

REGULATION MONTGOMERY COUNTY PUBLIC SCHOOLS

Related Entries: ACG

Responsible Office: Human Resources and Development

Reasonable Accommodations and Modifications for Individuals with Disabilities with Regard to Employment, Services, Programs, and Activities

I. PURPOSE

To provide procedures for processing requests for accommodations from members of the public, Montgomery County Public Schools (MCPS) employees, and job applicants with disabilities in compliance with the *Americans with Disabilities Act Amendments Act of 2008*.

II. DEFINITIONS

A. The *Americans with Disabilities Act Amendments Act of 2008 (ADAAA)* is a comprehensive civil rights statute that provides protection to qualified individuals with disabilities in the areas of employment, state and local government services, and telecommunications. This regulation is to be construed to comport with the ADAAA and its implementing regulations.

B. *An individual with a disability is:*

1. A person with a physical or mental impairment that substantially limits one or more of the major life activities of an individual;
2. A person with a record of such an impairment; or
3. A person regarded as having such an impairment.
 - a) An individual 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) An individual who meets the definition of an individual 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.

C. *Physical or mental impairment* means:

1. 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
2. Any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

D. *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.
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.
4. The following factors should be considered in determining whether an individual is substantially limited in a major life activity:
 - a) The nature and severity of the impairment;
 - b) The duration or expected duration of the impairment; and
 - c) The permanent or long-term impact, or the expected permanent or long-term impact of or resulting from the impairment.

- E. *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.
- F. *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, or oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; or learned behavioral or adaptive neurological modifications.
- G. *Low vision devices* means devices that magnify, enhance, or otherwise augment a visual image.
- H. *A qualified individual with a disability* means:
1. With regard to employment, an individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such a position.
 2. With regard to services, programs, and activities, an individual with a disability who, with or without reasonable modifications to rules, policies, or practices; the removal of architectural, communication, or transportation barriers; or the provision of auxiliary aids and services; meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by MCPS.
- I. *Direct threat* means a significant risk of substantial harm to the health or safety of others that cannot be eliminated or reduced by reasonable accommodation.
- J. *Essential functions* are the fundamental job duties of the employment position, as determined by MCPS, that the individual with a disability holds or desires. The term does not include the marginal functions of that position.

- K. The term *services* includes any services, programs, and activities provided by MCPS.
- L. *Undue hardship* with respect to the provision of an accommodation or modification means significant difficulty or expense, when considered in light of—
1. the nature and net cost of the accommodation or modification;
 2. the overall financial resources of MCPS;
 3. the overall size of MCPS with respect to the number of its employees;
 4. the number, type, and location of MCPS facilities;
 5. the type of operation(s) conducted by MCPS, including the geographic separateness, and administrative or fiscal relationship of the school or unit in question to MCPS as a whole; and
 6. the impact of the accommodation or modification on the operation of the school or unit, including the impact on the ability of other employees and individuals to perform their duties or participate in services, and the impact on the school's or unit's ability to conduct business.
- M. *Reasonable accommodation*, with respect to employment, means the following:
1. Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires.
 2. Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position.
 3. Modifications or adjustments that enable an MCPS employee with a disability to enjoy equal benefits and privileges of employment, as are enjoyed by other similarly situated MCPS employees without disabilities.
 4. A reasonable accommodation does not include an accommodation, modification, or adjustment that presents an undue hardship, would require the elimination or reassignment of an essential function of the position, or would present a direct threat to the health or safety of the individual or others.

- N. *Reasonable modification*, with respect to services, programs, or activities means the following:
1. A reasonable modification of a policy, practice, or procedure to avoid discrimination on the basis of disability, unless that modification would result in an undue hardship, fundamentally alter the nature of the service, or would present a direct threat to the health or safety of the individual or others.
 2. A method of making a service accessible or usable to a qualified individual with a disability, unless that method would result in an undue hardship, a fundamental alteration of the service, or would present a direct threat to the health or safety of the individual or others. .
 3. The provision of auxiliary aids for qualified individuals with disabilities, unless those aids would fundamentally alter the nature of the service or, where applicable, would constitute an undue financial and administrative burden.
- O. *Auxiliary aids and services* include:
1. Qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
 2. Qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;
 3. Acquisition or modification of equipment or devices; and
 4. Other similar services and actions.
- P. *Program accessibility* means that MCPS services, when viewed in their entirety, must be readily accessible to and usable by qualified individuals with disabilities.
- Q. The term *principal/administrator* means the principal of an MCPS school or an individual in charge of an MCPS unit that is not a school.
- R. The terms *disability* and *qualified individual with a disability* do not include individuals currently engaging in the illegal use of drugs, when MCPS acts on the basis of such use.

III. PROCEDURES

- A. This regulation applies to the participation in any MCPS service by qualified members of the public with disabilities; the MCPS job application procedures; the hiring, advancement, or discharge of employees; employee compensation; job training and other terms, conditions, and privileges of employment.
- B. The human resources compliance coordinator, Office of Human Resources and Development, is responsible for coordinating MCPS efforts to comply with and carry out its responsibilities under the ADA, including assistance with investigations. The human resources compliance coordinator is available to facilitate and provide guidance or support in matters related to the rights of individuals with disabilities.
- C. It is the responsibility of administrative and supervisory staff to administer employment policies, regulations, and practices in such a way that the rights of individuals with disabilities are upheld.
- D. Principals and supervisors will provide reasonable accommodations or modifications, if possible, at the local level to qualified individuals, job applicants, and employees with disabilities.
- E. Requests for Accommodations or Modifications
 - 1. Who May Request an Accommodation or Modification
 - a) An MCPS employee who is a qualified individual with a disability may request a reasonable accommodation in order to perform essential job functions or enjoy other equal benefits of employment by completing the appropriate section on MCPS Form 270-6: *Employee/Member of the Public Request for ADA Accommodation/Modification*, if the request cannot be handled informally.
 - b) A job applicant who is a qualified individual with a disability may request a reasonable accommodation in the application process by completing the appropriate section on MCPS Form 270-6, if the request cannot be handled informally.
 - c) A qualified individual with a disability may request a modification in order to participate in an MCPS service for which he/she is eligible by completing the appropriate section on MCPS Form 270-6, if the request cannot be handled informally.

2. The principal or supervisor to whom the request is made will consult with the human resources compliance coordinator to determine whether the individual is eligible for services under the ADAAA.
3. If the individual with a disability is eligible for services under the ADAAA, the human resources compliance coordinator will do the following:
 - a) Determine whether the individual can perform the essential functions of his/her position, or meet the essential eligibility requirements for the service with or without a reasonable accommodation or modification.
 - b) Determine whether the individual's participation in the service or position would pose a direct threat to his/her own safety or to the safety of others.
 - c) If participation of the individual would pose a significant, specific, current risk of substantial harm, determine whether the risk can be eliminated or reduced to an acceptable level by a reasonable accommodation or modification. (A person who poses a direct threat will not be qualified if a reasonable accommodation or modification will not eliminate or reduce the risk to an acceptable level.)
 - d) In consultation with the employee, job applicant, or individual, identify or specify a reasonable accommodation(s) or modification(s) that would enable them to perform the essential job functions or participate in the service.
 - e) Determine whether the requested accommodation(s) or modification(s) would result in an undue hardship or would fundamentally alter the nature or operation of the school or unit.
 - f) Consider any known funding from sources outside MCPS, such as grants, and the experience, if any, of other schools or facilities in handling similar requests for accommodations or modifications.
 - g) Notify the requester in writing of the decision, and the reasons for reaching the conclusion.
4. If the human resources compliance coordinator determines that no reasonable accommodation or modification can be made, the requester may appeal the decision to the superintendent of schools/designee.

5. If the superintendent of schools/designee determines that no reasonable accommodation or modification can be provided, he/she will inform the requester in writing, giving the reasons for reaching the conclusion.

F. Filing a Complaint

1. The decision of the superintendent of schools (or failure to make a decision) that an individual is not a qualified individual with a disability or that a requested accommodation or modification is not reasonable or would constitute an undue hardship, direct threat, or result in a fundamental alteration of the nature of the service, may be appealed to the Montgomery County Board of Education within 14 calendar days.
2. All other complaints not related to requests for accommodations or modifications may be filed as follows:
 - a) Employees should follow MCPS Regulation GKA-RA, *Administrative Complaint*.
 - b) Job applicants and other members of the public should follow MCPS Regulation KLA-RA, *Responding to Inquiries and Complaints from the Public*.

Regulation History: New Regulation July 20, 1994; revised December 22, 2011.