

STUDENTS

IN GENERAL

REGULATION

§8-6A Non-Discrimination on the Basis of Disability for Students

The purpose of this regulation is to establish procedures for the identification, evaluation, and educational placement of school-age students under Section 504 of the Rehabilitation Act of 1973, as amended, and for the prompt and equitable resolution of complaints with respect to any alleged discrimination on the basis of disability for such students.

A. Section 504 Identification, Evaluation and Placement

1. General. The Director of Diagnostic and Prevention Services is designated as the school division's Section 504 Coordinator ("coordinator"). The coordinator is responsible for the development, maintenance, implementation, and dissemination of this regulation.

2. Definition. Under this regulation, a "student with a disability" is defined by and under Section 504 of the Rehabilitation Act of 1973 as any student who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment.

a. A physical or mental impairment means:

- (i) 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
- (ii) Any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

b. The current illegal use of drugs is not a qualified disability protected under Section 504 unless a student has successfully completed a supervised drug rehabilitation program, is participating in a supervised rehabilitation program, or has been rehabilitated, and in any case, the student is no longer using drugs; or the student is erroneously regarded as engaging in illegal use of drugs but is not engaging in such use.

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- c. Major life activities include, but are not limited to, caring for one's self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working; and the operation of a major bodily functions include, but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- d. A student who "has a record of a disability" or "is regarded as disabled" is protected under Section 504 from discrimination based upon that record, history, perception, or treatment. However, a student who has a "record of" or is "regarded as" disabled is insufficient, in itself, to trigger those Section 504 protections that require the provision of a free appropriate public education
- e. A student is not "regarded as" a student with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of six (6) months or less.
- f. An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.
- g. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
- h. The determination of whether an impairment substantially limits a major life activity shall be made without regard to the corrective effects of mitigating measures, such as 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.

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- i. The corrective effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity. The term 'ordinary eyeglasses or contact lenses' means lenses that are intended to fully correct visual acuity or eliminate refractive error; and the term 'low-vision devices' means devices that magnify, enhance, or otherwise augment a visual image.
3. Location and Notification. LCPS shall annually:
 - a. undertake to identify and locate qualified students with disabilities residing in the school division who are not receiving a public education; and
 - b. take appropriate steps to notify students with disabilities and their parents or guardians of LCPS's responsibility under Section 504.
 4. Identification and Evaluation of Students
 - a. LCPS shall conduct an evaluation of any student who needs or is believed to need special education or related services before taking any action with respect to the initial placement of the student in regular or special education and any subsequent significant change in placement.
 - b. Written parental consent is required prior to an initial evaluation of the student who is believed to be disabled.
 - c. LCPS is required to individually evaluate a student before classifying the student as having a disability or providing the student with a Section 504 plan. Evaluations do not necessarily include formal testing. Generally, evaluation refers to the gathering of information from a variety of sources and may include medical information, psychological evaluations, educational evaluations or other information from the student's educational file, sociological information, information provided by the student's parents or guardians, and other relevant information.

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- d. The amount of information needed is determined by a Section 504 team gathered to evaluate the student. The Section 504 team must include persons knowledgeable about the student, the meaning of evaluation data, and the placement options. The Section 504 team must determine if they have enough information to make a knowledgeable decision as to whether or not the student has a disability or, if not, what evaluations and/or additional information are needed.
- e. The Section 504 team must draw from a variety of sources in the evaluation process so that the possibility of error is minimized. The information obtained must be documented and all significant factors related to the student's learning process must be considered. A physician's medical diagnosis may be considered among other sources in evaluating a student, but a medical diagnosis alone does not suffice as an evaluation under Section 504 nor does its absence preclude finding a student eligible. Other sources to be considered, along with the medical diagnosis include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. In evaluating a student suspected of having a disability, it is not proper to rely on presumptions and stereotypes regarding persons with disabilities or classes of such persons.
- f. LCPS must ensure that:
 - (i) Tests and other evaluation materials have been properly validated for the specific purpose for which they are used and administered by trained personnel in conformance with the instructions provided by their producer.
 - (ii) 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.
 - (iii) Tests are selected and administered so as to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results

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accurately reflect the student's aptitude or achievement level or other factors measured 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.

- g. In interpreting evaluation data and in making placement decisions, LCPS 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) Carefully consider and document information obtained from all such sources; and
 - (iii) Ensure that the decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options.
- h. LCPS must periodically reevaluate students who are eligible under Section 504. A suggested timeline for this periodic reevaluation is every three years, unless the parent and/or school personnel request an earlier reevaluation.
- i. The Section 504 team will convene with notice to the student's parents to decide if additional information is required to determine continued eligibility under Section 504. In some cases, review of existing data and other information will be sufficient. If the team determines that new assessments are necessary, parental consent for those assessments should be obtained.
- j. Section 504 also requires the school division to conduct a reevaluation prior to a significant change in placement. Long-term removals (more than 10 school days at a time) are considered a significant change in placement. Moreover, cumulative short-term removals exceeding 10 days in a school year that constitute a pattern are considered a significant change in placement. Further, transferring a student from one type of program to another or terminating or significantly reducing a related service is also

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considered a significant change in placement, which requires a reevaluation.

5. Free Appropriate Public Education and Placement

- a. LCPS shall offer a free appropriate public education to each qualified school-age student with a disability within the school division regardless of the nature and severity of the student's disability.
 - (i) Appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of students without disabilities are met.
 - (ii) Free education is the provision of educational and related services without cost to the student with a disability or to his or her parents or guardian, except for those fees that are imposed on students without disabilities or their parents or guardian.
- b. Aids, benefits, and services provided to a qualified student with a disability are not required to produce identical results or levels of achievement with students without disabilities to be considered equally effective but must afford an equal opportunity to obtain the same result, to gain the same benefit, and to reach the same level of achievement in the most integrated setting appropriate to the student's needs.
- c. For each qualified student, a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options shall develop a 504 plan that specifies the services necessary to afford an equal opportunity to participate in and benefit from programs and activities.
- d. If LCPS places a student with a disability or refers the student for aid, benefits, or services not operated or provided by LCPS as its means of carrying out the requirements, LCPS 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 student or his or her parents or guardian if the student were placed in the

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aid, benefits, or services operated by LCPS.

- e. If a public or private residential placement is necessary to provide a free appropriate public education to a student with a disability because of his or her disability, the placement, including non-medical care and room and board, shall be provided at no cost to the student or his or her parents or guardian.
- f. If LCPS has made available a free appropriate public education to a student with a disability and the student's parents or guardians choose to place the student in a private school, LCPS is not required to pay for the student's education in the private school. Disagreements between a parent or guardian and LCPS regarding whether LCPS has made a free appropriate public education available or otherwise regarding the question of financial responsibility are subject to the due process procedures in the Procedural Safeguards section.
- g. LCPS shall educate, or shall provide for the education of, each qualified student with a disability with students without disabilities to the maximum extent appropriate to the needs of the student with a disability.
- h. In providing or arranging for nonacademic and extracurricular services and activities, including meals and recess periods, a student with a disability shall participate with students without disabilities to the maximum extent appropriate to the needs of the student.
- i. LCPS shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford qualified students with disabilities an equal opportunity for participation in such services and activities. These services and activities may include counseling, physical recreational activities, transportation, health services, clubs, physical education, athletics, referrals to agencies, and employment.
- j. LCPS shall ensure that the facility and the services and activities that are provided to qualified students with disabilities are comparable to other facilities, services, and activities of the school division.

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6. Discipline

- a. A manifestation determination is required if LCPS is contemplating a removal that constitutes a significant change in placement for a qualified student with a disability who has violated the code of student conduct that applies to all students.
- b. A significant change in placement is regarded as a removal for more than ten (10) consecutive school days; or the student has received a series of short-term removals in excess of 10 school days that constitutes a pattern:
 - (i) Because the student's behavior is substantially similar to the student's behavior in previous incidents that results in a series of removals; and
 - (ii) Because of such additional factors, such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.
- c. A group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options shall determine the student's conduct to be a manifestation of the student's disability if:
 - (i) The conduct was caused by or had a direct and substantial relationship to the student's disability; or
 - (ii) The conduct was the direct result of the LCPS's failure to implement the student's 504 plan.
- d. Students with disabilities cannot be expelled or suspended from school for more than ten (10) school days for misconduct that was a manifestation of the student's disability.
- e. If it is determined that the misconduct was caused by the disability, the student may not be removed, and the team should continue with the evaluation by reviewing the student's Section 504 Plan to determine whether the current educational placement is appropriate and, if necessary, the Section 504 Plan should be revised to address the student's current needs.

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- f. If the student's conduct was not a manifestation of the student's disability, the student with a disability may be disciplined in the same manner as students without disabilities would be disciplined.
- g. Students with disabilities who receive long-term suspension or expulsion for behavior not related to the identified disability are not provided educational services unless those services are provided to students without disabilities.
- h. A qualified student with a disability who is currently engaging in the illegal use of drugs or in the illegal use of alcohol may be removed from his or her educational placement for a drug or alcohol offense to the same extent that such disciplinary action is taken against students without disabilities.
 - (i) In such an instance, a student is not entitled to Section 504 protections including a manifestation determination meeting.
 - (ii) Possession of illegal drugs or alcohol does not automatically equate with current use of drugs or alcohol.

B. Procedural Safeguards. Procedural safeguards regarding the identification, evaluation, and educational placement of students with disabilities are provided to parents and shall include:

- 1. Notice;
- 2. An opportunity for the parents or guardians of a student with a disability to inspect and review all educational records;
- 3. An impartial hearing with opportunity for participation by the student's parents or guardian and representation by counsel; and
- 4. A review procedure for appealing impartial hearing decisions.

C. Grievance Procedure. Persons who believe that the school division has discriminated against a student on the basis of disability and thus violated Section 504 of the Rehabilitation Act (Section 504) or the Americans with Disabilities Act (ADA) can file a written grievance with the school division's Section 504 Coordinator. Once a written grievance is received, the school division will investigate the allegations

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contained in the written grievance in an effort to reach a prompt and equitable resolution.

1. Filing. The grievance must be in writing. At a minimum, it must contain (1) the nature of the grievance; (2) the facts upon which the grievance is based, including a list of all witnesses; (3) the remedy requested; and (4) the complainant's signature and the date the grievance is filed.

- a. The written grievance must be filed with the school division's Section 504 Coordinator ("coordinator") at the following address:

Section 504 Coordinator
Loudoun County Public Schools
21000 Education Court
Ashburn, Virginia 20148

- b. The grievance should be reported as soon as possible, but not later than thirty (30) school days after the occurrence. This time frame may be lengthened for extraordinary circumstances.
- c. The complainant must have the opportunity to present verbal and written evidence.

2. Investigation. The coordinator or designee will independently investigate the allegations to determine whether the school division is in compliance with Section 504 and the ADA. The coordinator or designee will provide a written report of the investigation to the complainant within thirty (30) school days of receipt of the complaint. The report should include the following information:

- a. A statement of the complainant's allegations and the remedy sought;
- b. A statement of facts as contended by each party;
- c. A narrative describing attempts to resolve the grievance;
- d. A list of the witnesses interviewed, and the documents reviewed during the investigation;

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- e. A statement of facts as determined by the coordinator or designee with reference to the evidence to support each fact;
- f. The coordinator or designee's conclusion as to whether the allegations are valid; and
- g. If the coordinator or designee determines that the allegations are valid, the report should include any corrective action determined by the coordinator or designee.
- h. An extension of the thirty (30) school day time limit for submitting the written report may occur if necessary as determined by the coordinator or designee. The complainant will be notified in writing of the extended time limit.

3. Appeal. The complainant shall have an opportunity to make a written appeal to the school division's superintendent within ten (10) school days of receiving the coordinator's report. Following an appeal, the superintendent or the superintendent's designee will review the complainant's appeal along with the coordinator's report and then respond in writing to the complainant within thirty (30) school days of receiving the appeal. The superintendent or the superintendent's designee shall either confirm or disapprove the coordinator or designee's decision.

- a. An extension of the thirty (30) school day time limit may occur if necessary as determined by the superintendent or the superintendent's designee. The complainant will be notified in writing of the extended time limit.

4. Retaliation. Retaliation against a complainant or anyone who reports discrimination or participates in a grievance investigation is prohibited. If this occurs, the individual may file a complaint with the school division.

D. Section 504 Impartial Hearing and Review Procedures

1. Impartial hearings are available under Section 504 to resolve disagreements between parents and the school division over matters related to the identification, evaluation, or educational placement of a student with a disability.

- a. Exception for student use of drugs or alcohol. LCPS can take disciplinary action against any student with a disability who currently is engaging in the illegal use of drugs or in the use of

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alcohol to the same extent that such disciplinary action is taken against students who are not individuals with disabilities. Furthermore, disciplinary matters relating to a student's current use of illegal drugs or alcohol are not reviewable in a hearing.

- b. These hearing procedures shall not be used if the remedy requested by the complainant is available through the due process procedures set forth in the Individuals with Disabilities Education Improvement Act ("IDEIA") of 2004.

2. Requesting a Hearing. Requests for hearings shall be made in writing and directed to the school division's Section 504 Coordinator ("coordinator"). A hearing must be requested within ninety (90) calendar days of the dispute giving rise to the hearing. The hearing request must include the following information:

- a. The name of the student, the address of the residence of the student (or available contact information in the case of a homeless student), and the name of the school the student is attending;
- b. In the case of a homeless student or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434a(2)), available contact information for the student and the name of the school the student is attending;
- c. A description of the decision(s) made by the school division with which the complainant disagrees, including facts relating to such decision; and
- d. A proposed resolution of the problem to the extent known and available to the party at the time.

3. Appointment of a Hearing Officer. The coordinator will appoint an impartial hearing officer from the list of special education hearing officers maintained by the Supreme Court of Virginia. The hearing officer should be appointed within five (5) school days of receipt of a request for a hearing.

4. Pre-Hearing Procedures

- a. The hearing officer is responsible for the following matters prior to the hearing:

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- (i) Within five (5) school days of appointment, securing a date, time, and location for the hearing that are convenient to both parties, and notifying both parties, in writing, of the date, time, and location of the hearing;
- (ii) Ascertaining whether the parties will be represented at the hearing; and
- (iii) Ensuring that the hearing is accurately recorded either by recording equipment or by a court reporter.

- b. A list of witnesses and documentary evidence for the hearing (including all evaluations and related recommendations that each party intends to use at the hearing) must be exchanged by the parties and received by the hearing officer at least five (5) school days before the hearing. The hearing officer has the authority to exclude any documentary evidence which was not provided and any testimony of witnesses who were not identified at least five (5) school days before the hearing.
- c. Pre-hearing conferences should be held, if appropriate.

5. Hearing Procedures

- a. The parties have the following rights in a hearing:
 - (i) to participate in the hearing and be represented by counsel at their own expense;
 - (ii) to present evidence and cross-examine witnesses; and
 - (iii) to obtain a copy of the transcript or a tape recording of the hearing (the cost of the transcript to be borne by the requesting party).
- b. For hearings requested on behalf of students, the student may attend the hearing.
- c. In connection with the hearing, the hearing officer shall:

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- (i) Maintain an atmosphere conducive to impartiality and fairness.
 - (ii) Ensure the appointment of a surrogate parent by the school division, if appropriate, pursuant to the regulations adopted by the State pursuant to the IDEIA.
 - (iii) Maintain an accurate record of the proceedings.
 - (iv) Issue a written decision to all parties setting forth findings of fact and conclusions of law based on the evidence presented in the hearing.
 - (v) Render a written decision within ninety (90) calendar days after the request for a hearing is received by the school division, unless continued upon a request of either party to the hearing. A continuance can be granted by the hearing officer upon a showing of good cause.
 - (vi) Assign the burden of proof to the party seeking relief.
- d. The hearing officer shall hold all records for thirty (30) calendar days after issuance of a decision. In the event an appeal is noted, the coordinator will provide the hearing officer with the name and address of the review officer and request that the records be forwarded to the review officer. The hearing officer shall transmit the records to the review officer within three (3) school days of the coordinator's request. In the event that no appeal is made, the hearing officer shall return the records to the coordinator.

6. Review Procedure

- a. Any party aggrieved by the hearing officer's decision may appeal the decision to a review officer.
- b. An appeal may be noted by an aggrieved party by filing a written notice with the coordinator within thirty (30) calendar days of the date of the decision issued by the hearing officer.

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- c. An impartial review officer will be appointed by the coordinator from the same list from which the initial hearing officer was appointed and within five (5) school days of the request for review.
- d. The review officer shall:
 - (i) examine the record of the hearing;
 - (ii) seek additional evidence, if necessary;
 - (iii) afford the opportunity for written or oral argument;
 - (iv) advise the parties of the right to be represented by counsel at their own expense during the review proceedings; and
 - (v) issue a written decision.
- e. The review officer shall uphold the initial decision unless it is found to be arbitrary or capricious, contrary to law, or not supported by evidence.
- f. The review officer's decision must be issued within thirty (30) school days of receipt of the request for an appeal, unless continued at the request of a party. A continuance can be granted by the review officer upon a showing of good cause. A copy of the decision must be sent to all parties.
- g. The record of the administrative hearings shall be sent by the review officer to the coordinator upon the issuance of the decision.
- h. The coordinator is responsible for maintaining all records of hearings and transmittal to court in the event of judicial proceedings.
- i. Any party aggrieved by the review officer's decision may file a civil action in a court of appropriate jurisdiction.

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Issued: 6/25/91

Revised: 6/22/93, 7/1/97, 9/11/12, 9/10/13, 9/28/15

Current Revision: 12/11/19

Leg Ref: Americans with Disabilities (ADA) Act Amendments Act of 2008; Section 504 of the Rehabilitation Act of 1973; McKinney-Vento Homeless Assistance Act.