

<b>FREDERICK COUNTY PUBLIC SCHOOLS</b>	<b>Reg. No. 400-66</b>
<b>Subject: SECTION 504 OF THE REHABILITATION ACT OF 1973 – IMPLEMENTATION GUIDELINES</b>	<b>Issued: 1/25/93</b>
<b>Preparing Office: Office of the Superintendent</b>	<b>Amended: 5/9/19</b>

I. Policy

II. Procedures

A. Statement of Nondiscrimination

1. Frederick County Public Schools does not discriminate on the basis of disability in violation of Section 504 of the Rehabilitation Act of 1973 or the accompanying regulations.
2. Frederick County Public Schools does not discriminate in admission, access to, or treatment of employees in its programs and activities.

B. Purpose

The purpose of these regulations is to administer federal law and ensure that no qualified person shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination on the basis of disability under any program or activity that receives or benefits from federal financial assistance.

C. Definitions

1. "Disability" means (with respect to an individual)
  - a. A physical or mental impairment, that substantially limits one or more major life activities;
  - b. A record of such an impairment;
  - c. Being regarded as having such an impairment; or
  - d. An impairment that is episodic or in remission if it would substantially limit a major life activity, when active.
2. "Individual with a disability" (as it relates to drug/alcohol users)

The term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when a covered entity (public school) acts on the basis of such use. This section does not exclude an individual who:

- a. Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs or who has otherwise been successfully rehabilitated and is no longer engaging in such use; or
- b. Is participating in a supervised rehabilitation program and is no longer engaging in illegal use of drugs; or
- c. Is erroneously regarded as engaging in illegal use of drugs, but is not engaging in such use.

With regard to employment, an alcoholic may qualify as an individual with a disability if the condition does not render the individual incapable of performing the essential duties of the job and does not pose a direct threat to the property or safety of others.

3. "Physical or mental impairment"

- 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; genitourinary; hermic 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.

4. "Major life activities"

Major life activities include, but are not limited to, functions such as caring for one's self, performing manual tasks, walking, bending, seeing, hearing, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

5. "Has a record of such an impairment"

This term means someone who has a history of, or has been misclassified as having a mental or physical impairment that substantially limits one or more of the major life activities.

6. "Is regarded as having an impairment"

- a. One who has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting such a limitation;
- b. One who 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. One who has none of the impairments listed under the definition of "physical or mental impairment" but is treated as having such an impairment.

7. "Qualified disabled person"

- a. One who is of an age when non-disabled persons are provided public preschool, elementary, secondary or adult educational services;
- b. One who is of an age when it is mandatory under Maryland law to provide such services to disabled persons; or
- c. One who is entitled to a free appropriate public education from the State of Maryland under Section 612 of the Education of the Handicapped Act.

8. "Disability"

- a. Any condition or characteristic that renders a person a "disabled person" as defined above.
- b. All individuals determined to be disabled under IDEA (Individuals with Disabilities Education Act) are disabled under Section 504. However, all individuals who have been determined to be disabled under Section 504 may not be disabled under IDEA.

9. "Appropriate education"

The provision of regular and/or special education and related aids and services that are designed to meet the individual educational needs of persons with disabilities as adequately meeting the educational needs of non-disabled persons.

10. "Free education"

The provision of a "free education" is the provision of educational and related services without cost to the disabled person or to his or her parents or guardian except for those fees that are imposed on non-disabled persons or their parents or guardians.

11. "School 504 team"

The "school 504 team" may be the same team that the school uses to screen students for special services (individualized education program (IEP) team). The team is selected by the principal and may include any of the following members: administrator, guidance counselor, psychologist, pupil personnel worker, teacher(s), and others.

12. "Auxiliary Aids and Services"

Auxiliary aids and services include, but are not limited to, qualified interpreters available to individuals with hearing impairments and qualified readers and taped texts available to individuals with visual impairments.

D. Consideration of Mitigating Factors

The analysis of whether a student has an impairment that substantially limits a major life activity must be conducted without regard to mitigating measures such as but not limited to:

1. Medication, medical supplies/equipment, low-vision devices (not including ordinary eye glasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants.
2. Use of assistive technology.

E. Location and Notification

1. The Department of Special Education through the Child Find process shall undertake to identify and locate every qualified disabled person residing in Frederick County who is not receiving a public education.
2. The Department of Special Education shall take appropriate steps to notify disabled persons and their parents or guardians of the school system's obligation to provide a free appropriate public education to qualified disabled persons.

F. Evaluation

1. The Child Find process applies to students who are or who may be a "disabled person" under Section 504 of the Rehabilitation Act of 1973.
2. Prior to the initial placement of a student who is or is believed to be disabled under Section 504, the student shall be evaluated to:
  - a. Determine eligibility for services as a "disabled person"; and
  - b. Establish the services needed by the student.
3. The evaluation procedures to be followed may be, but need not be, all those evaluation procedures that are followed for evaluating students who are eventually identified as having a disability under the Individuals With Disabilities Education Act (IDEA). However, for students who may be disabled under Section 504 of the Rehabilitation Act of 1973, but not also disabled under the IDEA, the evaluation procedures must ensure that:
  - a. Tests and other evaluation material 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;

- b. Tests and the 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
  - c. 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 tests purport to measure).
4. Each student who is a "disabled person" under Section 504 of the Rehabilitation Act of 1973 must be re-evaluated at least every three (3) years. A student's parent(s)/guardian(s) or teacher may request an earlier evaluation. A student must be re-evaluated prior to implementing a significant change in placement, i.e. expulsion, suspensions in some cases (see Section I.), transfer to home teachers, dismissal, etc.

#### G. Placement

- 1. Services to students identified as disabled students under Section 504, of the Rehabilitation Act of 1973 will be determined by the school 504 team. Referral may be initiated through the Child Find screening process via the IEP team or by the parent, a community professional, or any school-based personnel.
- 2. If after screening, the school 504 team determines that the student is a "disabled person" under Section 504 of the Rehabilitation Act of 1973, the committee shall develop a 504 student accommodation plan to ensure that the student receives a free appropriate public education.
- 3. In interpreting the evaluation data in making placement decisions, the school 504 team shall:
  - a. Draw upon information from a variety of sources including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior;
  - b. Ensure that all the evaluation data is documented and carefully considered;
  - c. 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
  - d. Ensure that the student is placed with non-disabled students to the maximum extent appropriate to the student's needs, in academic and non-academic settings (including extracurricular services and activities). Whenever the committee places a student in an academic setting other than the regular educational environment, it shall take into account the proximity of the alternative setting to the student's home.

4. Although the IDEA-eligible student is also entitled to protection under 504, the services recommended by the IEP team shall be delivered through an IEP.
5. If the school IEP team determines that the student is a "disabled person" under Section 504 of the Rehabilitation Act of 1973, but does not also meet the definition of "disabled" under the IDEA, the school 504 team will determine whether the student requires accommodations to the general education program and/or services to allow the student's educational needs to be met as adequately as the educational needs of non-disabled students are met. The recommended services and accommodations should be listed in writing in a 504 Student Accommodation Plan but not in an IEP.
6. Services and accommodations must be based on the needs of the individual student.
  - a. Accommodations may include but are not limited to: the instructional program, behavior techniques and procedures, teacher/pupil expectations, classroom organization and/or procedures, level or instructional materials, and instructional groupings.
  - b. Services may include but are not limited to: regular education, student counseling, related services, auxiliary aids and services, non-academic and extracurricular services and activities, physical education and athletics, parent conferences, referral to community agencies through the school multi-discipline department, provision of assistance through peer tutors and adult volunteers, and specialized transportation for the physically challenged.

#### H. Due Process Safeguards and Grievance Procedures for Students

With respect to actions regarding the identification, evaluation or educational placement of a student who is or may be a person with a disability under Section 504, the following procedural safeguards shall be afforded:

1. Notice to parent(s)/guardian(s) (written or oral) of any decision regarding the identification, evaluation, or educational placement of the student.
2. An opportunity for the parents or guardian of the student to examine relevant educational records.
3. An opportunity for an informal resolution session with the director of Special Education and Psychological Services.
4. An impartial hearing with the opportunity for participation by the student's parents or guardian and representation by counsel. All due process hearings shall be conducted by an impartial hearing officer who is not employed by the school system and who does not have a personal or professional interest that could conflict with his or her objectivity in the hearing.

5. If further review is desired, an aggrieved individual may file a complaint with the Federal Office of Civil Rights.
6. Due process hearing proceedings will follow the same timelines as specified for IDEA hearings.

I. Grievance Procedure - Employees, Beneficiaries Other than Students

1. This grievance procedure is intended to provide appropriate due process standards and facilitate the prompt and equitable resolution of complaints alleging that the school system has violated Section 504 in the provisions of its programs or activities, other than regarding the provision of a free, appropriate education to students (for student issues, refer to section G.). This grievance procedure does not apply to complaints from employment applicants.
2. An individual may file a written complaint under this section with the chief of staff and legal counsel who is designated as the Section 504 coordinator for employee and citizen issues. The form is attached as Exhibit 1 to this regulation.
3. The coordinator will investigate the complaint. As part of the investigation, the coordinator may interview or take evidence from the complainant and affected parties. The coordinator shall attempt to resolve the complaint informally. If the matter is not resolved informally, the coordinator will issue a written opinion within thirty days of the receipt of the complaint. The complainant may appeal that opinion to the superintendent of schools for Frederick County.
4. The superintendent of schools will review the matter and issue a decision within thirty (30) days. If dissatisfied with the superintendent's decision, the complainant may file a complaint with the Federal Office of Civil Rights.

J. Student Suspension and Expulsion Procedures under Section 504

1. Section 504 regulations require that a school district evaluate a student with a disability before making a "significant change in his or her placement."
2. If a proposed exclusion of a disabled student is permanent or for an indefinite period, or for more than ten consecutive school days, the exclusion constitutes a "significant change in placement" under Section 504 regulations.
3. If a series of suspensions that are more than ten (10) days in duration creates a pattern of exclusions that constitutes a "significant change in placement," the student must be evaluated. The determination of whether a series of suspensions creates a pattern of exclusions that constitutes a significant change in placement must be made on a case-by-case basis. Among the factors that should be considered in determining whether a series of suspensions has resulted in a "significant change in placement" are the length of each suspension, the proximity of the suspensions to one another, and the total amount of time the student is excluded from school.

4. In order to implement an exclusion (suspension or expulsion) that constitutes a "significant change in placement," a school must first conduct a re-evaluation of the student.
5. As a first step in this re-evaluation, the school must determine, using appropriate evaluation procedures that conform with Section 504 regulations, whether the misconduct is caused by the student's disability.
6. If it is determined that the student's misconduct is caused by the student's disability, the evaluation team must continue the evaluation to determine whether the student's current educational placement is appropriate.
7. If it is determined that the misconduct is not caused by the student's disability, the student may be excluded from school in the same manner as similarly situated non-disabled students are excluded. In such a situation, all educational services to the student may cease.
8. When the placement of a student with disabilities is changed for disciplinary reasons, the student and his or her parent or guardian are entitled to a system of procedural safeguards that includes notice, an opportunity for the examination of records, an impartial hearing (with participation of parents and opportunity for counsel), and a review procedure. Thus, if after re-evaluation the parents disagree with the determination regarding relatedness of the behavior to the disability, or with the subsequent placement proposal (in those cases where the behavior is determined to be caused by the disability) they may request an impartial hearing.
9. These procedures need not be followed for students who are disabled solely by virtue of being alcoholics or drug addicts with regard to offenses against school disciplinary rules as to the use and possession of drugs and alcohol. For example, if a student is disabled solely by virtue of being addicted to drugs or alcohol, and the student breaks a school rule that no drugs are allowed on school property and the penalty as to all students for breaking that rule is expulsion; the disabled student may be expelled with no requirement for a re-evaluation. This exception, however, does not apply to children who are disabled because of drug or alcohol addiction and, in addition, have some other disability. For children in that situation, the procedures outlined in this section must be followed.
10. A school may use its normal, reasonable procedures, short of a change in placement, for dealing with students who are endangering themselves or others. Where a student presents an immediate threat to the safety of others, the school may promptly adjust the placement or suspend him or her for up to ten (10) school days, in accordance with rules that are applied to all students.



K. Section 504 Coordinator

1. Students

Frederick County Public Schools Section 504 coordinator for issues involving students is the Supervisor of Special Education and 504 Compliance or designee.

2. Employees, Citizens, other Beneficiaries and Entities

Frederick County Public Schools Section 504 coordinator for issues involving employees, community members, organizations or other entities is the chief of staff and legal counsel.

L. Notice

1. Students and Parents

- a. The coordinator for student issues shall periodically notify students and parents of the statement of nondiscrimination contained in section A and of the name and title of the school system's coordinator for student issues.
- b. This notice shall appear in Frederick County Public Schools student/parent calendar handbook.
- c. The coordinator for student issues shall also provide notice to parents of their rights under Section 504.

2. Employees and Community

- a. The coordinator for employee and citizen issues shall periodically inform appropriate persons of the statement of nondiscrimination contained in section A and of the names and title of the school system's coordinator for employee and citizen issues.
- b. This notice shall appear in the school system's recruitment materials.
- c. This notice shall be sent to representatives of the FCTA, FASSE, and FCASA.

Approved:

*original signed by*

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Theresa R. Alban  
Superintendent

**SECTION 504 OF THE REHABILITATION ACT**  
**Grievance Procedure for FCPS Employees and Citizens – Complaint Form**

Date: \_\_\_\_\_

Name of Complainant:

\_\_\_\_\_

Contact Information:

Email: \_\_\_\_\_

Phone Numbers: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

I prefer to communicate by:

Email

U.S. mail

Phone

Briefly describe the nature of your complaint and specifically how you believe Frederick County Public Schools has violated your rights based on disability. (You may attach additional pages if you need more room to explain.) \_\_\_\_\_

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What is the remedy you are seeking? \_\_\_\_\_

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**Return form to:** Chief of Staff & Legal Counsel, Frederick County Public Schools, 191 S. East Street, Frederick, MD 21701