

REGULATION MONTGOMERY COUNTY PUBLIC SCHOOLS

Related Entries: ACG, ACG-RA, IOB, JGA-RB, 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)*

Accommodations and Services to Students Qualifying 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 qualify for accommodations and services under *Section 504 of the Rehabilitation Act of 1973 (Section 504)*
- B. To clarify that the procedures described in this regulation apply to the participation of qualified 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 qualified 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
- D. To align with the Americans with Disabilities Act Amendments Act of 2008 (ADAAA).

II. BACKGROUND

Section 504 of the Rehabilitation Act of 1973 (Section 504) is a federal statute designed to eliminate discrimination on the basis of a disability in any program or activity receiving federal financial assistance.

The following students with disabilities are protected from discriminatory practices: students who have a physical or mental impairment which substantially limits one or more major life activities, students who have a record of such an impairment, and students who are regarded

by MCPS as having such impairment. (For more specific explanations, see the federal Section 504 regulation, 34CFR§104(3)(j)(2)(i).) Only students who actually have a physical or mental impairment may be eligible for accommodations and services under Section 504 if their impairment substantially limits one or more major life activities.

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. A *major life activity* includes functions such as caring for one's self, performing manual tasks, walking, standing, lifting, bending, seeing, hearing, speaking, reading, concentrating, thinking, communicating, learning, working, eating, sleeping, breathing, and operating major bodily functions.
- D. *Mitigating measures* are devices or practices that a person uses to correct or reduce the effect of that person's mental or physical impairment.
- E. *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.
- F. A *physical or mental impairment* includes any physiological disorder or condition, cosmetic disfigurement, anatomical loss affecting one or more body systems or any mental or psychological disorder in accordance with the Section 504 regulation, 34CFR§104(3)(j)(2)(i).
- G. *Placements* are services and accommodations that a student with a disability must receive in order to obtain a free and appropriate public education (FAPE).

- H. 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 (EMT).
- I. An *eligible student with a disability* is a student who has a physical or mental impairment which substantially limits one major life activity or more.
- J. *Substantially limits* means restricted as to the condition, manner, or duration under which a student can perform a particular life activity as compared to the average student in the general population.
- 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 services 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. The Section 504 school-based team determines whether the student with a disability is eligible for accommodations 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.
2. A student with an impairment that is episodic or in remission is eligible for accommodations if that impairment would substantially limit a major life activity when active.
 3. Written consent must be obtained from parents or adult students before the Section 504 school-based team may convene to conduct an evaluation.
 4. The ameliorative affects of mitigating measures must not be considered when determining whether an impairment substantially limits a major life activity.
 5. A student currently engaging in the illegal use of drugs or use of alcohol is excluded from this definition and is, therefore, not protected under Section 504. 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.
 6. A student with a temporary and minor impairment is not eligible for accommodations under Section 504.

D. Evaluation

1. In determining whether a student with a disability is eligible for accommodations, the Section 504 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.

2. 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.
3. The Section 504 school-based team develops a written Section 504 plan for a student who is eligible for services. 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 periodically, as determined by the Section 504 school-based team, or before any significant change in the student's placement, including long-term suspension, recommendation for expulsion, or suspected noneligibility 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

1. Any student qualified under Section 504 may be suspended for up to 10 school days per school year by following the procedures used for students without disabilities set forth in Regulation JGA-RB, *Suspension or Expulsion of an MCPS Student*.

2. Circumstances in which the student receives disciplinary removal for more than 10 school days per year may constitute a “significant change in placement.”
3. A “significant change in placement” is the expulsion or suspension for more than 10 days or a series of short-term suspensions that are each of 10 days or fewer, if they create a pattern of exclusion. The determination of whether a series of suspensions creates a pattern is made on a case-by-case basis by the school-based Section 504 team before the tenth day of removal. The team must use the following factors to determine if there is a pattern of exclusion:
 - a) The length of each removal
 - b) The proximity of the removals to each other
 - c) The total amount of time the child is excluded from the school
4. If the team determines that a “significant change in placement” has occurred, they must conduct a causation meeting to determine whether the student’s behavior is caused by his or her disability.
5. If the behavior is determined to be caused by the student’s disability, the student must be permitted to return to a school program immediately, unless the behavior resulting in the disciplinary removal warrants a 45-day interim alternative educational setting (IAES). The team also must determine whether the child’s current educational placement is appropriate.

Certain infractions involving weapons, illegal drugs, or serious bodily injury inflicted upon another person may warrant placement in an IAES.

6. If the behavior is determined not to be caused by the student’s disability, the student may be excluded from school in the same manner as similarly situated students who do not have disabilities. Disciplinary proceedings should be handled in accordance with law and MCPS Regulation JGA-RB, *Suspension or Expulsion of an MCPS Student*.

V. DUE PROCESS SAFEGUARDS

A. Free and Appropriate Public Education (FAPE)

MCPS will provide a FAPE to each qualified 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 eligibility, evaluation, implementation, discipline, or any other Section 504 related matter, 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 (MSDE) 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.