
Department of Student Services
Office of Special Education and Student Services
Montgomery County Public Schools
Rockville, Maryland

Revised December 2012
VISION

A high-quality education is the fundamental right of every child. All children will receive the respect, encouragement, and opportunities they need to build the knowledge, skills, and attitudes to be successful, contributing members of a global society.

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MISSION

The mission of the Department of Student Services, through leadership, advocacy, and programs and services, is to optimize the educational experience and well-being of every student.

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INTRODUCTION

Equal opportunity for qualified people with disabilities is an objective of Section 504 of the Rehabilitation Act of 1973. 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.

The primary purpose of the law is to ensure that qualified individuals with impairments/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 the law, commonly known as Section 504:

“No otherwise qualified individual with an impairment/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 accommodations under Section 504 of the Rehabilitation Act of 1973. The manual is written in the spirit of the MCPS mission—“to provide a high-quality, world-class education that ensures success for every student through excellence in teaching and learning”—and of the MCPS core value that “every child can learn and succeed.”

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. MCPS’s vision for all students is stated on page iii in Our Call to Action: Pursuit of Excellence:

“We, the people of Montgomery County, believe that a high-quality education is a fundamental right of every child. All children will receive the respect, encouragement, and opportunities they need to build the knowledge, skills, and attitudes to be successful, contributing members of a global society.”

For children with impairments/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 an impairment/disability.

The future of our schools depends on the ability of a well-trained, committed, and caring workforce. Teachers must be able to teach all students if all students are to learn. 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 for Accommodations Under Section 504

Overview
This section provides guidelines for MCPS staff in determining whether a student is eligible for protection 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 that does not require special education may be referred for a Section 504 evaluation by the school’s Educational Management Team (EMT) or by the student’s parents. If the EMT concludes that the student may be eligible under Section 504, a Section 504 EMT evaluation meeting is scheduled and the parents 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.

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 EMTs. When Section 504 eligibility is being considered, principals are responsible for staffing the EMT with individuals who meet the Section 504 requirements. Membership of the team will vary depending on the impairment under consideration. For example, the school nurse and occupational or physical therapist would be required members when a physical or medical impairment is being considered. The school psychologist would be a required 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, either by the EMT or the parent(s), a meeting should be scheduled and the parent(s) 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 files contain non-MCPS assessment documentation that requires review by an MCPS professional, the appropriate professional should obtain written authorization from the parent(s) to conduct that review. MCPS Form 336-31: Authorization for Assessment is used for this purpose.

New information provided at the meeting: If the parent provides new information that requires a formal review by an MCPS professional, which cannot be conducted at the meeting, authorization for that review is obtained at the meeting and another meeting is scheduled within a reasonable time frame.

Conducting the Section 504 Evaluation Meeting
The Section 504 evaluation meeting is conducted according to the procedures shown on MCPS Form 270-2B: Section 504 Evaluation. The team is required to consider information from a variety of sources. They review existing student information such as aptitude and achievement tests; report cards and teacher reports; observations; educational and health records; evaluations of adaptive behavior; medical, psychological, and developmental reports; and results of IEP decisions, if appropriate. The team provides the parent with an opportunity to discuss the child’s impairment, and explains and follows the Section 504 eligibility requirements.

In order to be found eligible under Section 504, there must be evidence that—
Determining A Student’s Eligibility for Accommodations

1. the student has a physical or mental impairment
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 an average nondisabled student of the same age or grade level in the general population.

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.”

The team considers available documentation concerning the student’s disability and completes Part I of MCPS Form 270-2B in making this determination. MCPS Form 270-2A: Attentional Disorders Assessment is completed if the team is considering whether the student has “serious attentional problems”.

Determining whether a major life activity is affected by the impairment

Section 504 defines “major life activities” as “functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, standing, lifting, bending, reading, concentrating, thinking, and communicating.”

The team considers available documentation concerning the implications for the student’s impairment and completes Part II of MCPS Form 270-2B in determining which major life activity is affected by the impairment.

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

ADAAA revisions require that the consideration of a substantial limitation be “broadly interpreted.” The basic definition of disability has not changed. However, the intent of eligibility has been clarified such that “an impairment that substantially limits a major life activity” should be broadly interpreted. 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. This broader definition means that our interpretation is not as narrow as they were prior to the revisions.

The team considers available documentation concerning the major life activity in question and what limitations have an impact on that activity and completes Parts III and IV of MCPS Form 270-2B in making this determination. 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 an average nondisabled student in the general population.

Special Considerations

1. Attention deficit disorders: When considering whether a student has attention deficit disorder or attention deficit disorder with hyperactivity, a school psychologist must be a member of the team and assist the team in completing MCPS Form 270-2A: Attentional Disorders Assessment.

2. Temporary 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 either the duration (or
expected duration) of the impairment and the extent to which it actually limits a major life activity of the student.

3. Highly able students: Because a student is highly able and enrolled in Advanced Placement, Honors, or International Baccalaureate-level classes does not automatically preclude Section 504 eligibility. Highly able students may have physical or mental impairments that substantially limit a major life activity other than learning. 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 prohibits him/her from accessing appropriate-level courses.

4. Students attending private schools: MCPS EMT teams should evaluate students in private schools at parent request. The EMT completes the 504 evaluation for 504 eligibility, but does not create a 504 plan, regardless of the eligibility outcome. Parents are welcome to take their evaluation paperwork back to their private school.

Follow-up
If a student was found eligible in Part IV, the EMT develops a Section 504 plan to meet the needs of the student. MCPS Form 270-2: Section 504 Plan, is required.

If a student was not found eligible under Section 504, the EMT makes appropriate recommendations to address the student’s identified needs. MCPS Form 272-4: Educational Management Team Summary, is used to document this information.

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 decision-making Educational Management Team (EMT) considers the student’s need for accommodations 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 his/her impairment. The plan is a statement of the required accommodations and services that MCPS will provide to the student.

The Section 504 Decision-making Team
The principal is responsible for staffing the school’s Section 504 EMT 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 team must include—

- principal or designee,
- teachers who are or who will be working with the student, and
- additional staff 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 would be a required member of the team. The parent is also invited to participate in the development of the 504 plan.

Preparation for Developing the Section 504 Plan
The following forms are required for a Section 504 meeting:

- MCPS Form 270-2: Section 504 Plan
  - Side 1: Sign-in, background information, the plan and summary
  - Side 2: Due process procedural safeguards and definitions
- MCPS Form 336-41B: Testing Accommodations for Section 504 Students
- MCPS Form 272-4: Educational Management Team Summary (for additional meeting notes)

In preparation for developing the plan, the team should review the student’s Section 504 evaluation (MCPS Form 270-2B) and other current information, including, but not limited to—

- report card data;
- teacher reports;
- school-based testing;
- curriculum-based assessment;
- formal evaluations;
- current health records and/or medical updates;
- documentation of response to interventions, including functional behavioral assessments (FBA), behavioral intervention plans (BIP), and behavior contracts;
- grade-level team meetings and consultations; and
- oral and written documentation of observations.

Writing the Section 504 Plan
In developing the plan, the committee completes MCPS Form 270-2: Section 504 Plan. The names and titles of each participating team member must be listed on this form.

The plan is divided into two major sections:

- Part I: Background Information
- Part II: Section 504 Plan

Additional meeting notes should be recorded on MCPS Form 272-4: Educational Management Team Summary.

Part I: Background Information
The date the student was determined eligible by an EMT should be recorded on each plan. The plan should identify the following:

- Specific impairment identified at the eligibility meeting on Form 270-2B.
Developing a Section 504 Plan for Eligible MCPS Students

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

Part II: Section 504 Plan

The plan may include accommodations, program modifications, instructional approaches, and the use of supplemental services 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 his/her 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 that limits the student’s opportunity to access education and/or activities should not be incorporated in the 504 plan but may be provided by the teacher(s) as a matter of best practices.

When developing a 504 plan, the EMT must recommend accommodations that are supported with documented evidence of need, based on the substantial limits of the student’s mental or physical impairment.

- Many resources are available to staff to help them identify appropriate accommodations, instructional strategies, and supplementary services. Teams may also utilize the following resources:
  - State of the Art: Toward Ensuring Classroom Success for Every Student
  - Skilful Teacher: Building Your Teaching Skills
  - The Pre-Referral Intervention Manual: The Most Common Learning and Behavioral Problems Encountered in the Educational Environment
  - Academic Intervention Monitoring System (AIMS)

Additionally, teams are expected to consult with appropriate MCPS professionals for assistance in developing the 504 plan.

Using MCPS Form 336-41B: Testing Accommodations for Section 504 Students, the 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 team concludes the meeting by doing the following:

- Identifying a review date, within one year.
- Identifying a case manager (e.g., classroom teacher, guidance counselor, team leader; see the Case Management section (page 13) of this manual; MCPS Regulation E.2).
- Obtaining signature from the parent/guardian. If the parent refuses to sign the initial plan, it cannot be implemented. However, the team should develop and implement any best-practice strategies and always be available for the parent to revisit the decision.
- Providing parents with the Due Process Safeguards Information, located on the back 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.
Suggested Accommodations for Students with Section 504 Plans

Accommodations are intended to reduce or even eliminate the effects of a student’s disability; they do not reduce learning expectations. The accommodations provided to a student must be the same for classroom instruction, classroom assessments, and district and state assessments. It is critical to note that, although some accommodations may be appropriate for instructional use, they may not be appropriate for use on a standardized assessment. There may be consequences (e.g., lowering or not counting a student’s test score) for the use of some accommodations during state assessments. It is very important for educators to become familiar with Maryland policies regarding accommodations during assessments.¹

This section includes *Maryland Accommodations Manual: A Guide to Selecting, Administering, and Evaluating the Use of Accommodations for the Instruction and Assessment of Students with Disabilities*, Section 5: Maryland Accommodations Fact Sheets and Section 6: Teacher Tools.


This section is not exhaustive and is not intended to limit the accommodations that may be required for a given student. However, it can serve as a starting point for educational decision making and should relate directly to the student’s needs and disability/impairment. Consult the *Maryland Accommodations Manual 2005–2006: A Guide to Selecting, Administering, and Evaluating the Use of Accommodations for the Instruction and Assessment of Students with Disabilities* for additional information about accommodations.

MCPS Staff Responsibilities

Principals/Designated Administrators
• Be knowledgeable about Section 504.
• Ensure that all school staff comply with Section 504.
• Arrange for appropriate staff training to assist in the proper implementation of Section 504 plans.
• Ensure that information about students’ Section 504 plans is transmitted during articulation or transfers.
• Oversee maintenance of mainframe data for students with 504 plans.

Teachers
• Provide information to the EMT and 504 case managers regarding student performance and/or behavior in class, student use of accommodations, and effectiveness of accommodations.
• Implement all accommodations listed on the Section 504 plan.
• Serve as case manager, as needed.
• Communicate with parent in an ongoing manner regarding student progress and use of accommodations.
• Document use of accommodations.

Counselors
• Participate in EMT meetings or other meetings related to Section 504.
• Review student records.
• Participate in transition meetings related to articulation, including promotion to the next grade.
• Collaborate with staff regarding implementation of accommodations provided in a Section 504 plan.
• Consult with parents/guardians.
• Serve as case managers, as needed.

Team Leaders
• Serve as case managers, if appropriate.
• Monitor implementation of student’s Section 504 plan accommodations.

School Nurse
• Review information in the student’s health record with team.
• Assist with coordination of health-related services with private providers.
• Participate in EMT meetings or other meetings related to Section 504.
• Consult with school teams regarding health-related issues.
• Provide the team with information and resources on health-related issues.
• Maintain a resource bank of materials on health conditions in the school for staff orientation and development.

Pupil Personnel Workers
• Observe student at school.
• Serve as resource for classroom teacher regarding accommodations and strategies.
• Attend EMT meetings or other meetings related to Section 504.
• Attend parent conferences.
• Provide information on community resources.
• Provide procedural information on Section 504.
• Provide Section 504 training to school staff.

School Psychologists
• Conduct classroom/clinical observations.
• Attend teacher/staff conferences.
• Attend EMT meetings.
• Review school/confidential records.
• Complete behavior checklists.
• Attend parent conferences.
• Consult with school teams regarding interventions.
• Review non-MCPS testing data.
• Determine identification of serious attentional problems, for educational purposes.
• Provide Section 504 training to school staff.
Director of Pupil Personnel Services
• Handle requests for changes in school placements as they relate to Section 504.
• Conduct investigative conferences in response to expulsion requests for students with Section 504 plans, if the school EMT team finds no causal connection between the behavior and the disability.

Related Service Providers
• Provide consultation to staff and services and to student, as appropriate.
• Act as a resource to staff.
Case Management for Students with Section 504 Plans

Duties of the Case Manager

Case managers are responsible for overseeing the implementation and other aspects of students’ Section 504 plans. The case manager should do the following:

- Know the student through working with him/her in some capacity.
- Distribute the student’s Section 504 plan to appropriate staff and explain his/her responsibilities to each. (Note: Because Section 504 refers to students in the general school environment and the accommodations are implemented by the general educator, each teacher responsible for implementing the accommodations on the plan must be made aware of the student’s accommodations and given a copy of the student’s Section 504 plan. In addition, each time the plan is updated or changed, it must be given to those persons who are implementing the accommodations.)
- Meet with the teachers and staff responsible for implementing the student’s accommodations.
- Attend all Educational Management Team (EMT) meetings regarding the student with a Section 504 plan.
- Provide parents with Section 504 Due Process Safeguards Information brochure.
- Inform parents that they have the right to review the Section 504 plan and provide parents with a copy of the plan.
- Schedule periodic conferences with the student and parents, as needed.
- Maintain a copy of the Section 504 plan in the student’s confidential folder.
- Assist in the articulation process from elementary to middle school or middle to high school.
- Monitor implementation of the student’s Section 504 plan and ensure that all school testing accommodations required by the Section 504 plan are recorded on MCPS Form 336-41B: Testing Accommodations for Section 504 Students are implemented.
- Collect and organize data for an annual review of the student’s progress at EMT meetings. (Note: Data may include but is not limited to teacher reports, report cards, parent conference notes, staffing/team meeting notes, health forms, behavior assessments/checklists, standardized test information, student self-reports, and any other information related to the student’s progress.)

Coordination of Section 504 Services

Schools that identify students as eligible under Section 504 must develop a system of accountability regarding 504 services to students. Schools are expected to have a school-based coordinator in place to do the following:

- Maintain a master list at the school site of all student Section 504 plans and testing accommodations, for access by the school’s general educators and the testing coordinator.
- Ensure that student 504 plan data is entered and updated on the mainframe.
- Develop a database of students holding Section 504 plans (for monitoring and reporting purposes).
- Facilitate the articulation of students with Section 504 plans from one level to another—grade level to grade level, school to school, and semester to semester.
- Review annually all Section 504 plans for accuracy and efficacy.
- Provide periodic in-service on Section 504 to staff.
- Monitor the MCPS Section 504 Compliance Folder and share relevant information with staff, as warranted.
- Participate in systemwide Section 504 training opportunities.
Articulation and Communication of Section 504 Accommodations and Services
Articulation of Section 504 plans within a school building is typically conducted at the end of the school year or at the beginning of the next year. Articulation when students move from elementary to middle school and middle to high school needs to be coordinated between schools and the schools’ case managers. A best practice is to have the identified case manager at the incoming school attend the review meeting at the sending school to facilitate articulation of the Section 504 plan.

504 Plan Data Entry
Student data for all Section 504 plans must be maintained on the MCPS database. This data is entered for each student with a Section 504 plan and is updated as frequently as needed, but at least on a yearly basis, after the annual review of the 504 plan has taken place. After each review, a new plan must be entered in the database so that historical data can be maintained for each student.
Section 504 Progress Review

Overview
The Educational Management Team (EMT) should conduct an annual or as-needed review of each Section 504-eligible student to evaluate the appropriateness of services, accommodations, and modifications currently provided. The annual EMT review 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 the 504 Plan Progress Review form and Teacher Report form and submit them to the Section 504 case manager prior to the scheduled EMT 504 progress review meeting. Upon completion of the review form, the following questions shall be addressed:

Section 504 Progress Review
- Does the identified disability still exist?
- Does the disability continue to “substantially limit” a major life activity that impacts the student’s access to education? If so, how?
- 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 utilized and why?
- Does the Section 504 plan continue to be appropriate? If not, are there accommodations that should be added or removed?

Does the identified disability still exist?
To qualify for a Section 504 plan, the student must be regarded as having either a mental or physical impairment/disability, or a record of such an impairment/disability. The range of impairments/disabilities is broad—including but not limited to physiological, medical, and psychological disorders—and can include temporary disabilities. The EMT Team members reviewing the Section 504 plan should look at all available data to determine if the disability still exists and if additional data is necessary to support the team’s decision.

Does the disability continue to “substantially limit” a major life activity that impacts the student’s education? If so, how?
To answer this question, the EMT members must consider the student’s performance in his/her school, based on current data. To be considered “substantially limiting,” the impairment/disability must continue to present a barrier to the student’s ability to access the same educational opportunities as those afforded to non-disabled students. Also, the EMT members should consider what instructional strategies have been implemented (that is, the accommodations that have been used to mitigate the impairment/disability and their impact on the student’s daily academic performance).

Is the student using the accommodations listed on the current 504 plan? If not, what are the particular accommodations no longer utilized and why?
When preparing to review a Section 504 plan, the classroom teacher(s) provide key information in answering this question. To update the current educational needs of students with Section 504 plans, the teacher(s) should complete the Section 504 Plan Progress Review Form. Such information will be helpful in determining which accommodations are appropriate, which are not, and which need to be deleted or revised.

This information is presented at the EMT Section 504 progress review meeting to determine which accommodations are providing the student with equal access to learning and which additional accommodations or supports may be needed.
Does the Section 504 plan continue to be appropriate? If not, are there any accommodations that should be added?

All Section 504 accommodations listed on a Section 504 plan must be designed to meet the current educational needs of the identified student under Section 504. If it is determined that the accommodations listed on the current Section 504 plan are no longer warranted, the EMT shall remove all inappropriate accommodations on the revised Section 504 plan. The team should have documented evidence or data to support its decisions, whether accommodations are deemed inappropriate or appropriate.

What if the student no longer requires accommodations?

The EMT members must conduct a reevaluation before determining that a student is not eligible or removing the Section 504 plan.

The first step in removing a student’s Section 504 plan is for the EMT to review current student needs and determine that the student no longer requires formal accommodations. When reviewing current student needs, the EMT 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 three qualifying criteria and the follow-up questions listed below, the EMT should briefly describe the reasons for terminating the student’s Section 504 plan.

Qualifying criteria

The student has a physical or mental impairment/disability (a history of having a physical or mental impairment/disability) that substantially limits one or more major life activities.

Follow-up questions

Without formalized accommodations, is the student with a Section 504 plan able to—

- access educational programs and activities as compared with the average person in the general population, and
- access the MCPS program of studies and activities?

If the EMT members determine that the student’s impairment/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 Students with Section 504 Plans

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.

Definitions
*Causation meeting:* Educational Management Team (EMT) meeting where team considers whether the behavior was caused by the student’s disability.

*Causation hearing:* Formal hearing, subsequent to a parental appeal, where a hearing officer determines whether the behavior was caused by the student’s disability.

*Disciplinary sanction:* Disciplinary action based on MCPS policy, applied to all students with or without disabilities.

*Due process procedures:* Information provided to parents that references the various ways to address dissatisfaction with any team decision regarding the identification, evaluation, or placement/program of their child.

*Due process safeguards brochure:* Information provided to parents regarding the rights of their children under Section 504 of the Rehabilitation Act of 1973.

*Significant change in placement:* Expulsion or suspension for more than 10 days or a series of short-term suspensions that are each 10 days or fewer, if they create a pattern of exclusion.

Causation Meeting Procedures
Students with 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, or for expulsion, 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 implementing a suspension or expulsion amounting to more than 10 school days per year (consecutive or cumulative), the school EMT must hold a causation meeting to determine whether the misconduct for which the student is being suspended was “caused” by the impairment used as the basis for the student’s 504 plan.

A causation meeting in MCPS is called a Section 504 causation EMT meeting. The team that holds the causation EMT meeting comprises the typical Section 504 EMT members. In addition to being knowledgeable about the child, the meaning of evaluation data, and placement options, the causation EMT members should be knowledgeable about the student and his/her disability.

A causation EMT meeting must be scheduled as soon as possible after the disciplinary infraction, and the parent/guardian must be given advance notice of the purpose of the meeting. Notice should be provided 10 days before the causation EMT meeting. However, these meetings are often expedited and held in less than 10 days. In these cases, 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 followed by written notification of the meeting (see sample letters, pages 54–66.

If the team determines that the student’s disability “caused” the misconduct, the student cannot be disciplined and must return to school. A different educational setting may be recommended if the parent/guardian and staff are in agreement. If there is no agreement on a change in educational setting, the student must return to the current school.
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. All educational services to the student with the Section 504 plan may be stopped during the disciplinary period, provided nondisabled students would be treated in the same way.

Guidelines for a Causation Meeting

**Step 1: Introductions and purpose of the meeting**
All meeting participants introduce themselves and sign their names and titles as participating members. The purpose of the meeting is discussed. A recorder is assigned to take meeting notes on MCPS Form 272-4: Educational Management Team Summary

**Step 2: Review of the disciplinary data**
An individual who is knowledgeable about the disciplinary infraction describes what occurred.

**Step 3: Review of the Section 504 eligibility evaluation data**
The EMT members review all relevant information from the student’s file and any additional information provided by the parent; considers the nature of the student’s disability, including behavioral characteristics and severity; and considers the student’s strengths, challenges, and coping strategies.

**Step 4: Causation determination**
The EMT members determine to what extent, if any, the student’s disability precludes him/her from knowing that the conduct was wrong, and to what extent, if any, the student’s disability impairs his/her behavioral controls and ability to consider the consequences before acting. The EMT considers the student’s disciplinary history, including severity, setting, and frequency of disciplinary infractions; behavioral interventions that have been used in the past; and any differences between the student’s behavior at school and other settings such as home, job, recreational activities, and social situations.

Based on these considerations, the EMT determines if sufficient evidence exists to conclude the misconduct was “caused by” the student’s disability. If the EMT concludes that the misconduct was caused by the disability, the team may recommend revisions to the student’s Section 504 plan. The suspension or expulsion must be terminated, and the student must be returned to school. If the EMT members conclude that the misconduct was not caused by the disability, the student may be suspended or expelled from school following the same procedures as for nondisabled students.

Considerations to Assist with the Causation Determination
Section 504 does not provide a step-by-step analysis to follow in making a causation determination. The following provides a guide for the team deliberation:

- Review the behavior that resulted in the disciplinary sanction.
- Review all relevant information from the student’s files.
- Review any information provided by the parent (including evaluative or diagnostic data).
- Review current teacher reports.
- Consider the nature of the student’s disability, including behavioral characteristics and severity.
- Consider the student’s strengths, deficits, and coping strategies.
- Determine to what extent, if any, the student’s disability impairs behavioral control and ability to consider consequences before acting.
- Consider the student’s disciplinary history.
- Consider behavioral interventions used in the past.
- Consider differences in the student’s behavior between settings.
Discipline Procedures for Students with Section 504 Plans

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 of the Rehabilitation Act.
Conversely, students who are currently engaged in the abuse of drugs or alcohol are not entitled to a causation EMT 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.
Students who sell or distribute drugs on school property and receive disciplinary sanctions are entitled to a causation EMT 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 school.

Discipline for Students with Section 504 Plans Who Bring Weapons onto School Property
Under the Gun-Free School Act, a student with a Section 504 plan who brings a gun to school may be placed in an interim alternative placement for up to 45 calendar days, regardless of whether the behavior was caused by the student’s disability or whether the student had previously been suspended for 10 or more days.
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 EMT 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 school.

Causation Hearing
A parent must be provided with a copy of the Due Process Safeguards Information brochure at the causation EMT meeting. If a parent disagrees with the EMT causation determination, he/she has the right to appeal that decision through an administrative review or the hearing process. The administrative review is conducted by the Section 504 coordinator. The hearing is held before a special hearing officer, and the school is represented either by an attorney (if the parent is represented by an attorney) or the MCPS Section 504 coordinator. Members of the school staff may be required to attend the hearing as witnesses. The MCPS representative will discuss the case with staff and make the determination as to who will be required to attend the hearing. The independent hearing officer drafts a decision based on the evidence presented at the hearing.
Related Services

Under Section 504, students are entitled to a free and appropriate education, which may include related services. Unlike the Individuals with Disabilities Education Act (IDEA), Section 504 does not list specific types of related services.

The key difference in the provision of related services under Section 504, as compared with those required by the IDEA, lies in the purpose and scope of the law. Under Section 504, students with disabilities are assured equal access and the same educational opportunities that are provided to their nondisabled peers.

Related services, therefore, are geared toward ensuring access, as opposed to providing specialized instruction or remediation provided under special education law. Related services under Section 504 may be considered when the student does not show evidence of an IDEA disability that requires special education. Students who are evaluated and determined to be eligible for services under Section 504 are required to have an individualized accommodation plan that is developed by the Section 504 Educational Management Team (EMT). When the school team suspects that a related service may be warranted, or when a parent requests implementation of a Section 504 plan that includes a related service, the appropriate related-service staff must be consulted.

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.
Parental Collaboration and Involvement

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

The law requires that procedural safeguards be established to ensure that parents and guardians have an active say regarding the evaluation and placement of their children in educational programs. Parents have the right to participate in the educational process to make sure that their children receive the services to which they are entitled.

In terms of Section 504, parents have the right to request that a Section 504 evaluation be conducted when they feel that their child may meet the law’s eligibility criteria. Schools need to schedule an EMT meeting to discuss the parent’s concerns and review any information that the parent 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 shared accountability in obtaining the desired results.

The EMT members will determine whether a Section 504 evaluation is in order. If the team members decide that an evaluation is needed, then parental permission must be obtained (see sample letters, pages 54–66. Including parents in the development of a Section 504 plan is an integral step in the process. Parents need to be involved in the development of the plan or be provided with an avenue for input. The team should take parents’ suggestions and recommendations into consideration when developing the plan, and determine reasonable and appropriate accommodations/strategies. The EMT is also responsible for developing the plan, assigning a case manager to notify teachers about its details, and coordinating reviews annually.

If parents have a disagreement with the plan or any part of the process, the team should first try to resolve the disagreement at the school level. If needed, additional support information or involvement of the Section 504 coordinator is available from the Department of Student Services, Pupil Personnel Services. However, if the parties cannot reach a resolution, the team should ensure that parents are aware of their due process options. The Section 504 brochures, Section 504: A Parent’s Guide to Section 504 of the Rehabilitation Act of 1973 and Due Process Safeguards Information should be provided to parents at the EMT meeting.
Due Process Procedures for Section 504 Students

The following is a summary of the rights granted by federal law and MCPS Administrative Regulation IOG-RB, Accommodations and Services to Students Qualifying Under Section 504 of the Rehabilitation Act of 1973, to students with disabilities who qualify under Section 504:

- The right to have your child participate in programs without discrimination.
- The right to receive notice.
- The right to have your child receive a free and appropriate education.
- The right to have your child participate in school programs and extracurricular activities.
- The right to have decisions made based on a variety of sources by persons knowledgeable about the data and program options.
- The right to examine relevant records.
- The right to seek resolution if you are dissatisfied by requesting a review, an impartial hearing, and/or contacting the Office for Civil Rights in the U.S. Department of Education.

These rights are explained more fully in the MCPS brochures, Due Process Safeguards Information and A Parent’s Guide to Section 504. The brochures should be sent to parents with their invitation to any Section 504 EMT meeting or given out at the meeting. Due Process Safeguards Information includes a parent signature line and should be signed by the parent, indicating receipt of the brochure. The signed portion should be detached and placed in the confidential folder.
Request for Human and Material 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 classroom teachers. If it is anticipated that a Section 504 EMT may conclude that material or human resources are needed outside of what is currently available in the school, the following steps should be taken prior to the EMT meeting:

1. The principal (or designee) should consult with the Section 504 coordinator prior to the services or resources being placed on the plan.

2. The principal of the building should put the possible request in a memorandum to the Section 504 coordinator, with documentation to support the request.

3. The Section 504 coordinator should work collaboratively with the community superintendent and any other MCPS staff to address the request.

4. After collaboration with the community superintendent (review of request along with collection of any additional data by the coordinator or community superintendent), the 504 coordinator should send a memorandum to the executive assistant to the chief operating officer for approval by the chief operating officer.

The executive assistant should process and coordinate an approved request with the appropriate office(s) and the principal of the school.
Section 504 Compliance Update
Department of Student Services

November 2000 Number 1
Revised: 01/06

504 Referrals/Requests for Occupational Therapy, Physical Therapy, and Speech/Language Services

Question:
What are the procedures for making referrals for occupational therapy (OT) and/or physical therapy (PT) and speech/language services under Section 504 of the Rehabilitation Act of 1973?

Response:
Before any referrals are made for OT, PT, or speech/language screening assessments or services under Section 504, it is expected that school staff and parents/guardians have been planning, implementing and documenting the effectiveness of intervention strategies. If the impact of suspected fine motor, gross motor, or speech/language problems continues to be significant, despite a reasonable period of intervention, referrals for OT/PT or speech/language services should follow the process outlined below:

Section 504 EMT:

1. Referral
In rare instances, an EMT may initiate a referral for an OT/PT evaluation for a child with significant physical or motoric problems or for a speech/language evaluation if significant speech/language problems exist. If staff have reason to believe that the student’s physical, motor, or speech/language problem appears to substantially limit a major life activity, the referral may be made provided school staff have previously consulted with the Office Of Services for Students with Physical Disabilities or Speech and Language Programs; and the student does not show evidence of an Individuals with Disabilities Education Act (IDEA 2004) disability that requires special education.

2. Evaluation
The Section 504 evaluation may include, but is not limited to, observation of the student, use of a motor characteristics checklist (MCPS Form 336-24), review of any private OT/PT or speech/language screen summary (MCPS Form 336-26), or review of any private OT/PT or speech/language testing submitted by the parent/guardian.

3. Results
When the EMT meets to consider the results of the evaluation, an occupational therapist, physical therapist, or speech pathologist, as appropriate, must be present. If, based on the results of the evaluation and a comparison of the student’s performance with that of nondisabled peers in general education, the EMT determines that there is a substantial limitation to motor or speech/language activity, the therapist assists the EMT in developing a Section 504 plan.
Guidelines for Self-Testing of Section 504 Students Who Have Diabetes

Question:
Where should students who have diabetes self-test?

Response:
Self-testing by students with diabetes should ordinarily occur in the health room. In accordance with the Montgomery County Public Schools (MCPS) blood-borne pathogens procedures, certain measures must be followed when handling blood or other body fluids. Consideration also should be given to the knowledge of and the respect for each student’s safety and privacy rights.

The designated safe and secure area in the school where monitoring and supervision of students’ self-testing for diabetes and the documentation of medical information are to occur are in the health room. While there may be an exception to this guideline, each case will be handled on an individual basis. However, the final decision will be made by the school principal or designee and the school nurse, with input from the teacher, parents, and student.

If you have questions regarding the MCPS blood-borne pathogens program, you may contact Ms. Pam Montgomery, supervisor, Safety and Environmental Health Program, Department of Facilities Management, 301-279-3066, or Mrs. Barbara Pearlman in the Department of Curriculum and Instruction, 301-279-3508. Questions regarding Section 504 issues should be referred to Ms. Yolanda Speights in the Section 504 Office, Department of Student Services, 301-279-3225.
Appendixes

1. Glossary
2. Sample Letters
3. Section 504 Forms
4. MCPS Regulation
5. C.F.R. Part 104
6. Tips for Educators
Glossary

Causation Educational Management Team (EMT)
The EMT is the school committee responsible for determining whether the student’s behavior is caused by his/her disability when a student with a Section 504 plan is recommended for extended suspension or expulsion. This team must include persons knowledgeable about the student, the meaning of evaluation data, and the placement options.

Eligibility
An eligible student is a student who (a) has a record of having or (b) is regarded as having a physical or mental impairment that substantially limits one or more of his/her major life activities (e.g., learning, walking, or hearing).

Equal opportunity
Equal opportunity for qualified people with disabilities is an objective of Section 504. 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.

Evaluation
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 observations, anecdotal records, and behavioral assessments.

Least restrictive environment
In terms of Section 504, least restrictive environment means that, to the maximum extent possible, children have the right to an education that takes place in a setting with children who are not disabled.

Major life activity
This concept includes major life functions (e.g., walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, and performing manual tasks).

Nondiscrimination
Nondiscrimination is mandated by Section 504, which states “No otherwise qualified individual with an impairment/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.”

Under Section 504, recipients must ensure nondiscrimination through program accessibility, equal opportunity, and full participation in programs, activities, and services.

Notice
The school will provide the parent or guardian with prior written notice about actions or proposed actions regarding Section 504. Whenever possible, all notices will be written in the native language of the parent. If this is not possible, the school must use other means to ensure that the parent understands the information in the notice.

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” 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 of the following body systems: neurological; musculo-skeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine.

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

The term *physical or mental impairment* includes, but is not limited to, diseases and conditions such as orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; mental retardation; emotional illness; and past drug addiction and alcoholism.

**Section 504 plan**

The Section 504 plan is a written document developed by the school EMT members that guarantees qualified individuals with disabilities a free and appropriate public education, consisting of accommodations and related aid and services that are designed to meet individual educational needs.

**Substantial limitation on learning**

A substantial limitation on learning must be demonstrated by an educational need (i.e., a serious academic deficit and/or serious behavior concerns) resulting from the student’s disability and not from other causes. Every impairment does not have to affect learning under Section 504.

“*Substantially Limits*”

1. “Unable to perform a major life activity that the average person in the general population can perform;” or

2. “significantly restricted as to the condition, manner, or duration under which an individual can perform a particular major life activity as compared with the condition, manner, or duration which the average person in the general population can perform the same major life activity.”
Sample Letters

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Obtaining a 504 Letter in a Language Other Than English

The content for the English form letters for 504 meetings can be obtained through the Language Assistance Services Unit in Spanish, Chinese, French, Vietnamese, and Korean.

How to obtain a letter in one of these languages:

1. Use the MCPS standardized Section 504 form letters to prepare the letter in MS Word.
   a. Avoid making any changes to the wording in the form letters, except for names and dates.
   b. Do not make any aesthetic changes to the text (such as soft returns to keep certain words together; the text length for the same content varies from language to language).

2. If your school is using the Translation Request System, send the letter to the translation coordinator for your school. The translation coordinator will submit the request. (Schools are being added weekly, so check with your administration.)

3. If your school is not yet using the Translation Request System, submit the letter with MCPS Form 311-1 to Translations@mcpsmd.org. Instructions can be found at http://www.montgomeryschoolsmd.org/curriculum/esol/lastu/translations/

4. If you need the document urgently, in addition to indicating that on the 311-1, we suggest calling the Language Assistance Services Unit at 301-230-5474 to make your timeline clear.

Under normal circumstances, if the project is called to the attention of the Language Assistance Services Unit staff by a telephone call, a simple version of the form letter can be produced within 24 hours. There are times when the work flow may make this impossible.

If there are significant customizations to a letter, more time may be required to produce the translation.

The Language Assistance Services Unit staff will make every effort to obtain translations in languages other than Spanish, Chinese, French, Vietnamese, and Korean from contractors, as needed. However, there is no guarantee for availability or turnaround time in other languages.
Invitation to Section 504 Eligibility EMT Meeting

[LETTERHEAD]
[DATE]

[MR. AND MRS.] ****
[ADDRESS]
[CITY], MD [ZIP]

Re: [STUDENT’S NAME]
[STUDENT ID]

Dear [MR. AND MRS.] ****:

After carefully reviewing your child’s school records and teacher recommendations, members of the school staff recommend that [HE/SHE] be evaluated for possible eligibility under *Section 504 of the Rehabilitation Act of 1973*, which prohibits discrimination on the basis of disability. Therefore, I am scheduling a Section 504 Educational Management Team (EMT) meeting on [DATE] at [TIME]. The EMT will be composed of staff members who are knowledgeable about your child, the meaning of evaluation data, and accommodations and placement options. Information from a variety of sources will be considered.

You are invited and encouraged to attend this meeting. If you have any information that you wish the committee to consider, it would be helpful if you provide it in advance of the meeting to [NAME, TITLE, LOCATION].

Please complete the enclosed response form and return it to this office within one week from the date of this letter. Unless you inform me otherwise, I will assume that these arrangements meet with your approval, and the meeting will be held on the date scheduled.

Sincerely,

Principal

[Initials]

Enclosure

Copy to:
Outcome of Section 504 Qualification EMT Meeting

[LETTERHEAD]

[DATE]

[MR. AND MRS.] ****
[ADDRESS]
[CITY], MD [ZIP]

Re: [STUDENT’S NAME]

Dear [MR. AND MRS.] ****:

The Educational Management Team (EMT) met on [DATE] to determine whether your child qualifies as a student with disabilities under Section 504 of the Rehabilitation Act of 1973. The team was composed of persons knowledgeable about your child, the meaning of evaluation data, and accommodations/placement options.

Based on their review of a variety of sources of information, the EMT members determined that

_____ your child qualifies as a student with disabilities under Section 504. A copy of the Section 504 plan that was developed [IS ENCLOSED/WAS GIVEN TO YOU AT THE MEETING] OR you will be notified of the date on which the EMT will meet to develop a Section 504 plan for your child.

_____ your child does not qualify as a student with disabilities under Section 504.

_____ additional information is needed in order to make a determination about eligibility. Once the information is obtained, an EMT meeting will be scheduled to determine whether your child qualifies for protections under Section 504.

_____ your child is being referred to a screening IEP team meeting to consider eligibility under the Individuals with Disabilities Act (IDEA 2004).

If you disagree with the EMT’s determination, I would be happy to meet with you to discuss your concerns. You also have the right to appeal the decision. Please see the enclosed brochure, Due Process Safeguards Information: Section 504 of the Rehabilitation Act of 1973, which explains your rights in this process. If you have any questions or would like to schedule a meeting, please call me at the telephone number listed above.

Sincerely,

Principal

[Initials]

Enclosure
Copy to:
Establishment of a Confidential Folder

[LETTERHEAD]
[DATE]

[M. AND MRS.] ****
[ADDRESS]
[CITY], MD [ZIP]

Re: [STUDENT’S NAME]

Dear [M. AND MRS.] ****:

This letter is to inform you that, in accordance with MCPS regulation JOA-RA, Student Records, a confidential school folder is being established for your child because eligibility for a Section 504 plan is being considered.

A confidential folder is established for a student whenever it is necessary to obtain and hold special information for that individual. Documents placed in the confidential folder are factual and objective, necessary for professional understanding of the student, and helpful in counseling with the student and/or parents or legal guardian. They are dated and signed by the originator.

Should you ever wish to review your child’s confidential folder, please contact me at [SCHOOL’S TELEPHONE NUMBER].

Sincerely,

Principal

[Initials]

Enclosure

Copy to:
Invitation Section 504 Review Meeting

[LETTERHEAD]

[DATE]

[MR. AND MRS.] ****:
[ADDRESS]
[CITY], MD [ZIP]

Re: [STUDENT’S NAME]

Dear [MR. AND MRS.] ****

This letter is to inform you that a Section 504 review meeting has been scheduled for [DATE] at [TIME]. The purpose of this meeting is to discuss [STUDENT’S NAME] progress at [SCHOOL’S NAME] and to plan for the upcoming school year. As a result of this meeting, your child’s 504 plan may be continued, revised, or removed. Your attendance and input at the Section 504 review meeting is strongly recommended. If you are unable to attend this meeting, please contact [OFFICE AND/OR CASE MANAGER] to reschedule.

Please return the slip below, either in person or by your [SON/DAUGHTER], to [OFFICE AND/OR CASE MANAGER] by [DATE]. Your prompt attention to this matter would be appreciated.

Sincerely,

Principal

[Initials]

Enclosures

Copy to:
Student’s Confidential Folder
PLEASE SIGN AND RETURN

To: Principal, [NAME OF SCHOOL]

Re: ________________________________

(STUDENT’S NAME)

____ I will attend the Section 504 review meeting on [DATE] at [TIME].

____ I cannot attend the Section 504 review meeting on [DATE] at [TIME] but give my permission for the review to proceed in my absence. I understand that I will receive the review meeting notes and will be notified about the outcome of the meeting.

____ I cannot attend the Section 504 review meeting on [DATE] at [TIME] and request that the meeting be rescheduled. I understand that my request to reschedule may cause a delay in the review of my child’s Section 504 plan.

_________________________________
(PARENT/GUARDIAN SIGNATURE)

_________________________________
(DAYTIME PHONE)

_________________________________
(DATE)

Copy to:
Student file
Outcome of Section 504 Review EMT Meeting

[LETTERHEAD]

[DATE]

[MR. AND MRS.] ****

[ADDRESS]

[CITY], MD [ZIP]

Re: [STUDENT’S NAME]

Dear [MR. AND MRS.] ****:

The Educational Management Team (EMT) met on [DATE] to review your child’s Section 504 Plan. The team was composed of persons knowledgeable about your child, the meaning of evaluation data, and accommodations/placement options.

Based on their review, the EMT—

_____ revised the Section 504 plan

_____ continued the current plan

_____ recommended the following assessments:

_____ referred your child to a screening IEP team meeting to consider eligibility under the Individuals With Disabilities Act (IDEA 2004)

_____ removed the Section 504 plan; student not eligible

A copy of the Section 504 plan and/or a copy of the EMT notes are enclosed. If you disagree with the EMT’s determination, I would be happy to meet with you to discuss your concerns. You also have the right to appeal the decision. Please see the enclosed brochure, *Due Process Safeguards Information: Section 504 of the Rehabilitation Act of 1973*, which explains your rights in this process. If you have any questions or would like to schedule a meeting, please call me at the telephone number listed above.

Sincerely,

Principal

[Initials]

Enclosures

Copy to:
Invitation to Causation Meeting

[LETTERHEAD]
[DATE]

[MR. AND MRS.] ****
[ADDRESS]
[CITY], MD [ZIP]

Re: [STUDENT’S NAME]

Dear [MR. AND MRS.] ****:

This letter is to notify you that an Educational Management Team (EMT) meeting has been scheduled for [DATE] at [TIME] to discuss your child’s involvement in a serious incident. This meeting is being held to determine whether your child’s behavior was caused by the disability documented in your child’s Section 504 plan.

The EMT meeting will include staff members who are knowledgeable about your child. Other individuals who may attend include the school counselor, school nurse, school psychologist, pupil personnel worker, or other individuals, at your discretion, or that of Montgomery County Public Schools, who have knowledge or special expertise regarding your child.

Please see the enclosed brochure, Due Process Safeguards Information: Section 504 of the Rehabilitation Act of 1973, which explains your rights in this process. If you need assistance in interpreting the information in this brochure, feel free to contact me.

Sincerely,

Principal

[Initials]

Enclosure

Copy to:
Student’s Confidential Folder (signed copy)
PPW
Follow Up to Causation Meeting: No Causation Determined

[LETTERHEAD]
[DATE]

[MR. AND MRS.] ****
[ADDRESS]
[CITY], MD [ZIP]

Re: [STUDENT’S NAME]

Dear [MR. AND MRS.] ****:

On [DATE], the Educational Management Team (EMT) met to determine whether the [DESCRIBE THE BEHAVIOR FOR WHICH THE STUDENT WAS SUSPENDED OR RECOMMENDED FOR EXPULSION] was caused by [HIS/HER] disability.

The EMT team considered all relevant information about the behavior, including teacher reports, curriculum-based assessments, and information provided by you. Based on their review of the information provided, the EMT members determined that the behavior was not caused by [STUDENT’S NAME] disability. [ADD DECISION RENDERED AT MEETING.]

Therefore, the disciplinary procedures will continue. By copy of this letter, I am requesting that the superintendent of schools authorize a conference to be held at [NAME OF FIELD OFFICE] by [NAME OF FIELD OFFICE SUPERVISOR], supervisor, based on the team’s recommendation. You will be contacted by the [NAME OF FIELD OFFICE] and notified of the time and date of this investigative conference.

You have received a copy of the brochure *Due Process Safeguards Information: Section 504 of the Rehabilitation Act of 1973*, which explains your right to appeal the EMT decision. A copy of the meeting notes is enclosed for your information.

Sincerely,

Principal

[Initials]

Enclosures

Copy to:
Field Office Supervisor
Student’s Confidential Folder
Follow-Up to Causation Meeting: Causation Determined

[LETTERHEAD]
[DATE]

[MR. AND MRS.] ****
[ADDRESS]
[CITY], MD [ZIP]

Re: [STUDENT’S NAME]

Dear [MR. AND MRS.] ****:

On [DATE], the Educational Management Team (EMT) met to determine whether the [DESCRIBE THE BEHAVIOR FOR WHICH THE STUDENT WAS SUSPENDED OR RECOMMENDED FOR EXPULSION] was caused by [STUDENT’S NAME] disability.

The EMT considered all relevant information about the behavior, including evaluations and diagnostic results and information provided by you. Based on their review of the information provided, the EMT determined that the behavior was caused by [STUDENT’S NAME] disability. The disciplinary procedures, therefore, have been terminated and [STUDENT’S NAME] will return to [HIS/HER] current placement.

A copy of the meeting notes is enclosed for your information. You have received a copy of the brochure, Due Process Safeguards Information: Section 504 of the Rehabilitation Act of 1973, which explains your right to appeal the EMT’s decision.

Sincerely,

Principal

[Initials]

Enclosures

Copy to:
Field Office Supervisor
Student’s Confidential Folder
10-Day Suspension or Expulsion Request for Students with Section 504 Plans

[LETTERHEAD]
[DATE]

[MR. AND MRS]****
[ADDRESS]
[CITY], MD [ZIP]

Re: [STUDENT’S NAME]

Dear [MR. AND MRS.] ****:

On [DATE] your [SON/DAUGHTER] was involved in a serious incident [BRIEFLY DESCRIBE INCIDENT: e.g., “the student displayed a knife in a threatening manner to another student with whom he or she was arguing”]. As a result of [HIS/HER] involvement in this incident, I am suspending [NAME OF STUDENT] for a period of 10 days [LIST DATES] and requesting expulsion from Montgomery County Public Schools (MCPS). [IN CASES OF PROPERTY DAMAGE ADD THE FOLLOWING: “I am requiring restitution for property damage in the amount of [FAIR-MARKET VALUE, NOT TO EXCEED $2,500].

I [OR DESIGNEE NAME AND TITLE] met with [NAME OF STUDENT], informed [HIM/HER] of the charges/allegations against [HIM/HER], and allowed [HIM/HER] to tell [HIS/HER] side of the story prior to taking this action. I [OR NAME AND TITLE OF DESIGNEE] spoke with you by telephone on [DATE OF CONTACT] and notified you of this decision. By copy of this letter, I am requesting that the superintendent of schools authorize a conference at the [FIELD OFFICE] by [FIELD OFFICE SUPERVISOR’S NAME], field office supervisor, based on my recommendation. You will be contacted by [FIELD OFFICE] and notified of the time and date of this conference.

During the time [NAME OF STUDENT] is on suspension, [HE/SHE] will not be permitted on MCPS property and may not participate in or attend any school activities, unless permission is granted by an administrator. However, [NAME OF STUDENT] will be permitted, to the extent possible, to make up academic work missed.

In accordance with MCPS regulations, you may appeal this decision by contacting [FIELD OFFICE SUPERVISOR’S NAME AND ADDRESS] in writing within 10 days of the date of this letter.
Because [NAME OF STUDENT] has a Section 504 plan, a Section 504 causation team must meet to determine whether the behavior described above was caused by [HIS/HER] disability. If the behavior is found to be caused by [HIS/HER] disability, the extended suspension and expulsion request will be terminated. [BECAUSE (name of student) WAS ENGAGED IN THE ILLEGAL USE OF DRUGS/ALCOHOL, YOUR CHILD MAY NOT BE ENTITLED TO A CAUSATION EMT OR ANY OTHER SECTION 504 PROTECTION]. You will be contacted shortly regarding the time, date, and location for this meeting and your participation is strongly encouraged. Enclosed is a copy of the brochure *Section 504 Due Process Safeguards*. If you need assistance in interpreting the information in this brochure, feel free to contact me at the above number.

Sincerely,

Principal

[Initials]

Enclosure

Copy to:
Superintendent of Schools
Field Office Supervisor
Pupil Personnel Worker
Section 504 Forms

270-2: Section 504 Plan (Confidential)

270-2A: Authorization for School Psychologists Section 504 Attentional Disorders Assessment

270-2B: Section 504 Evaluation (Confidential)

270-2C: Section 504 Progress and Accommodation Review Worksheet (Confidential)

272-2B: Secondary Teacher Referral

272-4: Educational Management Team Summary

336-41B: Testing Accommodations for Section 504 Students
MCPS Regulation ACG-RB
Accommodations and Services to Students Qualifying
Under Section 504 of the Rehabilitation Act of 1973

MCPS Regulation ACG-RB

504 Parents Guide

Due Process Brochure

Note: Go to http://www.montgomeryschoolsmd.org/departments/studentservices/504/index.shtm to access the 504 Parents Guide and Due Process brochures in Chinese, French, Korean, Spanish, and Vietnamese.
From http://www2.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html

Title 34 Education
Subtitle B Regulations of the Offices of the Department of Education
Chapter I -- Office For Civil Rights, Department Of Education

Part 104—Nondiscrimination On The Basis Of Handicap In Programs Or Activities Receiving Federal Financial Assistance

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APPENDIX A TO PART 104 ANALYSIS OF FINAL REGULATION

APPENDIX B TO PART 104 GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS [NOTE]


SOURCE: 45 FR 30936, May 9, 1980, unless otherwise noted.

Subpart A—General Provisions

104.1 Purpose.
The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

104.2 Application.
This part applies to each recipient of Federal financial assistance from the Department of Education and to the program or activity that receives such assistance.

104.3 Definitions.
As used in this part, the term:


(b) Section 504 means section 504 of the Act.


(d) Department means the Department of Education.

(e) Assistant Secretary means the Assistant Secretary for Civil Rights of the Department of Education.

(f) Recipient means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) Applicant for assistance means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.
(h) Federal financial assistance means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;
(2) Services of Federal personnel; or
(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) Handicapped person—(1) Handicapped persons means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) Physical or mental impairment means (A) 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 (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) Major life activities means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) Is regarded as having an impairment means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) Program or activity means all of the operations of--

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k) (1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 29 U.S.C. 794(b))

(i) Qualified handicapped person means:

1. With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

2. With respect to public preschool elementary, secondary, or adult educational services, a handicapped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

3. With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient’s education program or activity;

4. With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(m) Handicap means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

104.4 Discrimination prohibited.

(a) General. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.

(b) Discriminatory actions prohibited. (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:
(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program or activity;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person’s needs.

(3) Despite the existence of separate or different aid, benefits, or services provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such aid, benefits, or services that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient’s program or activity with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives Federal financial assistance or

(ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.
(c) **Aid, benefits or services limited by Federal law.** The exclusion of nonhandicapped persons from aid, benefits, or services limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from aid, benefits, or services limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

### 104.5 Assurances required.

(a) **Assurances.** An applicant for Federal financial assistance to which this part applies shall submit an assurance, on a form specified by the Assistant Secretary, that the program or activity will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) **Duration of obligation.**

1. In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

2. In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

3. In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) **Covenants.**

1. Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

2. Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

3. Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Assistant Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

### 104.6 Remedial action, voluntary action, and self-evaluation.

(a) **Remedial action.**

1. If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of the discrimination.
(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Assistant Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Assistant Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient’s program or activity but who were participants in the program or activity when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program or activity had the discrimination not occurred.

(b) Voluntary action. A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient’s program or activity by qualified handicapped persons.

(c) Self-evaluation. (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Assistant Secretary upon request:

(i) A list of the interested persons consulted,

(ii) A description of areas examined and any problems identified, and

(iii) A description of any modifications made and of any remedial steps taken.

104.7 Designation of responsible employee and adoption of grievance procedures.

(a) Designation of responsible employee. A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) Adoption of grievance procedures. A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.
104.8 Notice.
(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity. The notification shall also include an identification of the responsible employee designated pursuant to 104.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients’ publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

104.9 Administrative requirements for small recipients.
The Assistant Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with 104.7 and 104.8, in whole or in part, when the Assistant Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

104.10 Effect of state or local law or other requirements and effect of employment opportunities.
(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

Subpart B—Employment Practices

104.11 Discrimination prohibited.
(a) General. (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.

(2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs or activities assisted under that Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.
(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeships.

(b) Specific activities. The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including those that are social or recreational; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient’s obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

104.12 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity.

(b) Reasonable accommodation may include:

(1) Making facilities used by employees readily accessible to and usable by handicapped persons, and

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient’s program or activity, factors to be considered include:

(1) The overall size of the recipient’s program or activity with respect to number of employees, number and type of facilities, and size of budget;
(2) The type of the recipient’s operation, including the composition and structure of the recipient’s workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

104.13 Employment criteria.
(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and

(2) Alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant’s or employee’s job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant’s or employee’s impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

104.14 Preemployment inquiries.
(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant’s ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to 104.6 (a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to 104.6(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, Provided, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.
(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee’s entrance on duty, Provided, That:

(1) All entering employees are subjected to such an examination regardless of handicap, and

(2) The results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

Subpart C—Accessibility

104.21 Discrimination prohibited.
No qualified handicapped person shall, because a recipient’s facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

104.22 Existing facilities.
(a) Accessibility. A recipient shall operate its program or activity so that when each part is viewed in its entirety, it is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) Methods. A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of 104.23, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that serve handicapped persons in the most integrated setting appropriate.

(c) Small health, welfare, or other social service providers. If a recipient with fewer than fifteen employees that provides health, welfare, or other social services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this
section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible.

(d) Time period. A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(e) Transition plan. In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient’s facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full accessibility in order to comply with paragraph (a) of this section and, if the time period of the transition plan is longer than one year, identify the steps of that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) Notice. The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

104.23 New construction.

(a) Design and construction. Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

(b) Alteration. Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) Conformance with Uniform Federal Accessibility Standards. (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use,
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will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.


Subpart D—Preschool, Elementary, and Secondary Education

104.31 Application of this subpart. Subpart D applies to preschool, elementary, secondary, and adult education programs or activities that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities.

104.32 Location and notification. A recipient that operates a public elementary or secondary education program or activity shall annually:

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient’s jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient’s duty under this subpart.

104.33 Free appropriate public education. (a) General. A recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient’s jurisdiction, regardless of the nature or severity of the person’s handicap.

(b) Appropriate education. (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of 104.34, 104.35, and 104.36.

(2) Implementation of an Individualized Education Program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person or refer such a person for aid, benefits, or services other than those that it operates or provides as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) Free education—(1) General. For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient
places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the aid, benefits, or services. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) Transportation. If a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the aid, benefits, or services is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the aid, benefits, or services operated by the recipient.

(3) Residential placement. If a public or private residential placement is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the placement, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) Placement of handicapped persons by parents. If a recipient has made available, in conformance with the requirements of this section and 104.34, a free appropriate public education to a handicapped person and the person’s parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person’s education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made a free appropriate public education available or otherwise regarding the question of financial responsibility are subject to the due process procedures of 104.36.

(d) Compliance. A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

104.34 Educational setting.
(a) Academic setting. A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person’s home.

(b) Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in 104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.
(c) **Comparable facilities.** If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

104.35 Evaluation and placement.
(a) **Preplacement evaluation.** A recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

(b) **Evaluation procedures.** A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) **Placement procedures.** In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with 104.34.

(d) **Reevaluation.** A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

104.36 Procedural safeguards.
A recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a
review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

104.37 Nonacademic services.
(a) General. (1) A recipient to which this subpart applies shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) Counseling services. A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) Physical education and athletics. (1) In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

104.38 Preschool and adult education.
A recipient to which this subpart applies that provides preschool education or day care or adult education may not, on the basis of handicap, exclude qualified handicapped persons and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided.

104.39 Private education.
(a) A recipient that provides private elementary or secondary education may not, on the basis of handicap, exclude a qualified handicapped person if the person can, with minor adjustments, be provided an appropriate education, as defined in 104.33(b)(1), within that recipients program or activity.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.
(c) A recipient to which this section applies that provides special education shall do so in accordance with the provisions of 104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of 104.34, 104.37, and 104.38.

Subpart E—Postsecondary Education

104.41 Application of this subpart.
Subpart E applies to postsecondary education programs or activities, including postsecondary vocational education programs or activities, that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities.

104.42 Admissions and recruitment.
(a) General. Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) Admissions. In administering its admission policies, a recipient to which this subpart applies:

1. May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

2. May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Assistant Secretary to be available.

3. Shall assure itself that (i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant’s aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant’s impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

4. Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) Preadmission inquiry exception. When a recipient is taking remedial action to correct the effects of past discrimination pursuant to 104.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to 104.6(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped, Provided, That:
(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) **Validity studies.** For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

### 104.43 Treatment of students; general.

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education aid, benefits, or services to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, and education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its program or activity in the most integrated setting appropriate.

### 104.44 Academic adjustments.

(a) **Academic requirements.** A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) **Other rules.** A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient’s education program or activity.
(c) Course examinations. In its course examinations or other procedures for evaluating students’ academic achievement, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represent the student’s achievement in the course, rather than reflecting the student’s impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) Auxiliary aids. (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

104.45 Housing.

(a) Housing provided by the recipient. A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in subpart C, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students’ choice of living accommodations is, as a whole, comparable to that of nonhandicapped students.

(b) Other housing. A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

104.46 Financial and employment assistance to students.

(a) Provision of financial assistance. (1) In providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not,

(i) On the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or

(ii) Assist any entity or person that provides assistance to any of the recipient’s students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) Assistance in making available outside employment. A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such
employment opportunities, as a whole, are made available in a manner that would not violate subpart B if they were provided by the recipient.

(c) Employment of students by recipients. A recipient that employs any of its students may not do so in a manner that violates subpart B.

104.47 Nonacademic services.
(a) Physical education and athletics. (1) In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of 104.43(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) Counseling and placement services. A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) Social organizations. A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

Subpart F—Health, Welfare, and Social Services

104.51 Application of this subpart.
Subpart F applies to health, welfare, and other social service programs or activities that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities.

104.52 Health, welfare, and other social services.
(a) General. In providing health, welfare, or other social services or benefits, a recipient may not, on the basis of handicap:

(1) Deny a qualified handicapped person these benefits or services;

(2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons;

(3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in 104.4(b)) as the benefits or services provided to others;
(4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or

(5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) Notice. A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) Emergency treatment for the hearing impaired. A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(d) Auxiliary aids. (1) A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(2) The Assistant Secretary may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(3) For the purpose of this paragraph, auxiliary aids may include brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision.

104.53 Drug and alcohol addicts.
A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a medical condition, because of the person’s drug or alcohol abuse or alcoholism.

104.54 Education of institutionalized persons.
A recipient to which this subpart applies and that operates or supervises a program or activity that provides aid, benefits or services for persons who are institutionalized because of handicap shall ensure that each qualified handicapped person, as defined in 104.3(k)(2), in its program or activity is provided an appropriate education, as defined in 104.33(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under subpart D.

Subpart G—Procedures

104.61 Procedures.
The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in 100.6-100.10 and part 101 of this title.
Tips for Educators
ADD/ADHD AND SECTION 504

✓ Treat each Section 504 case individually
✓ Determine how ADD/ADHD impacts the individual
✓ Work collaboratively with parents and student
✓ Get input from teachers and other staff
✓ Implement and monitor intervention strategies
✓ Treat the diagnosis as one piece of the eligibility criteria
✓ Do an evaluation before developing a Section 504 plan
✓ Base your decisions on the data available
✓ Include appropriate accommodations—Do what the plan says
✓ Monitor the plan’s implementation and effectiveness
✓ Remember—changes to the plan must be made by the
  Emergency Management Team
✓ Do not make blanket refusals