodations, and modifications currently provided, if any. Review meetings also may be conducted prior to the annual date, on an as-needed basis. A reevaluation must be conducted whenever there is a change in placement, i.e., suspension of more than 10 days, pattern of removals for suspension, expulsion, or transfers. Additionally, parents/guardians may request a Section 504 review at any time.

The annual reevaluation of the Section 504 Plan is to evaluate whether the student continues to be eligible for Section 504 services and accommodations and to determine whether the services and accommodations currently being provided continue to be appropriate. All educators implementing accommodations for students with Section 504 Plans must complete *MCPS Form 270-2c, Section 504 Progress and Accommodation Review Worksheet* and *MCPS Form 272-7, Elementary Teacher Report* or *MCPS Form 272-8, Secondary Teacher Report* and submit them to the Section 504 case manager prior to the scheduled meeting.

Section 504 Progress Reevaluation Meeting.

Upon completion of the review form, the following questions shall be addressed:

Section 504 Progress Reevaluation

- Does the student still have a physical or mental impairment?
- Does the physical or mental impairment still affect a major life activity?
- Does the physical or mental impairment continue to substantially limit a major life activity? (The substantial limitation is determined by comparing the student's performance on the major life activity with that of their nondisabled peers.)
- Does the student continue to require accommodations?
- Is the student using the accommodations listed on the current Section 504 Plan? If not, what are the particular accommodations no longer used and why?
- Does the Section 504 Plan continue to be appropriate? If not, are there accommodations that should be added or removed?

What if the student no longer requires accommodations?

The Section 504 team members must conduct a reevaluation before determining that a student is no longer eligible or removing the Section 504 Plan.

The first step for reevaluation is to review the student's current needs and to determine if the student no longer requires formal accommodations. When reviewing current student needs, the Section 504 team should review information from a variety of sources. All decisions to remove a Section 504 Plan should be based on the review of documented evidence. Referencing the qualifying criteria listed below, the Section 504 team should briefly describe the reasons for terminating the student's Section 504 Plan.

Qualifying criteria

The Section 504 team should consider whether, based on current information, the following criteria still apply:

1. The student has a physical or mental impairment.
2. The physical or mental impairment affects a major life activity.
3. The physical or mental impairment substantially limits a major life activity. The substantial limitation is determined by comparing the student's performance on the major life activity with that of their nondisabled peer.

The team also should consider whether the student with a Section 504 Plan is able to access the MCPS program of studies and activities, without formalized accommodations, equally, compared with their nondisabled peers?

If the Section 504 team members determine that the student's disability is no longer "substantially limiting," they should indicate that the student is no longer eligible under Section 504 on the evaluation form. All documentation is maintained in the student's confidential folder.

DISCIPLINE PROCEDURES FOR SECTION 504 STUDENTS

Overview

Although Section 504 does not prescribe extensive regulations regarding student behavior, a student with a Section 504 Plan does have specific protections when being suspended or expelled as a result of a disciplinary infraction.

Causation Meeting Procedures

Students with Section 504 protections and a Section 504 Plan may receive the same disciplinary sanctions as general education students, with one major exception. If a Section 504 student is recommended for a suspension that would constitute a significant change of placement, certain due process procedures apply. A significant change of placement is defined as an expulsion or suspension for more than 10 consecutive school days. A series of suspensions that are each 10 days or fewer in duration that creates a pattern of exclusion may also constitute a “significant change in placement.”

Before the 10th day of removal for the school year (consecutive or cumulative), the Section 504 team must hold a causation meeting to determine whether the misconduct for which the student is being suspended was “caused” by the Section 504-eligible impairment.

A causation meeting generally includes the same Section 504 team members, who attended the student’s annual review meeting. In addition to being knowledgeable about the meaning of evaluation data, and placement options, the causation Section 504 team members should be knowledgeable about the student and their disability.

A causation meeting must be scheduled as soon as possible after the disciplinary infraction, or removal/commencement of suspension, and the parent/guardian must be given advance notice of the purpose of the meeting. Causation meetings are expedited and held prior to the 10th day of removal for the school year. Prior notice can be provided by way of a telephone call to the parents/guardians, to notify them of the time, date, location, and purpose of the meeting. The telephone call should be documented and followed by written notification of the meeting.

During the causation meeting, the Section 504 team should complete the Causation/Manifestation Determination Review form in the online Section 504 platform. A copy of the completed form should be placed in the student’s confidential file.

If the team determines that the student’s disability “caused” the misconduct, the student must be returned

to current school program (educational setting) immediately. A different educational setting may be recommended if the parent/guardian and staff members are in agreement. If there is no agreement on a change in educational setting, the student must return to the current school program (educational setting).

If, however, the team determines that the student’s behavior was not caused by the identified disability, the student may be excluded from school in the same manner as nondisabled students. Disciplinary proceedings should be handled in accordance with applicable state laws, the MCPS *Student Code of Conduct, A Student’s Guide to Rights and Responsibilities*, and MCPS *Regulation, JGA-RC, Suspension and Expulsion of Students with Disabilities*.

Educational supports to the student with the Section 504 Plan will be provided in the same way as nondisabled students according to the MCPS *Student Code of Conduct*.

Discipline for Students with 504 Plans Who Use Drugs or Alcohol

Under Section 504, current untreated drug or alcohol abuse is not considered a disability. A student who has successfully completed a supervised drug or alcohol rehabilitation program, has otherwise been rehabilitated, or is currently participating in a supervised rehabilitation program, is entitled to protection under Section 504.

Conversely, students who are currently engaged in the abuse of drugs or alcohol are not entitled to a causation meeting or any other Section 504 protection. MCPS may take disciplinary action pertaining to the “use or possession of drugs or alcohol against any student with a Section 504 disability who is currently engaging in the illegal use of drugs or the use of alcohol,” as would be the case for nondisabled students.

Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person’s drug use is current or that continuing use is a real and ongoing problem. Drug means a controlled substance, as defined in schedules I through V of Section 202 of the *Controlled Substances Act* (21 U.S.C. § 812).

Students who sell or distribute drugs on school property and receive disciplinary sanctions are entitled to a causation meeting. If the team determines that there was no causation, the student may be disciplined in the same way a nondisabled student would be treated. If the team determines that the behavior was caused by the student’s disability, the student must return to the current school program (educational setting).

Discipline for Students with Section 504 Plans Who Bring Weapons onto School Property

The team must consult with the MCPS Section 504 coordinator when the disciplinary infraction involves a firearm, as defined in 18 U.S.C. § 921(a), to ensure consistency with the *Gun-Free School Act*.

If a student with a Section 504 Plan brings a weapon other than a gun to school and is recommended for disciplinary sanctions, the student is entitled to a causation meeting. If the team determines that there was no causation, the student may be disciplined in the same way a nondisabled student would be treated. If the team determines that the behavior was caused by the student's disability, the student must return to the current school program (educational setting).

Appealing a Causation Meeting

A parent/guardian must be provided with a copy of the *Due Process Safeguards Information* brochure at the causation meeting. If a parent/guardian disagrees with the causation determination, they have the right to appeal that decision through an administrative review, mediation, and/or due process hearing. See 34 C.F.R. § 104.36. For additional information, please refer to the [Montgomery County Board of Education Policy BLC, Procedures for Review and Resolution of Special Education Disputes](#).

RELATED SERVICES

Under Section 504, students are entitled to a free appropriate public education, which may include related services.

Students with disabilities are assured equal access and the same educational opportunities that are provided to their nondisabled peers.

Related services are geared toward ensuring access. When the Section 504 team suspects that a related service may be warranted, or when a parent/guardian requests implementation of a Section 504 Plan that includes a related service, the appropriate related service staff member must be consulted.

MCPS related-service personnel will conduct observations and functional evaluations as needed, participate in the Section 504 Planning or review meetings, provide training as appropriate to implement the recommended accommodations, and consult with teachers regarding the student's access in the school environment and participation in all school activities.

PARENT/GUARDIAN COLLABORATION AND INVOLVEMENT

Parents/guardians are important stakeholders in home/school partnerships. Parents/guardians should be considered collaborative partners in the Section 504 process. The school staff member should take the initiative to reach out to parents/guardians in a variety of ways to encourage their participation in this process.

The law requires that procedural safeguards be established to ensure that parents/guardians have the right to participate in the Section 504 educational process.

In terms of Section 504, parents/guardians have the right to request that a Section 504 eligibility meeting be conducted when they feel that their student may meet the law's eligibility criteria. Section 504 only requires informed parental consent for the initial evaluation. Schools need to schedule a Section 504 team meeting to discuss the concerns and review any information that the parent/guardian provides to the school. This meeting is an opportunity to brainstorm about the challenges that confront the student.

Identifying strategies and developing plans for students eligible for Section 504 protections in a collaborative manner facilitates ownership and accountability in obtaining the desired results.

The Section 504 team will determine whether the student is eligible under Section 504. If the Section 504 team decides that an assessment is needed, then parent/guardian permission must be obtained (see [MCPS Form 336-31, Authorization for Assessment](#)).

Including parents/guardians in the development of a Section 504 Plan is an integral step in the process. Parents/guardians should be involved in the development of the plan or be provided with an avenue for input. The team should take parents'/guardians' suggestions and recommendations into consideration when developing the Plan, and determining reasonable and appropriate accommodations and strategies, when applicable.

If parents/guardians have a disagreement with the Plan or any part of the process, the team should ensure that parents/guardians are aware of their due process options and first try to resolve the disagreement at the school level. If needed, additional support or involvement of the MCPS Section 504 coordinator is available from the Resolution and Compliance Unit. The Section 504 brochures: *A Parent's/Guardian's Guide to Section 504 of the Rehabilitation Act of 1973* and *Due Process Safeguards Information* should be provided to parents/guardians at or prior to the Section 504 team meeting.

DUE PROCESS PROCEDURES FOR SECTION 504 STUDENTS

The following is a summary of the rights granted by federal law and

MCPS Regulation ACG-RB, *Reasonable Accommodations and Modifications for Students Eligible Under Section 504 of the Rehabilitation Act of 1973*, to parents/guardians of students with disabilities who qualify under Section 504:

- The right to have the student take part in, and receive benefits from, public education programs without being discriminated against on the basis of their disability;
- The right to receive notice with respect to identification, evaluation, reevaluation, or placement/program decisions involving the student;
- The right to have the student receive a free appropriate public education. This includes the right to be educated with students who do not have disabilities to the maximum extent appropriate;
- The right to have the student afforded an opportunity, equal to that of students who do not have a disability, to participate in school programs and extracurricular activities sponsored by the school;
- The right to have identification, evaluation, and placement/program decisions made based on information from a variety of sources, and by persons who know the needs of the student, and the meaning of evaluation data, and placement/program options;
- The right to examine the student's educational records and obtain a copy of those records pursuant to law and MCPS Regulation JOA-RA, *Student Records*; and
- The right to seek resolution of issues if the parent/guardian is dissatisfied with any decision regarding the identification, evaluation, reevaluation, or placement/program of the student.

These rights are explained more fully in the MCPS Section 504 brochures located on the RACU Section 504 website. The MCPS Section 504 brochures should be sent to parents/guardians with their invitation to any Section 504 team meeting, provided at the Section 504 team meeting, or provided on request.

When a Section 504 Plan has been developed for the student, the parent/guardian signs to acknowledge their participation in the development of the Section 504 Plan and that they have received a copy of *Due Process Safeguards Information*.

REQUEST FOR ADDITIONAL RESOURCES

Request for Additional Resources (presently not available in the school) To Implement a Section 504 Plan

Accommodations and intervention strategies to implement a Section 504 Plan for a general education student usually fall within the domain of general education classroom teachers. If it is determined by the Section 504 team that the student needs material, technology, or staffing that are not currently available at the school, then the principal or designee will work with the Section 504 coordinator and central office staff members to request additional resources.

GLOSSARY

Disability

A disability under the *Americans with Disabilities Act* (ADA) is (a) a physical or mental impairment that substantially limits one or more major life activities of such individual; (b) a record of such an impairment; or (c) being regarded as having such an impairment.

Equal access

The equal opportunity of a student with a disability to participate in or benefit from educational aid, benefits, or services sponsored and/or funded by a public agency.

Evaluation

An evaluation determines whether the student meets the definition of student with a disability under Section 504 and, therefore, may be eligible to receive a Section 504 Plan. An evaluation shall be conducted before any action is taken with a Section 504-identified student with respect to the initial placement of the student and before any significant changes to placement. Evaluation data may include, but is not limited to, formal and informal test instruments, aptitude and achievement tests, teacher recommendations, physical or medical reports, student grades, progress reports, parent/guardian observations, anecdotal records, and behavioral assessments.

Free Appropriate Public Education

For purposes of Section 504, “free appropriate public education” (FAPE) refers to the provision of regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and is based on adherence to procedures that satisfy the Section 504 requirements pertaining to educational setting, evaluation and placement, and procedural safeguards. Please note that this is a separate standard from the *Individuals with Disabilities Education Act* (IDEA); however, compliance with the FAPE requirements under IDEA also satisfy the FAPE requirements under Section 504. 34 C.F.R. § 104.33

Least restrictive environment

A student shall be educated with nondisabled peers to the maximum extent appropriate to meet the needs of the student with a disability. The student with a disability must be placed in the regular educational environment, unless the education of the student with a disability in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 104.34.

Major life activity

The term “major life activity” includes but is not limited to, the following:

1. Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, and working; and
2. The operation of a major bodily function, such as the functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within a body system. 34 C.F.R. § 104.3 and 29 C.F.R. § 1630.2

Mitigating Measures

The term “mitigating measures” includes, but is not limited to, the following:

1. Medication, medical supplies, equipment, appliances, low-vision devices (defined as devices that magnify, enhance, or otherwise augment a visual image, but not including ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aid(s) and cochlear implant(s) or other implantable hearing devices, mobility devices, and oxygen therapy equipment and supplies;
2. Use of assistive technology;
3. Reasonable modifications or auxiliary aids or services as defined in this regulation;
4. Learned behavioral or adaptive neurological modifications; or
5. Psychotherapy, behavioral therapy, or physical therapy.

Nondiscrimination

Nondiscrimination is mandated by Section 504, which states “No otherwise qualified individual with an disability in the United States...shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program.”

Under Section 504, recipients must ensure nondiscrimination through program accessibility and equal opportunity to participate in programs, activities, and services funded and/or sponsored by the public agency.

The Montgomery County Board of Education has established a nondiscrimination policy consistent with Section 504. See Policy ACA, *Nondiscrimination, Equity, and Cultural Proficiency*.

GLOSSARY

Office for Civil Rights

The Office for Civil Rights in the U.S. Department of Education enforces Section 504 and investigates complaints made under the Act.

Parent

Under Section 504, “parent” means a natural or adoptive parent or guardian, surrogate parent, someone acting in place of a parent (e.g., grandparent with whom the child lives) or someone legally responsible for the child.

Physical or mental impairment

1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, 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 disability.

The term physical or mental impairment includes, but is not limited to, contagious and noncontagious diseases and conditions such as the following: orthopedic, visual, speech and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, dyslexia and other specific learning disabilities, attention deficit hyperactivity disorder, human immunodeficiency virus infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction (current use), and alcoholism. 34 C.F.R. § 104.3

Section 504 Plan

The Section 504 Plan is a written document developed by the Section 504 team that provides a free appropriate public education, consisting of accommodations and related aids and services that are designed to meet the student’s individual educational needs.

Substantially Limits

The term “substantially limits” shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA and ADAAA. (Section 504 incorporates this standard established in the ADAAA.) A mental or physical impairment is a disability within the meaning of this part if it substantially limits the ability of an individual to perform a major life activity as compared to their nondisabled peers, without regard to the ameliorative effects of mitigating measures (excluding ordinary eyeglasses or contact lenses). An impairment does not need to prevent or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. An impairment that substantially limits one major life activity does not need to limit other major life activities in order to be considered a substantially limiting impairment. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

MCPS SECTION 504 FORMS

The Section 504 Evaluation, Section 504 Plan, the Causation Meeting, and all invitation letters from Section 504 are completed using the online Section 504 platform. Additionally, the following MCPS forms are also used, as appropriate:

MCPS Form 270-2A, *Authorization for School Psychologists Section 504 Attentional Disorders Assessment*

MCPS Form 270-2C, *Section 504 Progress and Accommodation Review Worksheet (Confidential)*

MCPS Form 270-2D, *Distribution of Section 504 Plan (Confidential)*

MCPS Form 272-9, *Teacher Referral*

MCPS Form 272-7, *Elementary Teacher Report*

MCPS Form 272-8, *Secondary Teacher Report*

MCPS Form 336-31, *Authorization for Assessment (Confidential)*

MCPS Form 336-32, *Authorization for Release/Exchange of Confidential Information*

MCPS Form 336-68, *Team Consideration of External Report*

MCPS REGULATION AND SUPPORTING DOCUMENTS

MCPS Regulation ACG-RB, *Reasonable Accommodations and Modifications for Students Eligible Under Section 504 of the Rehabilitation Act of 1973*

MCPS Regulation JGA-RC, *Suspension and Expulsion of Students with Disabilities*

A Parent's/Guardian's Guide to Section 504 of The Rehabilitation Act of 1973, located on the RACU Section 504 website.

Due Process Safeguards Information: Section 504 of The Rehabilitation Act of 1973 brochure, located on the RACU Section 504 website.

SECTION 504 RESOURCES

U.S. Department of Education, *Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools*

U.S. Department of Education, *Frequently Asked Questions About Section 504 and the Education of Children with Disabilities*

U.S. Department of Education, *Frequently Asked Questions, Disability Discrimination*

U.S. Department of Education, *Questions and Answers on OCR's Complaint Process*

MCPS NONDISCRIMINATION STATEMENT

Montgomery County Public Schools (MCPS) prohibits illegal discrimination based on race, ethnicity, color, ancestry, national origin, religion, immigration status, sex, gender, gender identity, gender expression, sexual orientation, family/parental status, marital status, age, physical or mental disability, poverty and socioeconomic status, language, or other legally or constitutionally protected attributes or affiliations. Discrimination undermines our community’s long-standing efforts to create, foster, and promote equity, inclusion, and acceptance for all. Some examples of discrimination include acts of hate, violence, insensitivity, harassment, bullying, disrespect, or retaliation. For more information, please review Montgomery County Board of Education Policy ACA, *Nondiscrimination, Equity, and Cultural Proficiency*. This Policy affirms the Board’s belief that each and every student matters, and in particular, that educational outcomes should never be predictable by any individual’s actual or perceived personal characteristics. The Policy also recognizes that equity requires proactive steps to identify and redress implicit biases, practices that have an unjustified disparate impact, and structural and institutional barriers that impede equality of educational or employment opportunities.

For inquiries or complaints about discrimination against MCPS staff *	For inquiries or complaints about discrimination against MCPS students *
<p>Office of Employee Engagement and Labor Relations Department of Compliance and Investigations 850 Hungerford Drive, Room 55 Rockville, MD 20850 240-314-4899 OCOO-EmployeeEngagement@mcpsmd.org</p>	<p>Office of School Administration Office of School Administration Compliance Unit 850 Hungerford Drive, Room 162 Rockville, MD 20850 301-279-3444 OSSI-SchoolAdministration@mcpsmd.org</p>

**Inquiries, complaints, or requests for accommodations for students with disabilities also may be directed to the supervisor of the Office of Special Education, Resolution and Compliance Unit, at 301-517-5864. Inquiries regarding accommodations or modifications for staff may be directed to the Office of Employee Engagement and Labor Relations, Department of Compliance and Investigations, at 240-314-4899. In addition, discrimination complaints may be filed with other agencies, such as: the U.S. Equal Employment Opportunity Commission, Baltimore Field Office, City Crescent Bldg., 10 S. Howard Street, Third Floor, Baltimore, MD 21201, 1-800-669-4000, 1-800-669-6820 (TTY); or U.S. Department of Education, Office for Civil Rights, Lyndon Baines Johnson Dept. of Education Bldg., 400 Maryland Avenue, SW, Washington, DC 20202-1100, 1-800-421-3481, 1-800-877-8339 (TDD), OCR@ed.gov, or www2.ed.gov/about/offices/list/ocr/complaintintro.html.*

This document is available, upon request, in languages other than English and in an alternate format under the *Americans with Disabilities Act*, by contacting the MCPS Public Information Office at 301-279-3853, 1-800-735-2258 (Maryland Relay), or PIO@mcpsmd.org. Individuals who need sign language interpretation or cued speech transliteration may contact the MCPS Office of Interpreting Services at 240-740-1800, 301-637-2958 (VP) or Interpreting_Services@mcpsmd.org. MCPS also provides equal access to the Boy/Girl Scouts and other designated youth groups.



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