

**PROCEDURES AND
GUIDELINES
for
Implementing Section 504
of the Rehabilitation Act of 1973**



Department of Special Education and Student Services
The Howard County Public School System
Ellicott City, Maryland 21042

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I. What is Section 504?

Section 504 of the Rehabilitation Act of 1973 (commonly known as Section 504) is federal law that affects all programs receiving federal financial assistance of any kind. It is a civil rights and anti-discrimination law. The law is intended to provide equal opportunity for qualified people with disabilities. This translates into the provision of accessibility, the provision of benefits, services, and aids that are equally effective for people with disabilities and those without, as well as the provision of programs and activities that are otherwise free from discrimination based on disability. The law itself is very broad and is an area Congress and federal courts are continuing to develop. The Howard County Public School System's (HCPSS) Department of Student Services will provide leadership in ensuring the district's commitments under the law in collaboration with School Administration. The HCPSS Board of Education (BOE) has developed Policy 9060 to implement Section 504 and this handbook is developed as binding guidance to the school system under direct authorization of that policy.

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Section 504 states: *No otherwise qualified individual with a disability shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.*

This may be interpreted as:

- HCPSS must follow Section 504 requirements since it receives federal financial assistance.
- HCPSS cannot exclude a student on the sole basis of a disability from participation in school system programs or deny a student benefit of such participation.
- HCPSS cannot discriminate against a student on the basis of disability.

HCPSS is committed to providing a quality education for all students. Section 504 Plans assist in ensuring that students with disabilities receive a free and appropriate public education (FAPE).

II. Types of Section 504 Team Meetings and Timelines

A. Initial Referral for a Section 504 Plan

An initial referral to the Section 504 team begins the Section 504 process for a student. Persons who may refer students with suspected disabilities include parent(s)/guardian(s), any HCPSS staff member, or the student (for self-identification only). The HCPSS highly recommends that any parent referrals or student referrals be submitted in writing. If the parent makes a verbal request for referral, the school-based Section 504 Administrative Building Coordinator shall document the request by completing the *Section 504 Referral* form. All HCPSS staff must submit their referral in writing using a *Section 504 Referral* form. (Refer to section IV on Identification.)

Timeline: The Initial Evaluation Meeting is held within a reasonable time from the receipt of the initial referral, generally within 30 calendar days.

B. Initial Evaluation Meeting

An initial evaluation meeting is the first full Section 504 team meeting. At this time the Section 504 team asks for the consent of the parent/guardian and obtains written consent by completing the *Section 504 Informed Consent for Initial Evaluation or Reevaluation* form before the team begins any evaluation. The *Section 504 Eligibility* form is used to document this permission. (Refer to section IV on Identification.) Through the evaluation process, the team reviews all relevant and pertinent data that may be used to draw conclusions as to whether a student has a disability that meets Section 504 eligibility criteria. This may include a review of formal assessment(s), such as psychological report(s), but does not require it. A valid evaluation can be completed without a formal assessment if there are sufficient data of any kind that provide the necessary level of information for the team to make an eligibility determination.

Timeline: The Initial Evaluation Meeting is held within a reasonable time from the receipt of the initial referral, generally within 30 calendar days.

C. Eligibility Determination Meeting

An eligibility determination meeting is conducted when the Section 504 team applies the student data to the Section 504 eligibility criteria in order to make a final determination as to whether a student is a student with a qualified disability. (Refer to Section V on Eligibility.)

Timeline: The Eligibility Determination Meeting is held within a reasonable time following the Initial Evaluation Meeting, generally within 60 calendar days. In most circumstances, evaluation and eligibility meetings will occur during the same meeting. This 60-day window will likely be used when the Section 504 team needs additional data.

D. Section 504 Plan Development Meeting

At the Section 504 Plan development meeting the Section 504 team determines what type(s) of accommodations and/or related services the student requires. (Refer to Section VI on Section 504 Plan development.)

Timeline: The Section 504 Plan Development Meeting is held within a reasonable period of time following the Eligibility Determination Meeting, generally within 30 calendar days. Every effort should be made to schedule the eligibility and Section 504 Plan development for the same meeting.

E. Annual Review Meeting

Section 504 annual review meetings allow team members to review and discuss the Section 504 Plan and determine if any changes are needed for the new school year.

Timeline: A Section 504 Review Meeting must be held annually, generally within one year of the date of the Eligibility Determination Meeting or last Annual Review Meeting.

F. Three (3) Year Reevaluation Meeting

Three-year reevaluation meetings are conducted to make a determination as to whether the student remains eligible with a qualified disability and determine if any changes are necessary to the Section 504 Plan.

Timeline: A Reevaluation Meeting is held within three years from the Initial Evaluation Meeting or from the previous Three Year Reevaluation Meeting. A Three Year Reevaluation Meeting will take the place of the current year's required Annual Review Meeting.

G. Meetings at Parent Request

Section 504 meetings are held to address a parent's request that a Section 504 evaluation be conducted when they feel their child may meet the law's eligibility criteria. Section 504 meetings are also held at parent request to discuss any concerns parents have regarding any aspect of their child's Section 504 Plan. HCPSS staff may ask for specific clarification of the parent's concern before scheduling the Section 504 team meeting. After speaking with the Section 504 Administrative Building Coordinator, the parent may simply want a parent teacher conference if the purpose is not Section 504 related. The parent has no obligation to clarify exactly what they want to address. If, after discussion, the parent reaffirms his/her desire for a Section 504 team meeting, the school must schedule the meeting.

Timeline: Meetings at parent request will be held within a reasonable period of time, generally within 30 calendar days of receipt of the request.

H. 504 Manifestation Determination Meeting

A manifestation determination meeting is required if the student commits a conduct violation and the recommended sanction is a suspension of more than 10 cumulative or consecutive school days in a school year. (Refer to Section IX, Discipline.) Manifestation meetings are exempt from the 10-calendar day notice guideline.

Timeline: Section 504 Manifestation Meetings shall be scheduled as soon as possible but no more than 10 school days after the conduct violation.

I. Academic Eligibility Waiver Meeting

An academic eligibility waiver meeting is typically requested by the parent but may be requested directly from the student. An HCPSS extracurricular advisor or an athletic team coach may also request an academic eligibility waiver meeting. Students are required to meet specific academic criteria before they may participate in extracurricular activities. The Section 504 team may issue an academic eligibility waiver for students with a Section 504 Plan who fail to meet the academic criteria if certain conditions exist. These meetings shall be conducted in accordance with BOE Policy 9070 - *Academic Eligibility for High School Extracurricular Activities*.

Timeline: Academic Eligibility Waiver Meetings shall be scheduled by request. The school should make an effort to hold the meeting before the extracurricular activity starts or athletic team begins practice.

J. Combination of Meetings

Many Section 504 team meetings can be combined. For example, the Initial Evaluation, Eligibility Determination, and Section 504 Plan Development meetings are usually held at the same time, assuming no additional data is needed when conducting the Initial Evaluation.

K. Required Notice

In addition to the above timelines, a school must provide a *Section 504 Meeting Notice* form to the parent(s), generally 10 calendar days before a Section 504 team meeting can be held. A manifestation determination meeting must be held within 10 school days of the incident that led to suspension. If the school is unable to meet the timeline requirements of any Section 504 team meeting, the school's Section 504 Administrative Building Coordinator may consult with the HCPSS Section 504 coordinator. **As part of the *Section 504 Meeting Notice* form, the parent is also provided a copy of the parental rights document, *Notice of Procedural Safeguards Under Section 504 of the Rehabilitation Act of 1973*.**

L. Pre/Post Meeting Document Disclosure

At least five business days before a team meeting, the parents are to receive an accessible copy of each assessment, report, data chart, draft Section 504 Plan (if appropriate), or other document the team plans to discuss at the meeting. If the document has been provided to the parent previously it need not be provided a second time unless specifically requested. If school personnel are unable to provide an accessible copy of the material(s) at least five business days before the scheduled meeting because of an extenuating circumstance, school personnel are to document and communicate to parents the nature of the extenuating circumstance that prevented the disclosure.

No later than five business days after a scheduled Section 504 team meeting of any kind the school shall provide the parents with the appropriate documentation of the official meeting notes and the Section 504 Plan, if the plan was altered. Refer to Section III for additional information on HCPSS forms used at the various Section 504 team meetings.

Parents may notify the case manager that they do not want to receive the required documents for the 5-day disclosure. In such instances, the case managers must document such notification in the student's record (Section 504 folder).

III. Section 504 Team Members and Meeting Procedures

A. Section 504 Team Members

Membership of Section 504 teams can be flexible. Membership may vary based on the purpose of the meeting and the impairment under consideration. For each Section 504 team meeting, the following participants are required:

- Person(s) knowledgeable about the student
This may include a general educator but does not require the presence of one. Any HCPSS staff member of the school who has sufficient interaction with the student to actively participate in the Section 504 team meeting may meet this requirement.
- Person(s) knowledgeable about the evaluation data
This includes a professional who administered the assessment or a professional who is qualified to interpret the assessment. For example, the school nurse or cluster nurse, occupational therapist, or physical therapist would be a required member when a physical or medical impairment is being considered. The school psychologist would be a required member when a mental or emotional impairment is being considered.
- Person(s) knowledgeable about accommodations, related services, and service delivery options
This may be a guidance counselor, school psychologist or other person who has experience in creating Section 504 Plans.
- The school Section 504 Administrative Building Coordinator, if appropriate
- The assigned Section 504 case manager
- A parent/guardian (must be invited to every Section 504 team meeting)
- The student, if the student is 14 years or older (Note: There is no requirement for the student to attend in order for the meeting to take place.)

HCPSS staff members can fulfill multiple roles if they meet the requirements of each role. For example, a student's case manager might also be the School Psychologist who administered a psychological assessment to the student. Other school-based HCPSS staff members may attend if the Section 504 Administrative Building Coordinator believes they may contribute to the process. Central Office staff may attend if necessary and appropriate to provide guidance and/or assistance to the team. Parents may invite a reasonable number of individuals knowledgeable about their child.

B. Required Documentation

For each Section 504 team meeting a parent receives the *Section 504 Meeting Notice* form, generally 10 calendar days before the scheduled meeting. The parent may agree to hold the Section 504 team meeting with less notice. The Section 504 case manager is required to provide the parent(s)/guardian(s) with copies of specific documents the Section 504 team plans to discuss at least five business days prior to the Section 504 team meeting (Refer to Section II for exemptions to the five day requirement).

For each meeting, regardless of the other required documentation, Section 504 meeting minutes must be recorded on the appropriate form. All minutes will include an explanation for each of the team’s decisions. All parental requests should be noted with an explanation for acceptance or rejection of each request. Depending upon the purpose(s) of a specific Section 504 team meeting, the following forms will provide the minutes and notice of decisions of the Section 504 team to the parents:

Purpose of Meeting	Form(s)
Initial meeting – Review existing information and determine eligibility under Section 504	<ul style="list-style-type: none"> • <i>Section 504 Eligibility</i> • <i>Notice of Procedural Safeguards Under Section 504 of the Rehabilitation Act of 1973 (Parental Rights)</i> • <i>Section 504 Informed Consent for Initial Evaluation or Reevaluation</i> • <i>Section 504 Informed Consent for Assessment, if applicable</i> • <i>Section 504 Plan, if appropriate</i> • <i>Teacher Input for an Initial Referral</i>
Review additional information/assessment results and determine eligibility under Section 504	<ul style="list-style-type: none"> • <i>Section 504 Eligibility</i> • <i>Section 504 Plan, if appropriate</i>
Develop/Approve a Section 504 Plan	<i>Section 504 Plan (including Parental Rights)</i>
Annual review of the Section 504 Plan – consider modifications to accommodations	<ul style="list-style-type: none"> • <i>Section 504 Plan (including Parental Rights)</i> • <i>Section 504 Progress and Accommodation Review Worksheet</i>
Conduct a reevaluation (determine continued eligibility under Section 504) and consider modifications to accommodations, if appropriate (NOTE: The annual review is combined with the reevaluation)	<ul style="list-style-type: none"> • <i>Section 504 Informed Consent for Initial Evaluation or Reevaluation</i> • <i>Section 504 Eligibility (including Parental Rights)</i> • <i>Section 504 Plan, if student remains eligible</i> • <i>Section 504 Progress and Accommodation Review Worksheet</i>
Conduct a manifestation determination	<ul style="list-style-type: none"> • <i>Section 504 Manifestation Determination Report (including Parental Rights)</i>
Consider modifications to accommodations (not an annual review)	<ul style="list-style-type: none"> • <i>Section 504 Plan, note if revisions are made</i>
Other	<ul style="list-style-type: none"> • <i>Section 504 Plan, note revisions are made</i>

IV. Identification of Students with Suspected Disabilities

A. Overview

HCPSS recognizes its responsibility to assure that all children with disabilities receive a free, appropriate public education (FAPE). HCPSS makes efforts to locate and identify children with disabilities who are not receiving services within our schools, community, and private schools located in Howard County. Persons who may refer students with suspected disabilities include parent(s)/guardian(s), any HCPSS staff member, or the student (for self-identification only). Individuals who want to refer the student as a student with a suspected disability should complete a *Section 504 Referral* form and submit it to the school's Section 504 Administrative Building Coordinator.

B. School Identification Obligations

When referring students with a suspected disability to the Section 504 team, school personnel should exercise professional judgment in making this difficult determination. Signs of disability may not be ignored. Schools should use problem-solving teams (such as IIT, CFIP, SST) to help identify students who may have disabilities. Problem solving teams must immediately refer students they suspect of having a disability to the Section 504 or IEP team. Problem solving teams may not adopt a "wait and see" approach. Intervention strategies may not be used in place of a Section 504 Plan or IEP if the student has a qualified disability; however, a student may continue in interventions through the school-based problem solving team during the Section 504 or IEP team referral process.

The school should strongly consider referral for an initial evaluation if the student is:

- Failing courses
- Failing to advance from grade to grade
- Returning to school following serious illness or injury
- Returning to school after alcohol or drug treatment
- Living with a life threatening health condition
- Failing to meet standards of personal independence or social responsibility expected of his or her age group.

V. Initial Evaluation and Eligibility

A. Initial Evaluation After Referral

The Section 504 team completes the *Section 504 Eligibility* form during the initial evaluation meeting. It should be noted that parents must provide written consent prior to a Section 504 team beginning any evaluation. If consent is granted, the team may proceed with the evaluation. The parent's consent is documented on the *Section 504 Section 504 Informed Consent for Initial Evaluation or Reevaluation Evaluation* form. If consent is refused, then the Section 504 team must document in the narrative section of the *Section 504 Eligibility* form that the parent refused to provide consent for the initial eligibility determination. In such instances the Section 504 process is terminated.

Once parental consent is provided, the evaluation process begins with a review of all available data from a **variety of sources**, including those listed below, as appropriate for the individual student:

- Psychological Evaluation
- Action Plan
- Parental information
- State test results
- Observation data
- Physician's report
- Home and health history
- Scholastic record
- Teacher input
- Benchmark assessments
- Report cards
- Attendance data
- Student's languages
- Curriculum assessments
- Work samples
- Disciplinary history
- Functional Behavioral Assessment (FBA) and Behavior Intervention Plan (BIP);
- Mitigating measures
- Other

The information considered during the Section 504 meeting is entered on the *Section 504 Eligibility* form.

Following this review, the team will determine if additional data are needed, including formal assessments, before reaching a thoughtful eligibility determination. Should the team need more data, the team must obtain parent consent for formal assessment(s) using the *Section 504 Informed Consent for Assessments* form. Note that parental consent to conduct assessments is different from parental consent for initial evaluation. If consent to conduct any assessments recommended by the Section 504 team is refused, the team documents that the Section 504 process is terminated due to parent refusal for consent for assessments. The team may also request the parent's consent to a release of information from a private provider by completing the

Request for Records and Release of Records form. If the team needs more data, and the parent consents to obtaining that data, the team should reconvene for an Eligibility Determination Meeting in accordance with prescribed timelines. In addition, if the parent provides new information during the meeting that requires a formal review by a HCPSS professional and this review cannot be conducted during the meeting, another meeting must be scheduled within a reasonable time frame.

If, during the evaluation process, the Section 504 team determines it has sufficient data to proceed with an eligibility determination and does not recommend formal assessments, the Section 504 team documents in detail why the team did not recommend formal assessments, what data they reviewed, and why the Section 504 team felt that existing evaluation data alone was sufficient for an eligibility determination.

B. Determining Whether or Not the Student is a “Student With a Disability” Under Section 504

Eligibility must be based on multiple data points from a **variety of sources** that support the decision. A two-part inquiry determines this process. **Both of the following criteria must be met before a student is eligible for a Section 504 Plan:**

1. Does the student have a physical or mental impairment?
2. Does the physical or mental impairment “**substantially limit**” a major life activity?

Determining Whether the Student Has a Physical or Mental Impairment

Section 504 defines a “physical or mental impairment” as “any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.” It should be noted that this is not an exhaustive list. The Section 504 team records the physical or mental impairment on the *Section 504 Eligibility* form.

Determining Whether A Major Life Activity Is Affected by the Identified Impairment

Section 504 defines “major life activities” as “functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, standing, lifting, bending, reading, concentrating, thinking, and communicating.” It should be noted that this is not an exhaustive list. While learning is the primary emphasis in schools, a student does not need to be substantially limited in the major life activity of learning to be eligible under Section 504. A student may have a disability that in no way affects his or her ability to learn, yet the student may need extra assistance of some kind to access public education programs and activities. The Section 504 team considers available documentation concerning the implications for the student’s impairment and completes the *Section 504 Eligibility* form in determining which major life activity (ies) is affected by the impairment.

Determining Whether the Physical or Mental Impairment Substantially Limits a Major Life Activity

A major life activity is substantially limited if “an individual who is limited in performing a major life activity (condition, manner, or duration) compared to a typical student in the general population” (BOE Policy 9060 Rehabilitation Act of 1973). In analyzing whether a major life activity is substantially limited, a comparative standard can provide guidance. Teams should consider if the student’s major life activity is restricted as to the conditions, manner, or duration with which they can be performed **in comparison to a non-disabled peer** of the same age or grade level in the general population. Under the ADA of 2008, consideration of a substantial limitation should be “broadly interpreted.” For this reason, the Section 504 team should **interpret “close calls” in favor of broad coverage**. The identified physical or mental impairment must substantially limit the student but it does not have to prevent or severely restrict the student from performing the major life activity.

It is important to note that an impairment in and of itself is not a disability; the impairment must **substantially limit** one or more major life activities in order to be considered a disability under Section 504. A diagnosis from a physician is only one part of the eligibility determination. A physician can diagnose the physical or mental impairment; however, **the Section 504 team makes the determination as to whether or not the impairment meets the eligibility standard of substantial limitation**.

The Section 504 team makes an educated estimate without the 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; oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; and learned behavioral or adaptive neurological modifications. Similarly, for impairments that are episodic or in remission, make the determination for the time they are active (See Section D. Special considerations below).

In preparation for a Section 504 initial eligibility determination meeting, the student’s teachers shall complete the *Teacher Input for an Initial Section 504 Referral* form. This information will assist the Section 504 team in determining the number on the following scale that indicates the degree to which the identified impairment limits the identified major life activity.

- 5 Extremely
- 4 Substantially**
- 3 Moderately
- 2 Mildly
- 1 Negligibly

If the Section 504 team determines the limitation is less than substantial, the student is not eligible for Section 504 protections.

The Section 504 eligibility decision of the Section 504 team is documented on the *Section 504 Eligibility* form by selecting **one** of the available conclusions listed on the form, in the “Initial Eligibility Decision” section.

INITIAL ELIGIBILITY DECISION

The Student is **Not a Student with a Disability**:

- The student is **not a student with a disability** because there is no physical or mental impairment that substantially limits a major life activity.

The Student is a **Student with a Disability**:

- The student is a **student with a disability** because there is a physical or mental impairment that substantially limits a major life activity, and services are needed in order that the student’s needs are met as adequately as those of nondisabled peers. **A Section 504 Plan will be developed.**

- Mitigating Measures** - The student is a **student with a disability but is not in need of a Section 504 Plan** because the student’s educational needs are met as adequately as those of nondisabled peers **based upon the positive effect(s) of mitigating measures** currently in use. The need for a Section 504 Plan will be addressed again should the positive effect(s) of mitigating measures currently in use no longer exist. While **the student currently is not in need of a Section 504 Plan**, it is understood that Section 504’s antidiscrimination provisions will still protect the student, and the school cannot discriminate against the student on the basis of disability.

- Episodic Impairment** - The student is a **student with a disability** because there is an **episodic physical or mental impairment** that, when active, substantially limits a major life activity, and services are needed in order that the student’s needs are met as adequately as those of nondisabled peers. **A Section 504 Plan will be developed that will be implemented when the impairment is active.** When the impairment is inactive, the 504 Plan will not be implemented, but it is understood that Section 504’s antidiscrimination provisions will still protect the student, and the school cannot discriminate against the student on the basis of disability.

- Impairment in Remission** - The student is a **student with a disability** because there is a physical and mental impairment that is **in remission** but when active, substantially limits a major life activity, and services are needed in order that the student’s needs are met as adequately as those of nondisabled peers. **The need for a Section 504 Plan will be addressed if/when the impairment comes out of remission.** When the impairment is inactive, it is understood that Section 504’s antidiscrimination provisions will still protect the student, and the school cannot discriminate against the student on the basis of disability.

Concluding the Section 504 Initial Evaluation and Eligibility Meeting

Ensure the parent was provided with a copy of his or her parental rights, *Notice of Procedural Safeguards Under Section 504 of the Rehabilitation Act of 1973*, and check the box on the form indicating the provision of the parental rights document. The form prints out with the meeting notice in TIENET.

If a follow up meeting for either initial eligibility determination or the development of a Section 504 Plan is required, determine the date of the next meeting.

C. Special Considerations

1. *Attention Deficit Hyperactivity Disorders (ADHD)*: When considering whether or not a student has attention deficit disorder or attention deficit hyperactivity disorder, a school psychologist, the qualified examiner for the determination of ADHD, must be a member of the Section 504 team.
2. *Temporary Impairments*: Under Section 504, the proper eligibility inquiry is not whether a disability is temporary or permanent. The question for the Section 504 team is whether the student's temporary physical or mental impairment is significant enough to be a disability. This decision is a case-by-case determination, taking into account either the duration (or expected duration) of the impairment and the extent to which the impairment actually limits a major life activity of the affected student. If the Section 504 team determines that the impairment substantially limits a major life activity, the Section 504 team will develop a Section 504 Plan for the anticipated duration of the impairment. Note the expected recovery date on the student's Section 504 Plan, based on feedback from a physician. The Section 504 team will meet periodically and close to the expected recovery due date, but not later than six months from the eligibility determination, to review the need for the specific accommodations. The Section 504 team should seek consent from the parent for the school nurse to speak with the treating medical provider to discuss the student's recovery. The school psychologist should seek consent to speak with providers related to the temporary mental impairment during the period of recovery. Once the student has recovered to the point that the temporary disability is no longer substantially limiting a major life activity, the Section 504 Plan is discontinued. **The decision to discontinue the Section 504 Plan is made by the Section 504 team.**
3. *Highly Able Students*: Students performing above grade level or enrolled in Advanced Placement or Honors level classes are not automatically precluded from Section 504 eligibility. Highly able students may have a physical or mental impairment that substantially limits a major life activity other than learning. Just like other students with disabilities, highly able students with disabilities may need accommodations to succeed in class. If a student with a disability is receiving accommodations in non-honors courses, there is a good possibility that the student will need those accommodations in all of his or her classes. Any accommodations on a Section 504 Plan for such students should "level the playing field," not provide a means by which the student is eligible for higher-level courses, improve average

grades, raise high-stakes test scores, or reduce homework responsibilities. Appropriate accommodations do not affect the integrity of the class or coursework.

4. *Mitigating Measures*: A mitigating measure is a compensation method that would allow or make the student appear to function as a typical non-disabled peer. Anything extraordinary should be considered a mitigating measure. Examples of some mitigating measures include:
- Medication, medical supplies, equipment or appliances, low-vision devices (which do not include ordinary eye glasses or contacts 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
 - Learned behavioral or adaptive neurological modifications

The eligibility standard of determining whether or not an impairment substantially limits a major life activity **shall be made without regard to the ameliorative effects of mitigating measures**. In other words, the mitigating measures must be set aside when determining whether the student’s physical or mental impairment substantially limits a major life activity. For example, for a student taking medication for ADHD, the determination of “substantial limitation” and whether or not the student is disabled would need to be made based upon evidence (if it exists) of how the student performs major life activities when not on medication. In such cases, the Section 504 team reviews past data such as report card comments, information from the student’s physician, and information from the parent. A review of such data may reveal the student to be only **mildly limited** in learning, concentrating, thinking, etc. in school; therefore, not meeting the requirement of substantial limitation. On the other hand, the Section 504 team may determine the data do indicate an impairment that substantially limits one or more major life activities. In another example, the Section 504 team should review any accommodations already in place by teachers or staff as these may be considered mitigating measures that will need to be set aside when making the determination of substantial limitation.

It is important to note that while the ameliorative effects of mitigating measures cannot be considered in *making the disability determination*, such effects **can be considered** in determining whether a student needs a Section 504 Plan. A student can be considered “disabled” (has a physical or mental impairment that substantially limits a major life activity because the mitigating measures have been set aside in this determination) but not in need of a Section 504 Plan because the student’s educational needs are met as adequately as those of nondisabled peers based upon the positive effect(s) of mitigating measures currently in use. In other words, the use of the mitigating measure of medication may indicate the student does not require a Section 504 Plan because by having his needs met, there is no accommodation(s) required to receive FAPE. The written notice to the parent of the Section 504 team’s

decisions, must indicate the Section 504 team's decision for disability determination when the mitigating measures were set aside. The written notice must also state whether or not the student needs a Section 504 Plan at this time.

In cases where students meet the disability criteria but are currently not in need of accommodations through a Section 504 Plan, it is important to remember that the student would still be considered disabled and could not be discriminated against based upon the disability. Further, should the student need accommodations or services in the future, the Section 504 team can address those needs as they arise. For example, should the student stop taking medication in the future and grades plummet or the student violates the student code of conduct, the Section 504 team should revisit the student's need for a Section 504 Plan.

5. *Physical or Mental Impairment That is Episodic or in Remission:* An impairment that is episodic or in remission is a disability **if it would substantially limit a major life activity when active.** An "episodic" impairment is one that ebbs and flows in its severity. Typical examples of episodic impairments include allergies, asthma, and migraine headaches. At certain times, such impairments may have little or no impact on the student's major life activities; however, at other times (e.g., in hot weather, when the student experiences stress, or when irritants or other trigger factors are present), they can be substantially limiting to the student. When the student is substantially limited by the impairment, the student would be considered a student with a disability under Section 504 and entitled to appropriate accommodations. Section 504 teams should look carefully at a range of data over time (as opposed to a snapshot in time). For example, the student whose heat-induced asthma is not affecting the student at the time of his evaluation in January may have experienced significant troubles as the school year started in August and September, and during the previous school year in April and May. The timing of the evaluation should not function to preclude eligibility for students whose impairments are episodic and are conveniently not substantially limited at the time of evaluation. If the student is found to have an impairment that is substantially limited when active, a Section 504 Plan may be developed to be in place when the impairment is active and the Section 504 Plan is needed. The Section 504 Plan should identify objective triggers to activate the Section 504 Plan. For example, a student with heat-induced asthma who needs assistance when the temperature rises about 90 degrees could have a Section 504 Plan triggered by the temperature. It is likely that most students will not have such clear triggers, which makes episodic plans difficult to implement. In these situations, the plan may be left in place all of the time.

An example of an impairment that is in remission would be a student who has undergone successful treatment for bone cancer or another disease. The student is protected from discrimination under Section 504 because the student has a record of an impairment; however, the student does not require a Section 504 Plan because there is no need for accommodations. If the impairment were to recur and is found to

be substantially limiting, the Section 504 team would convene, conduct an evaluation, and provide appropriate services and accommodations.

6. *Students Who “Have a Record of a Disability” or Are “Regarded As” Having a Disability:* HCPSS is not required to develop a Section 504 Plan for students who either “have a record of disability” or who are “regarded as having a disability.” Unless a student actually has an impairment that substantially limits a major life activity, the mere fact that a student 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 (FAPE). Students who either “have a record of disability” or who are “regarded as having a disability” are protected from discrimination under Section 504.

VI. Developing a Section 504 Plan for Eligible Students, Implementation, and General Compliance

A. Overview

When a student is determined eligible for a Section 504 Plan, the Section 504 team is responsible for developing the student's Section 504 Plan. A Section 504 Plan is a legally binding document that outlines the accommodations to meet the unique needs of a student as a result of his or her physical or mental impairment as determined during the evaluation meeting. The Section 504 Plan represents what HCPSS will provide to the student.

B. Membership of the Section 504 Team

Section 504 requires that decision making under Section 504 is made by a "group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and placement options." Membership of Section 504 teams can be flexible and may vary based on the purpose of the meeting and the impairment under consideration. Refer to Section III of this handbook for a detailed description of the Section 504 team's required membership.

C. Preparation for Developing the Section 504 Plan

For an annual review or reevaluation meeting the student's teachers shall complete the *Section 504 Progress and Accommodation* form. This information will assist the Section 504 team in determining eligibility under Section 504 as well as any adjustments necessary to the accommodations, if appropriate.

D. Writing the Section 504 Plan

The Section 504 team completes the *Section 504 Plan* form. The *Section 504 Plan* form is completed for both the initial Section 504 Plan as well as for revisions at each annual review.

Identifying Information:

Complete the student's demographic information. Identify the student's case manager. Refer to Section VII for information on a case manager's responsibilities.

Reason for Section 504 Meeting:

Check the box for either "Initial Section 504 Plan" or "Annual Review of Section 504 Plan."

Physical or Mental Impairment and Major Life Activity:

The record of a physical or mental impairment(s) as well as the major life activity substantially limited by the identified impairment that were identified through the Section 504 eligibility meeting will be recorded on the form through TIENET, as long as the eligibility items are completed on *Section 504 Eligibility* form is completed.

Specific Accommodations

Accommodations ensure the student receives an equal opportunity to receive FAPE as adequately as the needs of individuals without disabilities. Accommodations are intended to reduce or even eliminate the effects of a student's disability; they do not reduce learning

expectations. Determining and providing accommodations allows for a comparative standard. The Section 504 team determines what the school must do in order to ensure the student with a disability has an opportunity equal to that of his or her nondisabled peers to learn (or otherwise perform or participate, depending on the disability). Any recommended accommodations should:

- Relate to the area of impairment
- Reflect the unique needs of the student
- Enable the student with a disability to receive an equal opportunity to participate in all educational programming as his/her nondisabled peers; be reasonable for the student to have equal access to the curriculum and equal opportunity to demonstrate achievement
- Be specific enough in description to indicate when and where it will be implemented

Accommodations provided to the student must be the same for classroom instruction, classroom assessments, and district or State assessments. It should be noted that some accommodations may be appropriate for classroom use but may be prohibited during State testing. Staff should consult the 2012 *Maryland Accommodations Manual*, particularly Sections 5 and 6, in making such determinations and the 2015 *PARCC Accommodations Manual* available on the Section 504 Canvas Community Page.

Accommodations may include related aids and services but only if they are designed to meet individual educational needs of students with disabilities as adequately as the needs of nondisabled peers. Accommodations may include but are not limited to: specialized transportation, orientation and mobility, extended time on tests, and preferential seating. The need for a specific accommodation must relate to the area of the identified impairment and is based on **data to support the need for the accommodation**. 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. The team should also consider whether the student requires accommodations during co (fieldtrips or activities) or extracurricular activities (sports or school sponsored events) or during an emergency evacuation. These can be documented on the Section 504 plan.

Accommodations should be clearly written and specific. For example, if a student's Section 504 Plan includes "preferential seating" as an accommodation, write whether that means that the teacher should seat the student near the door, out of direct light, etc.

Requested accommodations should be thoroughly considered before they are deemed unreasonable. Financial costs of accommodations may not be considered in determining whether they are reasonable. Accommodations may not result in a material alteration of the program. 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.

Remember that the purpose of Section 504 is to level the playing field. If the Section 504 team ties each accommodation to data from the evaluation, showing where a disability has impacted negatively on the child's ability to access or benefit from the school's programs, it can

dramatically reduce the problem of over-accommodation. Where there is no disability-related need, there is no accommodation required by a nondiscrimination law.

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

There is a difference in the provision of related services under IDEA and Section 504. Under IDEA, related services are required in order for a student to benefit from their specialized instruction. Under Section 504 a student may require a related service to assure equal access and the same educational opportunities as those provided to their nondisabled peers. Related services under Section 504 may be considered when a student does not display evidence of a disability under IDEA that requires special education. Students who are evaluated and determined to be eligible for services under Section 504 must have a Section 504 Plan. If the Section 504 team suspects the need for a related service in order to assure equal access and the same educational opportunities provided to nondisabled students, the appropriate related services staff must be consulted. Related service staff will conduct observations and functional evaluations as needed, participate in the Section 504 planning or review meetings, provide training as appropriate to implement the recommended accommodations, and consult with teachers regarding the student's access in the school environment as well as participation in all school activities.

Summary of Discussion:

For each meeting, regardless of the other required documentation, Section 504 meeting minutes must be recorded on the appropriate area of each form. All minutes will include an explanation for each of the team's decisions. All parent requests should be noted with an **explanation for acceptance or rejection**. Refer to Section III for additional information on HCPSS forms used at the various Section 504 team meetings.

Dates:

The effective date and the most recent evaluation date will display when the *Section 504 Plan* form is printed. The projected reevaluation date (three years from the Section 504 team meeting where eligibility for the *Section 504 Plan* was determined) and the projected annual review date will display on the *Section 504 Plan* when printed. There is also a termination date for students who, through the reevaluation process, are determined no longer eligible under Section 504.

Participating Team Members:

The name and title of each Section 504 team meeting participant is recorded on the Section 504 Plan.

Parent/Guardian Consent:

Obtain the parent/guardian's consent (signature) at the end of the *Section 504 Plan* form for initial plans. If the parent refuses to sign the initial Section 504 Plan, it cannot be implemented. In such cases teachers, may develop and implement any best practice strategies they might use for any other student. The parent/guardian is provided with a copy of the Section 504 Plan within five (5) business days of the Section 504 team meeting.

Parental Rights Document:

The Section 504 Parental Rights document, *Notice of Procedural Safeguards Under Section 504 of the Rehabilitation Act of 1973*, outlines a parent's rights in the Section 504 process. It is included within the *Section 504 Notice of Invitation* form in TIENET for initial, annual, and reevaluation meetings. Parents acknowledge their receipt of the parental rights document on the space provided on each form. Parents have a right to address disputes through the grievance process as outlined in this manual.

E. Least Restrictive Environment

Every Section 504 Plan must include documentation of a student's placement and why it is appropriate. 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 his/her needs met with the use of accommodations. Other than placement in the Gateway program through the Central Admissions Committee (CAC), it would be extremely rare for a student with a Section 504 Plan to require placement outside the home school. If the Section 504 team believes that the student needs an alternate placement (other than the Gateway program) the Section 504 team will convene a district Section 504 team chaired by the HCPSS Section 504 Coordinator. Only Section 504 team meetings that include the HCPSS Section 504 Coordinator have authority to place a student in a more restrictive environment.

The appropriate Central Office Community Superintendent may place students with a Section 504 Plan in alternate educational environments for disciplinary purposes for the duration of a disciplinary sanction.

F. Follow-Up Actions

After the Section 504 team meeting the case manager is responsible for distributing copies of the Section 504 Plan to **all persons responsible for implementing the accommodations**. All individuals who provide or may implement Section 504 Plans must be made aware of the student's disability and accommodations. This includes substitute teachers if they will have implementation responsibilities. This also includes but is not limited to HCPSS employees who provide HCPSS extra-curricular programs and activities. The privacy of the student shall be protected to the maximum extent appropriate under the Federal Education Rights and Privacy Act. Access to student records will be limited to those HCPSS employees who have a legitimate educational need to know the student's Section 504 status.

Teachers and employees implementing the Section 504 Plan collect data on the use and success of the accommodations. This data will be reviewed at the annual review, any interim reviews, and reevaluation meetings. Data may include, but is not limited to, seating charts, examples of assignments where directions were simplified compared to the original class assignment, evidence of the amount of additional time the student required to complete assignments, etc.

G. Compliance

All HCPSS staff will implement the Section 504 Plan and required accommodations as written. No individual staff member has discretion or authority to alter/otherwise interpret the Section 504 Plan or deny any accommodations granted to the student. HCPSS will routinely take steps to ensure staff members are trained in Section 504 rules and procedures. Appropriate HCPSS Central Office staff may internally audit a school for Section 504 compliance. 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.

VII. Administrative Responsibilities of the School

A. Section 504 Administrative Building Coordinator

Each school principal must designate a Section 504 Administrative Building Coordinator or assume this role. The Section 504 Administrative Building Coordinator's responsibilities include the following:

- Attend initial Section 504 team meetings and attend or designate an administrator to attend manifestation meetings to support the team. Attend other Section 504 team meetings as necessary and retain accountability for compliance to Section 504.
- Maintain contact with the HCPSS Section 504 Coordinator and other members of the Central Office, when needed.
- Collaborate with Section 504 case managers to ensure that all staff members are complying with each student's Section 504 Plan and ensure attendance of appropriate staff at a section 504 meeting.
- Ensure a student's Section 504 status is known before any disciplinary sanction is imposed that would result in a student being excluded for more than 10 cumulative school days per school year. Refer to Section IX for more information.
- Assign a member of the school's administrative support staff to assist with Section 504 as necessary.
- Ensure all Section 504 team meetings are conducted in accordance with the Section 504 manual and BOE Policy 9060.
- Ensure that **all students suspected of having a disability** are immediately referred to an Individualized Education Program (IEP) or Section 504 team. This should not be interpreted to mean that schools are prohibited from providing interim intervention supports while the student is going through an eligibility process.
- Ensure Section 504 documents (including student Section 504 files) for all students are maintained properly in conjunction with administrative support personnel.
- Ensure training is provided to Section 504 case managers and school-based staff annually.
- Ensure that any person who wishes to refer a student to the Section 504 team shall have access to referral forms, including parents/guardian, staff, and students.
- Respond to student, staff, and parent Section 504 inquiries and referrals, as appropriate.

B. Section 504 Case Manager

Each Section 504 school-based principal must designate Section 504 case managers. These individuals may include and is not limited to assistant principals, counselors, school psychologists, administrative interns, or nurses.

Section 504 case manager responsibilities include the following:

- Attend all Section 504 team meetings for the students to whom they are assigned.
- Ensure all Section 504 team meetings are conducted in accordance with this manual and BOE Policy 9060 and assist in preparing documents for the meeting.
- Obtain any necessary data from the appropriate staff members, i.e. classroom teacher, school counselor, or nurse to prepare for the meeting.
- Ensure that necessary HCPSS employees are aware of student Section 504 Plans, as appropriate.
- Ensure that all Section 504 documents for their assigned students are completed appropriately.
- Receive and manage Section 504 documents for assigned students and place in the student's Section 504 file in the student's cumulative folder.

Each year, principals will be asked to submit the name and contact information of their Section 504 Administrative Building Coordinator. This submission must be in writing or electronic mail. The principal must provide a new submission every school year, **prior to August 15th of each year**. Submissions must be made even if the designee does not change from year to year.

VIII. Section 504 Annual Review Meetings, Progress Review Meetings, Reevaluation Meetings, and Removal of the Section 504 Plan

A. Overview

The Section 504 team shall conduct an annual review of each student's Section 504 Plan, generally within one year of the date of the Eligibility Determination Meeting or last Annual Review Meeting. During the annual meeting, the team will evaluate the appropriateness of services or accommodations currently provided in a student's Section 504 Plan. The purpose of the annual review is not to evaluate whether or not the student continues to be eligible for a Section 504 services and accommodations, but rather to determine if the services and accommodations in the student's current Section 504 Plan continue to be appropriate. Each of the student's teachers must complete the *Section 504 Progress and Accommodation Review Worksheet* and submit the completed form to the student's Section 504 case manager prior to the annual review meeting.

B. Conducting the Section 504 Annual Review Meeting

Meeting checklists outlining the steps to follow for meetings are available on the Section 504 Canvas Community page. For the annual review, the case manager completes a new *Section 504 Plan* document. In the box "Reason for 504 Meeting," check "Annual Review of the Section 504 Plan." Based on a review of the data from teachers in the *Section 504 Progress and Accommodation Review Worksheets*, the Section 504 team determines if the student is using the accommodations listed in his or her current Section 504 Plan and the effectiveness of each. The Section 504 team determines the following:

- What are the particular accommodations no longer utilized and why?
- Does the current Section 504 Plan remain appropriate?

The Section 504 team uses the answers to the questions above to determine if the current accommodations are providing the student with equal access to public education programs and activities and if any additional accommodations or supports may be needed to ensure such access.

All Section 504 Plan accommodations listed on a student's Section 504 Plan must be designed to meet the student's current educational program. Any accommodations that are no longer warranted are removed and not included in the revised Section 504 Plan. All decisions to remove, add, or reject any accommodations are based on data and explained in the "Summary of Section 504 team discussion" box of the student's *Section 504 Plan* document.

It should be noted that in most cases, the "Physical or mental impairment as identified through Section 504 eligibility criteria review" and "Major life activity substantially limited by the identified impairment" remain the same as determined at the last eligibility determination Section 504 meeting. If there are new data to review in consideration of changes in either the physical or mental impairment or major life activity determinations, the team should first review the data by conducting a reevaluation and completing a new *Section 504 Eligibility*

Determination form. It is important to remember that reevaluations are required every three years; however, they can be held earlier, if necessary.

C. Conducting the Section 504 Reevaluation Meeting

Meeting checklists outlining the steps to follow for meetings are available on the Section 504 Canvas Community page. Three (3) Year Reevaluations are conducted to make a determination as to whether the student remains eligible with a qualified disability and determine if any changes are necessary to the Section 504 Plan. The Reevaluation Meeting is held within three years from the Initial Evaluation Meeting or from the previous Three Year Reevaluation Meeting. A Three Year Reevaluation Meeting will take the place of the current year's required Annual Review Meeting.

A reevaluation Section 504 team meeting begins with a review of existing data. Each of the student's teachers must complete the *Section 504 Progress and Accommodation Review Worksheet* and submit the completed form to the student's Section 504 case manager prior to the reevaluation meeting. When the purpose of the meeting is a reevaluation, the *Section 504 Progress and Accommodation Review Worksheet* will include questions on both the impact of the disability and the process and accommodation review. The Section 504 team follows the same process described in Section V.B of this handbook, ***Conducting the Section 504 Evaluation Meeting***. The Section 504 team completes the *Section 504 Eligibility Determination* form. The Section 504 eligibility decision of the Section 504 team is documented on the *Section 504 Eligibility* form by selecting **one** of the available conclusions listed on the form, in the "Reevaluation Eligibility Decision" section.

REEVALUATION ELIGIBILITY DECISION

- Based upon re-evaluation data, the student **continues to be a student with a disability** under Section 504 because there is a physical or mental impairment that substantially limits a major life activity. **The Section 504 Plan will be reviewed/revised.**
- Based upon re-evaluation data, the student **no longer is a student with a disability** under Section 504 because there is not a physical or mental impairment that substantially limits a major life activity. **A Section 504 Plan is no longer needed.**

After the completion of the *Section 504 Evaluation Review Meeting and Eligibility Determination* form, if the student remains eligible for a Section 504 Plan, the student's Section 504 Plan is revised, as appropriate.

D. Conducting an Interim Review of the Section 504 Plan

An interim progress review meeting may be held any time the Section 504 team needs to evaluate the appropriateness of services or accommodations currently provided in a student's *Section 504 Plan*. The student's parent, the student, the case manager, or teacher(s) may request such a meeting at any time. The Section 504 team completes the *Section 504 Plan* form to document the discussion and decisions of the Section 504 Team. If changes are needed to the

student's *Section 504 Plan*, create a new Section 504 Plan by carrying over all parts of the document from the previous plan and make edits.

E. Removal of a Section 504 Plan

The Section 504 team must conduct a reevaluation, as described above, before determining that a student is no longer eligible under Section 504 and removing the Section 504 Plan. If the reevaluation determination is that the student's physical or mental impairment does not "substantially limit" a major life activity, then the student is no longer eligible for a Section 504 Plan. In such cases, the decisions of the Section 504 team are documented in the appropriate narrative section of the *Section 504 Evaluation Review Meeting and Eligibility Determination* form. This form is used to "unflag" the student in the student data collection system when the Section 504 team determines, through reevaluation, that the student is no longer eligible for a Section 504 Plan. Please let TIENET support know that the student is no longer "active" in the TIENET system.

If a student was referred to the IEP team and was found to be eligible, the Section 504 flag will also need to be removed. Keep in mind that while the student is now eligible for an IEP, the student is still protected under Section 504 and these protections are provided through the IEP. Please let TIENET support know that the student is no longer "active" in the TIENET system for 504 and has an IEP.

IX. Discipline for Students Protected Under Section 504

A. General School Responsibilities Related to Discipline of Students with Section 504 Plans

When suspending a student with a Section 504 Plan, school staff should follow suspension procedures used for nondisabled students, along with the following exceptions. Since Section 504 is first and foremost antidiscrimination legislation, a harsher sanction than a nondisabled peer would receive for the same misconduct is prohibited discrimination.

B. Suspension for 10 Days or Less

A principal may suspend a student with a Section 504 Plan for cause, for not more than 10 school days per year, regardless of disability (days are cumulative per school year). Educational services do not have to be provided to students with disabilities during the first 10 days of removal if they are not provided to students without disabilities. A Manifestation Determination meeting does not need to be held for a suspension less than 10 days (cumulative or consecutive). Keep in mind that a sound practice is to reconvene the Section 504 team during the suspension to determine if accommodations need to be adjusted or discontinued or if new accommodations are needed.

C. Suspension to the Superintendent (Extended Suspension): Suspension For More Than 10 School Days

After an incident occurs, it is the school administrator's responsibility to determine if there was a conduct violation in accordance with BOE Policy 9200. Should the administrator determine the student was responsible for a conduct violation, the administrator must then decide if he/she is recommending a consequence that will result in a suspension in excess of 10 school days (either consecutive or cumulative). If so, the school must convene a Section 504 team meeting for a manifestation determination **before** the superintendent's designee (Central Office Administrative Director) holds the extended suspension conference.

D. Section 504 Team Manifestation Determination Responsibilities

The Section 504 Team should immediately schedule a manifestation determination meeting when directed by the school-based administrator. The manifestation determination meeting must be held no later than 10 school days after taking the disciplinary action. The 10-day notice for a Section 504 team meeting does not apply to manifestation determination meetings because of the need to expedite the meeting. The parent/guardian may be provided advance notice of the meeting through a telephone call to notify him or her of the date, time, location, and purpose of the meeting. The telephone call should be followed by written notification of the meeting.

The Section 504 team completes the *Section 504 Manifestation Determination Report* form to document the Section 504 team's discussion and decisions regarding the relationship between the student's disability or suspected disability (if in process of initial or reevaluation) and the behavior subject to the disciplinary action. The administrator states the Code of Conduct violation that resulted in the suspension. The Section 504 team must answer the following two questions:

1. Is the conduct in question ***caused by*** or ***had a direct and substantial relationship*** to the student's disability; **or**

2. Is the conduct in question a direct result of the school's failure to implement the Section 504 Plan?

The conduct shall be determined to be a manifestation of the student's disability if the Section 504 team makes the determination that either of the two criteria listed above are applicable for the student.

If the team determines the behavior is **not** a manifestation of the student's disability:

- The student may be disciplined as any other general education student.
- The school system may cease educational services during the periods of disciplinary removal that exceed 10 school days if nondisabled students in similar circumstances do not continue to receive educational services.

If the team determines the behavior **is** a manifestation of the student's disability:

- The suspension or expulsion will be terminated and the student will return to his or her educational program. The Section 504 team may consider any revisions to the student's Section 504 Plan and should convene an 'Interim Review' meeting as soon as possible to consider modification to the accommodations to adjust the 504 plan. The team may also consider the need for a Functional Behavioral Assessment (FBA) or changes to an existing Behavior Intervention Plan (BIP), if appropriate.
- If school-based administration feels that despite the manifestation determination, the student continues to be a danger to himself/herself or others, **the administrator should immediately contact the Administrative Director and the Director of Special Education for assistance.**

E. Discipline for Students with Section 504 Plans Who Use Drugs or Alcohol

Under Section 504, current untreated drug or alcohol abuse is not considered a disability. This exclusion does not extend to a student who:

- Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use; or
- Is participating in a supervised rehabilitation program and no longer engaging in such use.

Conversely, a student currently engaging in the abuse of drugs or alcohol is not entitled to Section 504 protections, including a manifestation determination meeting. HCPSS may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any student with a disability who *currently is engaging in the illegal use of drugs* or in the use of alcohol to the same extent that such disciplinary action is taken against students who are not individuals with disabilities.

Possession, sale, or distribution of illegal drugs does not result in a loss of protections under Section 504 **unless the student is currently using drugs**. In such cases, a manifestation determination meeting is held.

F. Discipline for Students with Section 504 Plans Who Bring Weapons onto School Property

Under the Gun-Free School Act, a student with a Section 504 Plan who brings a gun to school may be placed in an interim alternative placement for up to 45 calendar days, regardless of whether the behavior was caused by the student's disability or whether the student had previously been suspended for 10 or more days. If a student with a Section 504 Plan brings a weapon other than a gun to school and is recommended for disciplinary sanctions, the student is entitled to a manifestation determination meeting. If the team determines that the action was not caused by or had a direct and substantial relationship to the student's impairment used as the basis for the student's Section 504 Plan, the student may be disciplined in the same way as a student without a disability would be treated. If the Section 504 team determines the behavior was caused by or had a direct and substantial relationship to the impairment that was used as the basis for the student's Section 504 Plan, the student must return to school.

G. Miscellaneous

- No unilateral removal exists for students with Section 504 Plans. There is no mechanism such as the 45 day Interim Alternative Educational Setting (IAES) for students with Section 504 Plans; an IAES is part of IDEA for students with IEPs, and **not part of Section 504**.
- Students with Section 504 Plans who are suspended beyond 10 days, related to conduct that is determined by the Section 504 team to **not be a manifestation**, do not have to be provided FAPE.
- Any days the student was excluded from educational services count toward the 10-day limit.
- Administrators will provide parents with appropriate documentation after any disciplinary determination is made.
- Parents will be provided with the *Section 504 Parental Rights* document at the beginning of a manifestation determination meeting.

X. Academic Eligibility and Waiver Process

A. General Impact of Section 504 on Athletic Eligibility and Extracurricular Activities

Students with a qualified disability shall be afforded an equal opportunity to participate in extracurricular activities and athletics as non-disabled peers. Neutral and systemically equal application of a rule that causes exclusion of students with a Section 504 Plan does not constitute discrimination. (BOE Policy 9070).

Schools are prohibited from excluding or denying the benefits of an extracurricular activity to a student with a qualified disability on the sole basis of that disability, assuming the student is otherwise qualified to participate. As an example, a student with a Section 504 Plan who has a qualified disability of speech language impairment may not be excluded from auditioning for a school play just because the impairment could affect the performance. In this example, the student could be excluded if the school play has competitive auditions and the student was not given a part because the drama teacher determined that the student did not possess the level of acting skill required.

B. BOE Policy 9070 – Establishing Academic Standards and Waiver Process

BOE Policy 9070 requires all students, disabled and nondisabled, to meet certain academic criteria before they are permitted to participate in athletics or extracurricular activities. This policy also permits Section 504 teams to waive academic eligibility requirements, under certain circumstances, and allow an otherwise academically ineligible student with a Section 504 Plan to participate in the desired activity or sport.

C. Waiver Process

An Academic Eligibility Waiver Meeting of the Section 504 team must be requested by or on behalf of the student in question. This meeting shall be conducted in accordance with all timeline and general Section 504 meeting procedures. There is a two-prong determination process when granting a waiver:

1. The Section 504 team should first determine if the school provided FAPE to the student. This specifically means, “Did the school fail to implement the Section 504 Plan as written?” If the determination is that FAPE was provided, then the team must deny the waiver and need not proceed to the second question. If the determination is that FAPE was not provided, then the team shall proceed to answer the second question.
2. If FAPE was not provided, the Section 504 team must ask if failure to provide FAPE led to the student being academically ineligible. If the specific failure of the implementation of the Section 504 Plan **directly caused** the academic ineligibility, then a causal link exists and a waiver should be granted. Given that this is a somewhat subjective analysis, teams should consider all provided data.

Consider the following example: Assume a student who has a qualified disability of ADHD under Section 504 has a specific accommodation of extended time on tests. Now assume that the

student is ineligible because he failed English. Next, assume the English teacher did not permit the student extended time on one exam but implemented the extended time for all other tests. Finally, assume the student received 0 points on the test for which he was not granted extended time. If the analysis of the grade sheet for that marking period reveals that the one test (conducted in violation) caused the student to fail the quarter, then a causal link exists between the student's failure of English and the failure to provide FAPE. In this scenario, the lack of extended time caused the student to fail the test, lowering his quarter grade to the failing range resulting in ineligibility. A waiver should then be granted. Conversely, if the grade sheet analysis revealed that the student would have failed English regardless of the provision of FAPE for the one exam, the student remains academically ineligible. The failure to provide FAPE did not result in the academic ineligibility; therefore, there is no causal link. A waiver should then be denied.

D. Pendency Between Request For Meeting and Waiver Determination

For Athletics: Per BOE Policy 9070, once a waiver meeting request for a student with Section 504 status is made, the student must be permitted to practice for any athletic team, but may not play in any competitive game until and unless the Section 504 team meets and grants the waiver.

For Extracurricular Activities: Per BOE Policy 9070, once a waiver meeting request is made for a student with Section 504 status, the student must be permitted to participate in the preparatory activities (e.g., practices, rehearsals, etc.) but may not participate in special events associated with the activity (e.g., performances, field trips, etc.) until and unless the Section 504 team meets and grants the waiver.

E. Consequence of Waiver Determination

Should a waiver be granted, the principal shall immediately be informed and declare the student eligible for the purposes of BOE Policy 9070. The student may immediately, fully participate in all aspects of the sport or extracurricular activity including competitive games and/or special activities. Should a waiver be denied, the principal shall immediately be informed and declare the student ineligible for the purposes of BOE Policy 9070. The student's temporary participation shall be terminated the day after the denial.

F. Consideration of Section 504 Modifications for Extracurricular or Athletic Participation

If the Section 504 team grants the waiver it shall, in the same meeting, consider whether or not the student needs any accommodation(s) or support(s) in order to be afforded an opportunity equal to that of a nondisabled peer for participation in the activity. In determining whether additional Section 504 Plan changes are needed, the Section 504 team should understand that equal opportunity does not mean equal participation.

XI. Grievance Procedures

Discrimination against students by other students or employees/third parties and discrimination against employees/third parties is covered through Board Policy 1010. Policy 1010 indicates the following grievance procedures in such cases.

1. Discrimination Against Students by Other Students
 - a. A student should report discrimination by other students promptly to a teacher, school counselor, school-based administrator, or the Equity Assurance Coordinator. Such reports may be made orally or in writing.
 - b. Teachers or school counselors who receive such a complaint of discrimination from a student or who believe discrimination has occurred must take action designed to stop the discrimination and report the complaint promptly to an administrator or the Equity Assurance Coordinator.
 - c. Administrators receiving such complaints must conduct an investigation as soon as possible and take appropriate steps, which may include contacting each student's parents, to address any findings of discrimination. Significant or repeated discrimination by the same offender may be reported to the Equity Assurance Coordinator.
2. Discrimination Against Students by Employees/Third Parties
 - a. A student should report discrimination by employees or third parties promptly to a teacher, school counselor, school-based administrator, or the Equity Assurance Coordinator. A complaint against an administrator should be filed with the Equity Assurance Coordinator. Such reports may be made orally or in writing.
 - b. Administrators receiving complaints alleging discrimination by a school system employee or third party must immediately notify the Equity Assurance Coordinator.
 - c. Upon receipt of a complaint, the Equity Assurance Coordinator will record the complaint, investigate it, and render findings with recommendations to the appropriate parties.
3. Discrimination Against Employees/Third Parties
 - a. An employee or third party should report discrimination promptly to the Equity Assurance Coordinator or a school-based administrator or supervisor, as appropriate.
 - b. School-based administrators and supervisors must forward complaints of discrimination from employees or third parties to the Equity Assurance Coordinator.

A. Section 504 Review Request

If a parent/guardian, student, or employee is dissatisfied with the decisions of the Section 504 team regarding the identification, evaluation, and educational placement/program for a student with a disability; believes the 504 Plan has not been implemented; or a student has been subject to discrimination due to the student's disability then he/she may request a Section 504 review by completing the *Request for Section 504 Review* form. The form is obtained from and submitted

to the HCPSS Section 504 Coordinator in the Department of Special Education and Student Services.

Investigation:

1. The HCPSS Section 504 Coordinator or designee will conduct an adequate, reliable, and impartial investigation of the complaint, which may include interviewing the complainant and witnesses along with the opportunity to present witnesses and other evidence. The HCPSS 504 coordinator will provide notice to the parties in writing of the outcome of the complaint and the basis for the decision within thirty (30) days of receipt of complaint by the school system's 504 Coordinator, excluding extenuating circumstances.
2. Should the investigation show that prohibited actions occurred then HCPSS will take steps to prevent the recurrence of any prohibited actions and to correct its discriminatory effects on the complainant and others, if appropriate.

B. Impartial Hearing Rights Under Section 504

Right to Impartial Hearing:

If a complainant wishes to contest an action or failure to act on the part of the school system with regard to the identification, evaluation, or placement/program of a disabled student under Section 504 of the Rehabilitation Act of 1973; believes the 504 Plan has not been implemented; or believes the student has been subject to discrimination due to the student's disability the he/she may request a hearing before an impartial Hearing Officer, who is not an employee of the Howard County Public School System.

Procedure to Request Impartial Hearing:

The complainant must submit a written *Request for Section 504 Hearing* to the Howard County Public School System's Coordinator of Section 504. The written request may be made on a form specified by the Section 504 Coordinator for that purpose.

The request for an impartial hearing must include:

1. The name of the student and his/her date of birth
2. Address of the student's residence
3. Name of the student's school
4. A description of the alleged action(s) or omission(s) regarding the student's Section 504 Plan that is the basis for the hearing request
5. The date of the alleged action(s) or omission(s)
6. A description of the remedy requested.

Requests for impartial hearings must conform to the six (6) requirements described above or may be dismissed, with prejudice, for lack of sufficiency.

Appointment of Impartial Hearing Officer and Scheduling of Hearing:

Upon receipt of the written request for an impartial hearing, the Executive Director of Special Education and Student Services of the Howard County Public School System will appoint an impartial Hearing Officer to preside over the hearing and issue a decision. This Hearing Officer

will be hired by the school system at no cost to the parent. The Hearing Officer shall not be an employee of the Howard County Public School System. The school system's choice of an impartial Hearing Officer is final and may not be a disputed issue at the Section 504 hearing, since such an issue would not relate to the identification, evaluation, or placement of a child under Section 504. If a parent disputes the impartiality of the Hearing Officer, he or she may raise such an issue in a review of the Hearing Officer's opinion by a court of competent jurisdiction.

In collaboration with the impartial Hearing Officer, the school system shall secure a date and a time to conduct the impartial hearing. Every effort should be made to hold the impartial hearing within 45 days after the date the Request for Section 504 Hearing is received by the school system's Section 504 Coordinator. Upon securing a date and time for the impartial hearing, the Section 504 Coordinator will notify, in writing, the parent or guardian of the hearing date, time, and location. The timeline for the hearing may be extended upon mutual consent of the parties. The Hearing Officer is also empowered to extend the hearing timeframe if good reason exists.

Pre-Hearing Conference:

The Hearing Officer may order a pre-hearing conference with the parties. During this conference, the parent or his/her representative will state and clarify the issues to be addressed at the hearing. The pre-hearing conference can also serve to resolve preliminary matters, jurisdictional issues, and answer the parties' questions regarding the hearing process.

Conduct of Hearing:

Any party to an impartial Section 504 hearing has the right to:

- 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;
- The right to present evidence and confront, cross-examine, and request the attendance of witnesses;
- The right to obtain a verbatim record of the hearing, upon request, which at the school system's election may be audio, electronic, or written;
- The right to obtain a written decision from the Hearing Officer.

The hearing must be conducted at a time and place that is reasonably convenient to the parent and the Howard County Public School System. A hearing officer may prohibit the introduction of repetitive or irrelevant evidence. The verbatim record of the hearing, when requested, and the written decision are provided to the parent at no cost.

The section of these guidelines entitled: "Grievance Procedure" shall control the outcome of any procedural or substantive matter if in conflict with COMAR.

Hearing Decision:

The impartial Hearing Officer must issue a written decision on substantive grounds based on a determination of whether the student received equal access to education and opportunity and whether the HCPSS made reasonable accommodations to allow the student to have access to and

participate with nondisabled peers and that the student was not discriminated against as a result of the student's disability. The Hearing Officer must confine his or her orders or rulings to those matters that involve the identification, evaluation, or placement of children under Section 504 and the provisions of the regulations implementing Section 504. This is the scope of the Hearing Officer's jurisdiction. Any party may raise objections or move to dismiss any claims that do not fall under Section 504. The Hearing Officer must issue a written decision within thirty (30) days of the completion of the hearing and/or the closing of the record. Hearing Officers may not award attorney fees.

C. Review Rights

If either party is not satisfied by the final decision of the Hearing Officer, the party may seek review of the hearing decision in a court of competent jurisdiction.

D. Complaints to the Office for Civil Rights (OCR):

This procedure does not deny the right of the parent/guardian or student to file a formal complaint with the Office for Civil Rights if the parent believes that the school system has committed a violation that falls under the jurisdiction of that office. The Office for Civil Rights is an investigatory office of the United States Department of Education, and it handles Section 504 complaints separately and independently of the local hearing process, and in accordance with the guidelines set forth in OCR's Complaint Resolution Manual.

Complaints to the Office for Civil Rights may be sent to:

Office for Civil Rights, *Philadelphia Office*

U.S. Department of Education

The Wanamaker Building

100 Penn Square East, Suite 515

Philadelphia, PA 19107-3323

The Section 504 Coordinator for the Howard County Public Schools is the:

Instructional Facilitator for Psychological Services or Designee

Howard County Public School System

10920 Clarksville Pike

Ellicott City, MD 21042

410-313-1252 (office)

410-313-6780 (fax)

XII. Section 504 Forms

Section 504 meeting forms are embedded in the TIENET program and supplemental forms are available through the Section 504 Canvas Community under the forms page.

XIII. Updates

This manual will be updated regularly. Updates will be distributed through regular school system channels of communication.

Update 1 August 2015-Updated grievance policy

Update 2 March, 2016-Updated document to reflect new data management system and form names

Update 3 August, 2016-Updated Section 504 Administrative Responsibilities of the School.

Update 4 August, 2017-Updated document to reflect new executive structure, new teacher input form names, addition to reevaluation section, and align Discipline section to Policy 9200.