

**A. Purpose**

1. To outline procedures for identifying, screening, evaluating, and placing students eligible to receive reasonable modifications under Section 504 of the Rehabilitation Act of 1973 (Section 504) and subsequent amendments.
2. To clarify that the procedures described in this regulation apply to the participation of eligible students with disabilities in Frederick County Public Schools (FCPS) preschool, elementary, and secondary general education programs and activities; including academic, nonacademic, and extracurricular activities.

**B. Background**

Section 504 is a federal civil rights and non-discrimination statute designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education. All public schools and school districts, including public charter schools, that receive Federal financial assistance from the Department must comply with Section 504. The law is intended to provide students who are eligible to receive services under Section 504 equal access to the educational environment.

**C. Definitions**

1. “Accommodation” is defined to mean a strategy, service, or facility modification that allows a student to access academic, non-academic, and extracurricular activities comparable to peers without disabilities.
2. “Child Find Process” is defined to mean the procedures under which FCPS employees must identify and locate all children with disabilities who reside within Frederick County, regardless of whether or not they are currently enrolled in FCPS and take appropriate steps to notify these students and their parents of FCPS's duty to child find.
3. “Discrimination”, for the purposes of this regulation, is defined to mean any act or omission due to an individual’s status or perceived status in a protected class that creates an intimidating, hostile, or offensive educational environment, or substantially interferes with an individual’s education, or otherwise is sufficiently serious to limit a student’s ability to participate in or benefit from an educational program.
4. “Extracurricular Activities” is defined to mean FCPS sponsored activities available to students beyond the regular school day, which are voluntary and not required for the satisfactory completion of a particular class.
5. “Free Appropriate Public Education” (FAPE) is defined as the provision of regular or

special education and related aids and services that are designed to meet a student with a disability's individual educational needs as adequately as the educational needs of students without disabilities are met.

6. "Harassment" is defined to mean actual or perceived negative actions that offend, ridicule, or demean another student with regard to race, which may also include acts of racism, ethnicity, national origin, immigration status, family/parental or marital status, sex, sexual orientation, gender identity, gender expression, genetic information, religion, ancestry, physical attributes, health condition, socioeconomic status, physical or mental ability, or disability.
7. "Intimidation" is defined to mean any communication or action directed against another student that threatens or induces a sense of fear and/or inferiority. Retaliation may be considered a form of intimidation.
8. "Least Restrictive Environment" is defined to mean the educational environment in which a student eligible for a Section 504 Plan can be educated with peers without disabilities to the maximum extent appropriate.
9. "Major Life Activity" is defined to include, but are not limited to:
  - a. Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, working; and
  - b. The operation of a major bodily function, such as the functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems, and includes the operation of an individual organ within a body system.
10. "Mitigating Measures" is defined as, but not limited to:
  - a. Medication, medical supplies/equipment, low-vision devices (devices that magnify, enhance, or otherwise augment a visual image, but not including ordinary eye glasses or contact lenses), prosthetics including limbs and devices, hearing aid(s) and cochlear implant(s) or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;
  - a. Use of assistive technology;
  - b. Reasonable modifications or auxiliary aids or services;
  - c. Learned behavioral or adaptive neurological modifications; or
  - d. Psychotherapy, behavioral therapy, or physical therapy.
11. "Parent" is defined to mean a biological or adoptive parent, a court-appointed custodian or guardian, a foster parent, or a caregiver (as defined by the Education Article of the Maryland Annotated Code or as designated by the United States Department of Health and Human Services, Office of Refugee Resettlement).
12. "Physical or Mental Impairment" is defined as:

- a. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as, but not limited to, neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or
  - b. Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability; and
  - c. Includes, but is not limited to, contagious and noncontagious diseases and conditions such as the following: orthopedic, visual, speech, and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, dyslexia and other specific learning disabilities, Attention Deficit Hyperactivity Disorder, Human Immunodeficiency Virus infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.
13. “Placement” is defined to mean the services and accommodations that a student with a disability must receive in order to obtain a Free and Appropriate Public Education (FAPE).
14. “Reasonable Modifications” is defined to mean any alteration of policies, practices, and procedures for a student to avoid discrimination on the basis of disability without fundamentally altering the nature of the curriculum, service, program or activity.
15. “Section 504 Plan” is defined as a written document developed for an eligible student that allows the student to receive a free and appropriate education in the least restrictive environment.
16. “Section 504 Team” or “504 Team” is defined to mean a group of individuals possessing knowledge of a student, the student’s evaluation data, placement options, Section 504, this regulation, and related, relevant Board policies and FCPS regulations.
- a. The Section 504 Team may consist of the student's parent, the student (if age 14 or older), one of the student's teachers, the Section 504 case manager, and the principal/designee.
  - b. Depending on the specific needs of the student, additional individuals may need to be included as part of the Section 504 Team, such as the school counselor, the school nurse, or other FCPS school-based professional qualified to interpret the implications of evaluations; such as an occupational therapist, social worker, physical therapist, adapted physical education specialist, vision specialist, deaf and hard of hearing specialist; and/or outside providers who are knowledgeable about the student.
17. “Staff” is defined as all FCPS school system and contracted employees.
18. “Student With a Disability”, for the purposes of this regulation, is defined to mean a student who qualifies as a student with a disability pursuant to Section 504, and who, because of such qualification, requires a Section 504 Plan.

19. “Substantially Limits” is defined to mean a term that refers to an individual who is limited in performing a major life activity (condition, manner or duration) as compared to most non-disabled students in the general population.
20. “Temporary Impairment” is defined to mean a substantial limitation, actual or expected, of one or more major life activities of an individual for an extended period of time, such as a broken limb that will eventually heal.

## **D. Procedures**

### **1. Location and Identification of Students and Notification**

- a. The Office of Special Education’s Child Find process will be used to identify students with disabilities who are eligible for services under Section 504.
- b. The Office of Special Education shall take appropriate steps to notify students with disabilities and students suspected of having disabilities and their parents of FCPS’s obligation to provide a FAPE to qualified students.

### **2. Referrals**

- a. Services to students identified as disabled students under Section 504, of the Rehabilitation Act of 1973, will be determined by the Section 504 team.
- b. A student may be referred by a parent, teacher, or any other FCPS employee for consideration as to whether the student should be evaluated under Section 504.
- c. A referral may also be initiated through the Child Find process or by a student’s Individualized Education Program (IEP) team, if the student has an IEP, or both.
- d. If FCPS staff suspect a student has a disability, a referral should be promptly made to the Section 504 Team.

### **3. Evaluation**

- a. 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:
  - i. Determine eligibility for services as a student with a disability; and
  - ii. Establish the services needed by the student.
- b. If a 504 Team determines assessments/testing are necessary to determine eligibility, parental consent will be obtained.
- c. FCPS will consider any private evaluations submitted by a student’s parents that are provided in whole to the Section 504 Team. [FCPS Regulation 508-02](#), *School IEP Team*, outlines the process for making referrals to the school IEP team.

### **4. Eligibility**

- a. A student who has a physical or mental impairment which substantially limits one or more of such student’s major life activities is entitled to a FAPE and is eligible to receive services under Section 504.
- b. For students who are considered disabled under Section 504, but not also disabled under the Individuals with Disabilities Education Act (IDEA), the evaluation procedures must ensure that:

- i. 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;
- ii. 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
- iii. 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).
- c. Eligibility must be based on multiple data points from a variety of sources that support the decision.
- d. Both of the following criteria must be met before a student is eligible for a Section 504 Plan:
  - i. Does the student have a physical or mental impairment?
  - ii. Does the physical or mental impairment substantially limit a major life activity?
- e. The impairment must substantially limit one or more major life activities, without regard to mitigating measures, in order to be considered a disability under Section 504.
- f. It is important to note for impairments that are episodic or in remission, the 504 Team is to make the determination for the time the impairment is active.

## 5. **Placement/Identification**

- a. If the student meets eligibility requirements as a “student with a disability” under Section 504, the Section 504 Team shall develop a Section 504 Plan to ensure that the student receives a free appropriate public education.
- b. In interpreting evaluation data and in making placement decisions, the Section 504 Team shall:
  - i. Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;
  - ii. Establish procedures to ensure that information obtained from all such sources is documented and carefully considered;
  - iii. 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
  - iv. Ensure that the placement decision is made in conformity with Section 504 regulations.

### 1. **Academic Setting**

- a. Section 504 Teams must ensure the student with a disability remains in the general education environment unless the district can show that the education of the student in the general education environment is not having their needs met with the use of supplementary aids and services (*i.e.*, accommodations).

- b. Whenever the district places a student in a setting other than the regular educational environment, it shall take into account the proximity of the alternate setting to the student's home.
2. **Non-Academic Setting**
- a. In providing or arranging for the provision of nonacademic and extracurricular services and activities, the district shall ensure that students with disabilities participate with students without disabilities in such activities and services to the maximum extent appropriate to the needs of the student with a disability in question.
  - b. Nonacademic and extracurricular services include, but is not limited to, meals, recess periods, counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by FCPS, referrals to agencies which provide assistance to individuals with disabilities, and employment of students, including both employment by the recipient and assistance in making available outside employment.
  - c. If the school IEP team determines that the student does not meet the definition of “disabled” under the IDEA, the Section 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 Section 504 Plan.
6. **Services and Accommodations.** Services and accommodations must relate to the area of the identified impairment and be based on data to support the need for the accommodation to meet the individual educational needs as adequately as the needs of nondisabled peers.
- a. Accommodations may include but are not limited to: the instructional program, behavior techniques and procedures, teacher/student 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, additional supports via Occupational or Physical Therapy consult, 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.
  - c. In cases where an accommodation is requested without adequate data to support the need for the accommodation, the Section 504 Team may agree to collect the necessary data and convene again to determine the need for the accommodation based on a review of data.
  - d. Requested accommodations should be thoroughly considered before they are deemed to create an undue hardship. Financial costs of accommodations may not be considered in determining whether they are reasonable. Accommodations may not impose an undue hardship on the educational institution’s operations or materially alter or change the nature of the academic or nonacademic program.

- i. For example, a requested accommodation of “no penalty for spelling errors” could materially alter a language arts class if that class were specifically teaching spelling skills.
    - ii. Additionally, a requested accommodation for a specific, expensive technology or equipment that is not readily available or financially feasible for general use when alternative solutions are available would be considered creating undue hardship.
- 7. Review/Re-Evaluation**
- a. Section 504 Plans must be reviewed annually, within one (1) year of the date of the initial Section 504 Plan or last annual review meeting.
  - b. Each student who is a “student with a disability” under Section 504 must be re-evaluated at least every three (3) years.
  - c. A student’s parent(s) or teacher may request an earlier evaluation.
  - d. A student must be re-evaluated prior to implementing a significant change in placement, i.e., expulsion, suspensions in some cases, transfer to home teachers, dismissal, etc.
- 8. Designation of Section 504 Coordinator**
- a. The District Level FCPS Section 504 Coordinator is the FCPS central office 504 Coordinator or designee.
  - b. The District Level Section 504 Coordinator is responsible for coordinating the District’s compliance with Section 504, including addressing complaints regarding the identification, evaluation, or educational placement of a student with a disability under Section 504.
- 9. Section 504 Procedural Safeguards and Resolution Procedures**
- a. FCPS will ensure that all students eligible for Section 504 Plans receive a FAPE in the least restrictive environment.
  - b. Parents shall be notified in writing of final District decisions regarding the identification, evaluation, or educational placement of students with disabilities or suspected disabilities, along with the Section 504 Procedural Safeguards. This notice and the Safeguards will also be provided to students who are entitled to these rights at age 18.
  - c. If a parent, eligible student, or other individual, or other individual is dissatisfied or disagrees with the identification, evaluation, or educational placement/program of a student with a disability under Section 504, or believes the Section 504 Plan has not been implemented or a student has been subject to discrimination due to the student’s disability, they may:
    - i. Request a Section 504 review of the decision by submitting a written request to the District Level Section 504 Coordinator.
    - ii. Request a hearing before the Superintendent or an impartial hearing officer. The Superintendent or their designee will appoint the impartial hearing officer.
  - d. **Section 504 Review and Informal Mediation**
    - i. A parent or eligible student can request a Section 504 review by completing the request for Section 504 Review Form and submitting it to the District Level 504 Coordinator.

- ii. Section 504 reviews are limited to alleged actions that have occurred within one (1) year which, in the absence of federal guidance, aligns to the Maryland Department of Education’s limitation on special education complaints.
  - iii. Section 504 reviews may include the utilization of informal mediation.
  - iv. Section 504 reviews will be investigated and responded to within thirty (30) days of receipt. The District Level Section 504 Coordinator will issue a written decision.
- e. **Impartial Hearing**
- i. A parent or eligible student can request an impartial hearing before the Superintendent or an impartial hearing officer. Requests for an impartial hearing must be submitted in writing to the District Level 504 Coordinator
  - ii. The parent shall set forth in writing the request for a hearing and include all of the following:
    - 1. The circumstances giving rise to the request for a hearing, including all relevant facts;
    - 2. The specific issues to be decided at the impartial due process hearing; and
    - 3. The relief requested.
  - iii. Requests for an impartial hearing must be made in writing and within sixty (60) calendar days from date of the District's written notice of proposed or refused action. Parents may utilize the Section 504 Review Form but are not required to do so as long as the written request provides all relevant information indicated above.
  - iv. Any party to an impartial Section 504 hearing has the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of the student.

10. **Office of Civil Rights (OCR) Complaint.** This regulation does not deny the right of a parent or student or other individual to file a formal complaint with the Federal Office of Civil Rights (OCR) if the parent or student or other individual believes that the school system has committed a violation that falls under the jurisdiction of the OCR. Complaints may be filed online at: <https://www.ed.gov/laws-and-policy/civil-rights-laws/file-complaint/ocr-discrimination-complaint-form>.

11. **Discipline.** A student with or eligible for a Section 504 Plan should be disciplined consistent with the provisions and procedures outlined in [Board Policy 403](#), *Student Discipline*, [FCPS Regulation 403-01](#), *Student Discipline*, [FCPS Regulation 408-01](#), *Suspension and Expulsion*, and [FCPS Regulation 300-39](#), *Weapon Possession on School Property*.

12. **Implementation/Compliance**

- a. A student’s Section 504 Plan will be accessible to appropriate FCPS employees who provide services to the student.
- b. All FCPS staff will implement the student’s Section 504 Plan and required accommodations as written by the Section 504 Team.
- c. No individual staff member has discretion or authority to alter or otherwise interpret the Section 504 Plan or deny any accommodations granted to the student.



- d. FCPS will routinely take steps to ensure staff members are trained in Section 504 rules and procedures. Appropriate FCPS Central Office staff may internally audit a school for Section 504 compliance.
  - e. The Office for Civil Rights of the U.S. Department of Education has jurisdiction to enforce Section 504 if the school has discriminated, harassed, or retaliated against anyone based on disability.
13. **Student Records.** All records relating to a student’s Section 504 Plan will be maintained in compliance with the Family Educational Rights and Privacy Act (FERPA).
14. **Extracurricular Activities**
- a. A student eligible for a Section 504 Plan will have the same opportunity to participate in extracurricular activities as any FCPS student.
  - b. The Section 504 Plan may include accommodations and/or reasonable modifications for the student to access extracurricular activities, as necessary.
  - c. A high school student eligible for a Section 504 Plan must meet the academic eligibility requirements consistent with the appropriate provisions of [FCPS Regulation 500-24](#), *Academic Standards for Participation in Extracurricular Activities in High School*.
15. **Professional Learning.** The Department of Special Education and Student Services will ensure that annual Section 504 professional learning will be provided to appropriate FCPS staff.

**E. Related Information**

- 1. **Board Policy**
  - a. [Policy 403](#), *Student Discipline*
  - b. [Policy 421](#), *Student Education Records*
  - c. [Policy 444](#), *Educational Equity and Excellence*
  - d. [Policy 508](#), *Special Education*
  - e. [Policy 509](#), *Extracurricular and Co-Curricular Activities*
- 2. **Code of Federal Regulations (CFR)**
  - a. 28 CFR §§35.101-35.190
  - b. 34 CFR §§104.1-104.61
  - c. 34 CFR §§99.1-99.67
- 3. **External Resources**
  - a. [US Department of Education “Protecting Students With Disabilities: Frequently Asked Questions About Section 504 and the Education of Children with Disabilities: Webpage](#)
  - b. [US Department of Education, Office for Civil Rights. \(July 2022\). \*Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline Under Section 504 of the Rehabilitation Act of 1973\*](#)
  - c. [US Department of Education, Office for Civil Rights. \(December 2016\). \*Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools\*](#)

**4. FCPS Regulations**

- a. [Regulation 400-20](#), *Student Records*
- b. [Regulation 400-48](#), *Bullying, Harassment, Intimidation Complaint Process for Students*
- c. [Regulation 400-57](#), *Bus Discipline Procedures*
- d. [Regulation 400-60](#), *Placement of Students Charged with a Reportable Offense Off-Campus*
- e. [Regulation 403-01](#), *Student Discipline*
- f. [Regulation 408-01](#), *Suspension and Expulsion*
- g. [Regulation 414-01](#), *Field Trips*
- h. [Regulation 434-01](#), *Technology Use, Students*
- i. [Regulation 500-15](#), *Homework Guidelines*
- j. [Regulation 500-24](#), *Academic Standards for Participation in Extracurricular Activities in High School*
- k. [Regulation 508-02](#), *School IEP Team*

**5. FCPS Resources**

- a. [Bullying, Harassment, or Intimidation Reporting Form](#)
- b. [FCPS Notice of Non-Discrimination Webpage](#)
- c. [Parent/Student Handbook and Student Code of Conduct](#)
- d. [Section 504 Parent Brochure \(2017\)](#)
- e. [Section 504 Rehabilitation Act of 1973 Summary of Parental Rights](#)
- f. [FCPS Handbook for Implementing Section 504 of the Rehabilitation Act of 1973](#)
- g. Section 504 Complaint Form
- h. Section 504 Referral Form

**6. Federal Law**

- a. Americans with Disabilities Act, Title II (ADA)
- b. Americans with Disabilities Amendments Act of 2008 (ADAAA)
- c. Family Education Rights and Privacy Act (FERPA)
- d. Individuals with Disabilities Education Act (IDEA)
- e. Section 504 of the Rehabilitation Act of 1973

**7. Federal Statutes**

- a. 20 USC § 1400, *et seq.*
- b. 20 USC § 1232g, *et seq.*
- c. 29 USC § 794, *et seq.*
- d. 42 USC § 12101, *et seq.*
- e. 42 USC § 12115, *et seq.*

**F. Regulation History** (Maintained by Legal Services)

<i>Responsible Office</i>	Department of Special Education and Student Services
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