

REGULATION MONTGOMERY COUNTY PUBLIC SCHOOLS

Related Entries: ACA, ACA-RA, ACG, ACG-RB, BLB
Responsible Office: Chief Operating Officer; Office of Human Resources and Development

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

I. PURPOSE

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

II. ISSUE

- A. This regulation applies to the participation in any MCPS service by qualified members of the public with disabilities; the MCPS job application procedures; the hiring, advancement, or discharge of employees; employee compensation; and job training and other terms, conditions, and privileges of employment. Procedures for eligible students with disabilities are set forth in Regulation ACG-RB, *Reasonable Accommodations and Modifications for Students Eligible Under Section 504 of the Rehabilitation Act of 1973*.
- B. The *Americans with Disabilities Act Amendments Act of 2008 (ADAAA)* is a comprehensive civil rights statute that provides protection to qualified individuals with disabilities in the areas of employment, state and local government services, and telecommunications. This regulation is to be construed to comport with the ADAAA and its implementing regulations.
- C. An individual with a disability is—
1. a person with a physical or mental impairment that substantially limits one or more of the major life activities of an individual,

2. A person with a record of such an impairment, or
3. A person regarded as having such an impairment.
 - a) An individual meets the requirement of being regarded as having such an impairment if the individual establishes that they have been subjected to discrimination because of an actual or perceived physical or mental impairment. This does not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of six months or less.
 - b) An individual who meets the definition of an individual with a disability solely because they are regarded as having a disability need not be provided with reasonable accommodations or modifications to policies, practices, or procedures.
- D. It is the responsibility of administrative and supervisory staff to administer employment policies, regulations, and practices in such a way that the rights of individuals with disabilities are upheld.

III. DEFINITIONS

- A. *Auxiliary aids and services* include the following:
 1. Qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments.
 2. Qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments.
 3. Acquisition or modification of equipment or devices.
 4. Other similar services and actions.
- B. *Direct threat* means a significant risk of substantial harm to the health or safety of others that cannot be eliminated or reduced by reasonable accommodation.
- C. The terms *disability* and *qualified individual with a disability* do not include individuals currently engaging in the illegal use of drugs, when MCPS acts on the basis of such use.

- D. *Essential functions* are the fundamental job duties of the employment position, as determined by MCPS, that the individual with a disability holds or desires. The term does not include the marginal functions of that position.
- E. *Interactive process* means the information-gathering communications between the employer and the qualified individual with a disability requesting a reasonable accommodation or modification, and may include obtaining relevant information from an employee's supervisor and the employee's health-care provider for the purpose of analyzing the essential functions of the employee's job, determining job-related limitations imposed by the individual's disability, and identifying reasonable accommodations to enable the employee to perform their essential functions.
- F. *Low vision devices* means devices that magnify, enhance, or otherwise augment a visual image.
- G. *Major life activities* include, but are not limited to, caring for self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.
- H. *Mitigating measures* include but are not limited to, medication; medical supplies; equipment or appliances; low-vision devices (which do not include ordinary eyeglasses or contact lenses); prosthetics, including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; or learned behavioral or adaptive neurological modifications.
- I. *Physical or mental impairment* means the following:
1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

2. Any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- J. The term *principal/administrator* means the principal of an MCPS school or an individual in charge of an MCPS unit that is not a school.
- K. *Program accessibility* means that MCPS services, when viewed in their entirety, must be readily accessible to and usable by qualified individuals with disabilities.
- L. *A qualified individual with a disability* means the following:
1. With regard to employment, an individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such a position.
 2. With regard to services, programs, and activities, an individual with a disability who—with or without reasonable modifications to rules, policies, or practices; the removal of architectural, communication, or transportation barriers; or the provision of auxiliary aids and services—meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by MCPS.
- M. *Reasonable accommodation*, with respect to employment, means the following:
1. Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires.
 2. Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position.
 3. Modifications or adjustments that enable an MCPS employee with a disability to enjoy equal benefits and privileges of employment, as are enjoyed by other similarly situated MCPS employees without disabilities.

4. A reasonable accommodation does not include an accommodation, modification, or adjustment that presents an undue hardship, would require the elimination or reassignment of an essential function of the position, or would present a direct threat to the health or safety of the individual or others.

N. *Reasonable modification*, with respect to services, programs, or activities means the following:

1. A reasonable modification of a policy, practice, or procedure to avoid discrimination on the basis of disability, unless that modification would result in an undue hardship, fundamentally alter the nature of the service, or present a direct threat to the health or safety of the individual or others.
2. A method of making a service accessible or usable to a qualified individual with a disability, unless that method would result in an undue hardship, a fundamental alteration of the service, or present a direct threat to the health or safety of the individual or others.
3. The provision of auxiliary aids for qualified individuals with disabilities, unless those aids would fundamentally alter the nature of the service or, where applicable, constitute an undue financial and administrative burden.

O. The term *services* includes any services, programs, and activities provided by MCPS.

P. *Substantially limits* means the following:

1. Substantially limited in the ability to perform a major life activity as compared with most people in the general population.
2. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
3. The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures.
4. The following factors should be considered in determining whether an individual is substantially limited in a major life activity:
 - a) The nature and severity of the impairment;

- b) The duration or expected duration of the impairment; and
- c) The permanent or long-term impact, or the expected permanent or long-term impact of or resulting from the impairment.

Q. *Undue hardship* with respect to the provision of an accommodation or modification means significant difficulty or expense, when considered in light of—

1. the nature and net cost of the accommodation or modification;
2. the overall financial resources of MCPS;
3. the overall size of MCPS with respect to the number of its employees;
4. the number, type, and location of MCPS facilities;
5. the type of operation(s) conducted by MCPS, including the geographic separateness and administrative or fiscal relationship of the school or unit in question to MCPS as a whole; and
6. the impact of the accommodation or modification on the operation of the school or unit, including the impact on the ability of other employees and individuals to perform their duties or participate in services, and the impact on the school's or unit's ability to conduct business.

III. PROCEDURES

A. The Office of Human Resources and Development (OHRD) is responsible for coordinating MCPS's efforts to comply with and carry out its responsibilities under the ADA. The ADA compliance coordinator provides guidance in matters related to the rights of qualified individuals with disabilities. The ADA compliance coordinator receives requests for accommodations as set forth in section III.B below.

B. Requests for Accommodations or Modifications under ADA

1. Who May Request an Accommodation or Modification
 - a) An MCPS employee who is a qualified individual with a disability may request a reasonable accommodation in order to perform essential job functions or enjoy other equal benefits of employment

by completing the appropriate section on MCPS Form 270-6, *Employee Request for ADAAA Accommodation/Modification*.

- b) A job applicant who is a qualified individual with a disability may request a reasonable accommodation in the application process. A request for a reasonable accommodation in the application process may be made by contacting the Department of Human Capital Management at staffing@mcpsmd.org.
- c) A qualified individual with a disability may request a modification in order to participate in an MCPS service for which they are eligible.
 - (1) The individual should contact the MCPS service/event sponsor with the requested accommodation/modification and the reason for the request.
 - (2) The principal or supervisor to whom the request is made may consult with the ADA compliance coordinator at ADArequests@mcpsmd.org.

C. Interactive Process

- 1. A request for an accommodation or modification will be determined by the ADA compliance coordinator through an interactive process in accordance with requirements of state and federal laws.
 - a) If the requesting party has not completed Form 270-6, the ADA compliance coordinator will ensure that the form has been completed in consultation with the requestor at the beginning of the interactive process.
 - b) The full circumstances of the situation will be considered in the interactive process.
- 2. If the individual with a disability is eligible for services under the ADAAA, the ADA compliance coordinator will do the following:
 - a) Determine whether the individual can perform the essential functions of their position or meet the essential eligibility requirements for the service with or without a reasonable accommodation or modification.

- b) Determine whether the individual poses a direct threat to the health and safety of the individual or others in the workplace.
- c) If the individual poses a direct threat to the health or safety of self or others, a determination will be made as to whether the risk can be eliminated or reduced to an acceptable level by a reasonable accommodation or modification. (A person who poses a direct threat will not be qualified if a reasonable accommodation or modification will not eliminate or reduce the risk to an acceptable level.)
- d) In consultation with the employee, job applicant, or individual, identify or specify a reasonable accommodation(s) or modification(s) that would enable them to perform the essential job functions or participate in the service.
- e) Determine whether the requested accommodation(s) or modification(s) would result in an undue hardship or would fundamentally alter the nature or operation of the school or unit.
- f) Consider any known funding from sources outside MCPS, such as grants, and the experience, if any, of other schools or facilities in handling similar requests for accommodations or modifications.
- g) Notify the requester, in writing, of the decision and the reasons for reaching the conclusion.

3. A determination will be rendered in as timely a manner as practicable.

D. Appeal

- 1. A decision of the ADA compliance coordinator may be appealed to the chief operating officer.
- 2. An appeal must be filed in writing by the requesting party within 10 calendar days of the issuance of the determination.
- 3. A trained hearing officer will be assigned to review investigation documents and arguments submitted in writing by the requesting party.

4. The OCOO hearing officer will issue a written determination describing the result of the appeal and the rationale for the result.
 5. The OCOO hearing officer will notify the requesting party of their right under Board Policy BLB, *Rules of Procedure in Appeals and Hearings*, and state law to appeal the decision to the Board within 30 calendar days.
- E. Pursuing an accommodation request through the OHRD does not prohibit or prevent the requesting party from directly filing a Maryland Commission for Civil Rights (MCCR) complaint at mccr.maryland.gov or an Equal Employment Opportunity Commission (EEOC) complaint directly with the EEOC, Baltimore District Office:
- U.S. Equal Employment Opportunity Commission
Baltimore Field Office
GH Fallon Federal Building
31 Hopkins Plaza, Suite 1432
Baltimore, MD 21201
1-800-669-4000, 1-800-669-6820 (TTY)
- G. The Office of the General Counsel in consultation with the OHRD, the Office of District Operations, and the Office of the Chief of School Support and Well-being, are responsible for coordinating periodic professional learning for individuals with responsibilities set forth in this regulation.

Related Sources:

Annotated Code of Maryland, State Government Article §20-601; Ann. Code, Education Article § 4-205; U.S. Constitution U.S.C., Amendment 14; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq.; Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.; Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400-1487; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Americans with Disabilities Act (ADA) 42 U.S.C. § 12131 et seq.; Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981

Regulation History: New Regulation July 20, 1994; revised December 22, 2011; revised February 1, 2023.

MCPS NONDISCRIMINATION STATEMENT

Montgomery County Public Schools (MCPS) prohibits illegal discrimination based on race, ethnicity, color, ancestry, national origin, nationality, religion, immigration status, sex, gender, gender identity, gender expression, sexual orientation, family structure/parental status, marital status, age, ability (cognitive, social/emotional, and physical), poverty and socioeconomic status, language, or other legally or constitutionally protected attributes or affiliations. Discrimination undermines our community's long-standing efforts to create, foster, and promote equity, inclusion, and acceptance for all. The Board prohibits the use of language and/or the display of images and symbols that promote hate and can be reasonably expected to cause substantial disruption to school or district operations or activities. For more information, please review Montgomery County Board of Education Policy ACA, *Nondiscrimination, Equity, and Cultural Proficiency*. This Policy affirms the Board's belief that each and every student matters, and in particular, that educational outcomes should never be predictable by any individual's actual or perceived personal characteristics. The Policy also recognizes that equity requires proactive steps to identify and redress implicit biases, practices that have an unjustified disparate impact, and structural and institutional barriers that impede equality of educational or employment opportunities. MCPS also provides equal access to the Boy/Girl Scouts and other designated youth groups.**

For inquiries or complaints about discrimination against MCPS students*	For inquiries or complaints about discrimination against MCPS staff*
Director of Student Welfare and Compliance Office of District Operations Student Welfare and Compliance 850 Hungerford Drive, Room 55, Rockville, MD 20850 240-740-3215 SWC@mcpsmd.org	Human Resource Compliance Officer Office of Human Resources and Development Department of Compliance and Investigations 45 West Gude Drive, Suite 2500, Rockville, MD 20850 240-740-2888 DCI@mcpsmd.org
For student requests for accommodations under Section 504 of the Rehabilitation Act of 1973	For staff requests for accommodations under the Americans with Disabilities Act
Section 504 Coordinator Office of Academic Officer Resolution and Compliance Unit 850 Hungerford Drive, Room 208, Rockville, MD 20850 240-740-3230 RACU@mcpsmd.org	ADA Compliance Coordinator Office of Human Resources and Development Department of Compliance and Investigations 45 West Gude Drive, Suite 2500, Rockville, MD 20850 240-740-2888 DCI@mcpsmd.org
For inquiries or complaints about sex discrimination under Title IX, including sexual harassment, against students or staff*	
Title IX Coordinator Office of District Operations Student Welfare and Compliance 850 Hungerford Drive, Room 55, Rockville, MD 20850 240-740-3215 TitleIX@mcpsmd.org	

**Discrimination complaints may be filed with other agencies, such as the following: U.S. Equal Employment Opportunity Commission (EEOC), Baltimore Field Office, GH Fallon Federal Building, 31 Hopkins Plaza, Suite 1432, Baltimore, MD 21201, 1-800-669-4000, 1-800-669-6820 (TTY); Maryland Commission on Civil Rights (MCCR), William Donald Schaefer Tower, 6 Saint Paul Street, Suite 900, Baltimore, MD 21202, 410-767-8600, 1-800-637-6247, mCCR@maryland.gov; or U.S. Department of Education, Office for Civil Rights (OCR), The Wanamaker Building, 100 Penn Square East, Suite 515, Philadelphia, PA 19107, 1-800-421-3481, 1-800-877-8339 (TDD), OCR@ed.gov, or www2.ed.gov/about/offices/list/ocr/complaintintro.html.*

***This notification complies with the federal Elementary and Secondary Education Act, as amended.*

This document is available, upon request, in languages other than English and in an alternate format under the *Americans with Disabilities Act*, by contacting the MCPS Office of Communications at 240-740-2837, 1-800-735-2258 (Maryland Relay), or PIO@mcpsmd.org. Individuals who need sign language interpretation or cued speech transliteration may contact the MCPS Office of Interpreting Services at 240-740-1800, 301-637-2958 (VP) mcpsinterpretingservices@mcpsmd.org, or MCPSInterpretingServices@mcpsmd.org.