

MONTGOMERY COUNTY BOARD OF EDUCATION
Rockville, Maryland

May 10, 2011

MEMORANDUM

To: Members of the Board of Education

From: Patricia O'Neill, Chair, Board of Education Policy Committee

Subject: Tentative Action, Policy ACG, *Access to Services, Programs, and Activities by Individuals with Disabilities*

The Montgomery County Board of Education Policy Committee, in consultation with staff members, identified Policy ACG, *Access to Services, Programs, and Activities by Individuals with Disabilities* for updating to reflect the *Americans with Disabilities Act Amendments Act of 2008* (ADAAA) and to include relevant portions of Policy GBH, *Employment of Individuals with Disabilities*. The policy provides a clear and comprehensive mandate for the prohibition and elimination of any unlawful discrimination against individuals with disabilities. The policy also affirms a strong commitment to the goals of the ADAAA as well as other applicable laws as they relate to employees, job applicants, and access to the school system's services by members of the public with disabilities.

The updated draft provides for the rescission of Policy GBH, *Employment of Individuals with Disabilities*, after incorporating relevant portions into Policy ACG, *Access to Services, Programs, and Activities by Individuals with Disabilities*. Updated Policy ACG, *Access to Services, Programs, and Activities by Individuals with Disabilities*, complies with ADAAA as well as aligns with other policies. A crosswalk of both policies is provided to outline the provisions that were retained and deleted.

Members of the Montgomery County Board of Education Policy Committee discussed draft Policy ACG, *Access to Services, Programs, and Activities by Individuals with Disabilities*, on November 16, 2010, and February 7, 2011. Updated Policy ACG, *Access to Services, Programs, and Activities by Individuals with Disabilities* is included as Attachment A. Policy GBH, *Employment of Individuals with Disabilities* is included as Attachment B. Included as Attachment C, is a crosswalk of both policies to outline the provisions that were retained and deleted.

The following resolution is provided for your consideration:

WHEREAS, Policy ACG, *Access to Services, Programs, and Activities by Individuals with Disabilities*, provides a clear and comprehensive mandate for the prohibition and elimination of any unlawful discrimination against individuals with disabilities and affirms a strong commitment to the goals of the ADA as well as other applicable laws as they relate to employees, job applicants, and access to the school system's services by members of the public with disabilities; and

WHEREAS, The Montgomery County Board of Education Policy Committee has considered and recommended revisions to update Policy ACG, *Access to Services, Programs, and Activities by Individuals with Disabilities*; and

WHEREAS, The Montgomery County Board of Education Policy Committee has considered that Policy GBH, *Employment of Individuals with Disabilities*, could be rescinded given that relevant portions of that policy have been incorporated into the updated draft of Policy ACG, *Access to Services, Programs, and Activities by Individuals with Disabilities*; and

WHEREAS, The Montgomery County Board of Education has received the Policy Committee's recommendation; now therefore be it

Resolved, That the Montgomery County Board of Education take tentative action on Policy ACG, *Access to Services, Programs, and Activities by Individuals with Disabilities*; and be it further

Resolved, That Policy ACG, *Access to Services, Programs, and Activities by Individuals with Disabilities*, be sent out for public comment with a notice that the Board of Education will consider rescinding Policy GBH, *Employment of Individuals with Disabilities*, after incorporating relevant portions of that policy into Policy ACG.

Present at the Board table for the discussion are Ms. Moriah Martin, assistant to the associate superintendent, Office of Human Resources and Development; and Mrs. Stephanie P. Williams, director, Department of Policy, Records, and Reporting.

PO:hp

Attachments

1 Related Entries: ACA, ACB, ACG-RA
2 Responsible Office: Superintendent of Schools
3 **Human Resources and Development**
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6 Access to **Employment**, Services, Programs, and Activities by
7 Individuals with Disabilities
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10 A. PURPOSE
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- 12 1. To provide a clear and comprehensive mandate for the
13 prohibition and elimination of any **unlawful**
14 discrimination ~~or harassment~~ against qualified
15 individuals with disabilities. ~~in regard to their~~
16 ~~participation in the school system's services~~
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- 18 ~~2. To make clear to the public and to the staff and students~~
19 ~~of Montgomery County Public Schools (MCPS) that no~~
20 ~~qualified individual with a disability shall, on the~~
21 ~~basis of disability, be excluded from participation in or~~
22 ~~be denied the benefits of an MCPS service~~
23
- 24 32. To affirm a strong commitment to the goals of the
25 *Americans With Disabilities Act Amendments Act* of
26 ~~1990~~**2008** (**ADAAA**), as well as ~~to the Rehabilitation Act of~~
27 ~~1973~~ and other applicable ~~disability~~ laws as they relate

28 to employees, job applicants, and access to the school
29 system's services by members of the public with
30 disabilities. This policy is to be construed to comport
31 with the ADAAA and its implementing regulations.
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33 3. To affirm to the citizens of the county, to staff of
34 MCPS, and to students that the Montgomery County Public
35 Schools are committed to the participation of such
36 individuals in the life and work of the schools in
37 accordance with applicable laws.
38

39 4. To affirm that present policies and regulations will be
40 administered to ensure that the rights of individuals
41 with disabilities will be upheld in MCPS, consistent with
42 the long-standing interest on the part of the Board of
43 Education and MCPS in prohibiting discrimination against
44 and in promoting affirmative action in employment and
45 reassignment for individuals with disabilities.
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48 5. To affirm that MCPS will not discriminate on the basis of
49 disability against any qualified individual with a
50 disability with respect to participating in or benefiting
51 from MCPS services.
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53 6. To declare that MCPS will not deny, on the basis of

54 disability, a qualified individual with a disability the
55 opportunity to participate as a member of planning or
56 advisory boards or committees.

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60 B. ISSUE

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~~MCPS has expressed its commitment to nondiscrimination against individuals with disabilities in policies such as human relations and nondiscrimination. With the enactment of the ADA, MCPS adopted Policy GBH: *Employment of Individuals with Disabilities*. Since the adoption of that policy, federal regulations have been issued regarding the other areas protected under the ADA; i.e., services, programs, and activities.~~ **The ADA** is a comprehensive civil rights statute, which provides protection to qualified individuals with disabilities in the areas of employment, state and local government services, and telecommunications. By issuing a companion **ADA** policy, ~~on services for individuals with disabilities,~~ the **Montgomery County** Board of Education (**Board**) seeks to ~~clarify~~ and reaffirm its commitment to nondiscrimination in all areas for individuals with disabilities.

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79 C. POSITION

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81 1. Montgomery County Public Schools (MCPS) will not
82 discriminate on the basis of disability against any
83 qualified individual with a disability with respect to
84 participating in or benefiting from MCPS services; job
85 application procedures; the hiring, advancement, or
86 discharge of employees; employee compensation; job
87 training and other terms, conditions, and privileges of
88 employment.

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90 2. MCPS will provide reasonable accommodations or
91 modifications as required for participation in services,
92 the job application process, employment, continued
93 employment, or reassignment of qualified individuals with
94 disabilities.

95
96 3. In accordance with requirements of ADA, reasonable
97 accommodations or modifications will be provided unless
98 such accommodations or modifications would impose undue
99 hardship on the school system; fundamentally alter the
100 nature of the service, program or activity; or present a
101 direct threat to the individual or others.

102
103 ~~1. Definitions~~

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105 ~~a) An individual with a disability as defined by~~
106 ~~applicable law is one who has a physical or mental~~
107 ~~impairment which substantially limits one or more~~

ATTACHMENT A

Draft 6
03/10/11
ACG

136 a) ~~MCPS will not discriminate on the basis of~~
137 ~~disability against any qualified individual with a~~
138 ~~disability with respect to participating in or~~
139 ~~benefiting from MCPS services.~~

141 b) ~~In providing any aids, program benefits or~~
142 ~~opportunities, or services, either directly or~~
143 ~~through contractual, licensing or other~~
144 ~~arrangements, MCPS will afford a qualified~~
145 ~~individual with a disability an equal opportunity~~
146 ~~to participate or benefit.~~

148 e) ~~MCPS will provide a qualified individual with a~~
149 ~~disability auxiliary aids that are effective and~~
150 ~~afford equal opportunity to obtain the same result,~~
151 ~~gain the same benefit or reach the same level of~~
152 ~~achievement as that provided to others.~~

154 d) ~~MCPS will not provide separate auxiliary aids to~~
155 ~~individuals with disabilities except where such~~
156 ~~action is necessary to provide such aids that are~~
157 ~~as effective as those provided to others.~~

159 e) ~~MCPS will notify applicants, participants,~~
160 ~~beneficiaries and other interested persons of the~~
161 ~~rights and protections of the ADA, including the~~
162 ~~right not to accept an auxiliary aid.~~

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ATTACHMENT A

Draft 6
03/10/11
ACG

- 164 ~~f) MCPS will not perpetuate any discrimination against~~
165 ~~qualified individuals with disabilities by~~
166 ~~providing significant assistance to any agency,~~
167 ~~organizations, or persons that discriminate on the~~
168 ~~basis of disability.~~
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- 170 ~~g) MCPS will not deny, on the basis of disability, a~~
171 ~~qualified individual with a disability the~~
172 ~~opportunity to participate as a member of planning~~
173 ~~or advisory boards or committees.~~
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- 175 ~~h) MCPS will not otherwise limit a qualified~~
176 ~~individual with a disability the enjoyment of any~~
177 ~~right, privilege, advantage, or opportunity enjoyed~~
178 ~~by others.~~
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- 180 ~~i) MCPS will not deny, on the basis of disability, a~~
181 ~~qualified individual with a disability the~~
182 ~~opportunity to participate in services provided to~~
183 ~~others.~~
- 184
- 185 ~~j) MCPS will not, in determining the site or location~~
186 ~~of any facility, make selections that unlawfully~~
187 ~~discriminate against individuals with disabilities.~~
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- 189 ~~k) MCPS, in selection of procurement contractors, will~~
190 ~~not use criteria that subject qualified individuals~~
191 ~~with disabilities to discrimination on the basis of~~

192 ~~their disability.~~

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194 ~~l) MCPS will make reasonable modifications in~~
195 ~~policies, practices, and procedures when the~~
196 ~~modifications are necessary to avoid discrimination~~
197 ~~on the basis of disability unless such~~
198 ~~modifications would fundamentally alter the nature~~
199 ~~of the service, or, where applicable, result in an~~
200 ~~undue financial or administrative burden.~~

201

202 ~~m) MCPS will not use eligibility criteria that have~~
203 ~~the effect of screening out individuals with~~
204 ~~disabilities from fully and equally enjoying any~~
205 ~~service unless such criteria are necessary to the~~
206 ~~provision of the service.~~

207

208 ~~n) MCPS will administer its services in the most~~
209 ~~integrated setting appropriate to the needs of~~
210 ~~qualified individuals with disabilities.~~

211

212 ~~o) MCPS will not impose any surcharge on any~~
213 ~~individual with disability to cover the costs~~
214 ~~entailed in ensuring nondiscrimination.~~

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216 ~~p) MCPS will not deny services to an individual based~~
217 ~~on his/her relationship or association with an~~
218 ~~individual with a disability.~~

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- 247 1. Procedures for implementing this policy will be set forth
248 in administrative regulations as needed.
249
- 250 2. The ~~ADA~~**human resource compliance** ~~co~~ordinator designated
251 by the superintendent will be responsible for
252 coordinating the efforts of MCPS to comply with and carry
253 out its responsibilities under the ~~ADA~~**AAA**, including
254 participating in investigation of any complaint, and will
255 be available to provide guidance, and support in matters
256 related to the rights of individuals with disabilities.
257
- 258 3. Complaint procedures for prompt and equitable resolution
259 of ~~ADA~~**AAA** complaints will be described in administrative
260 regulations. MCPS will not discriminate or retaliate
261 against an individual for filing a charge or
262 participating in an investigation or proceeding under the
263 ~~ADA~~**AAA**.
264

265 F. REVIEW AND REPORTING
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267 A report regarding the status ~~for implementation and~~
268 ~~monitoring of this policy~~**MCPS ADA AAA claims** will be prepared
269 ~~annually~~**quarterly** for Board review.
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272 *Policy History:* Adopted by Resolution No.26-96, January 11, 1996;
273 **revised.**

POLICY

BOARD OF EDUCATION OF MONTGOMERY COUNTY

Related Entries: ACA, FAA, GBH-RA, GEG-RA, IGO-RA

Responsible Office: Superintendent of Schools
Personnel Services

Employment of Individuals with Disabilities

A. PURPOSE

1. To provide a clear and comprehensive mandate for the prohibition and elimination of any discrimination against individuals with disabilities
2. To ensure equal employment opportunities for job applicants who have physical or mental disabilities
3. To ensure that every effort is made to provide for reasonable accommodation for the employment, continued employment in a presently held position, or reassignment to a vacant position for which the individual is qualified
4. To make clear to the citizens of the county, to staff of MCPS, and to students that the Montgomery County Public Schools are committed to the full participation of such individuals in the life and work of the schools, and that the policy of MCPS is to provide for that participation
5. To affirm a strong commitment to the goals of the Americans with Disabilities Act of 1990 (ADA) as well as other applicable laws as they relate to employees and applicants for employment
6. To reaffirm that present policies and regulations will be administered to ensure that the rights of individuals with disabilities will be upheld in MCPS, consistent with the long-standing interest on the part of the Board of Education and MCPS in prohibiting discrimination against and in promoting affirmative action in employment and reassignment for individuals with disabilities

B. ISSUE

The Americans with Disabilities Act of 1990 (ADA) is a comprehensive civil rights statute which provides protection to individuals with disabilities in the areas of employment, state and local government services, and telecommunications. MCPS has expressed its commitment to nondiscrimination against individuals with disabilities in policies such as human relations and nondiscrimination. With the enactment of the ADA, the Board of Education seeks to reaffirm its commitment to nondiscrimination with regard to employment of individuals with disabilities.

C. POSITION

1. Definitions

- a) *An individual with a disability* is one who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded by MCPS as having such an impairment.
- b) The term *qualified individual with a disability* means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

2. MCPS will not discriminate against any qualified individual with a disability in regard to job application procedures; the hiring, advancement, or discharge of employees; employee compensation; job training and other terms, conditions, and privileges of employment. In addition, in accordance with its affirmative action plan, MCPS will continue to make outreach efforts to employ and to advance in employment individuals with disabilities.

3. MCPS will provide reasonable accommodations as required for the application process, employment, continued employment, or reassignment of individuals with disabilities, unless such accommodations would impose undue hardship on the school system. The burden of demonstrating undue hardship will be with the school system in accordance with applicable laws.

D. DESIRED OUTCOME

1. All qualified individuals with disabilities who are seeking employment with the Montgomery County Public Schools will have equal employment opportunities.
2. Reasonable accommodations for the employment, continued employment in a

presently held position, or reassignment to a vacant position for which an individual with disabilities is qualified will be made to ensure participation of individuals with disabilities.

E. IMPLEMENTATION STRATEGIES

1. Procedures for implementing these goals will be set forth in administrative regulations as needed.
2. The ADA Coordinator designated by the superintendent will be responsible for coordinating the efforts of MCPS to comply with and carry out its responsibilities under the ADA, including participating in investigation of any complaint, and will be available to provide guidance, and support in matters related to the rights of individuals with disabilities.
3. Complaint procedures for prompt and equitable resolution of ADA complaints will be described in administrative regulations. MCPS will not discriminate or retaliate against an individual for filing a charge or participating in an investigation or proceeding under the ADA.

F. REVIEW AND REPORTING

A report regarding the status of implementation and monitoring of this policy will be prepared annually for Board review.

Policy History: Adopted by Resolution No. 374-91, April 22, 1991, amended by Resolution No. 26-96, January 11, 1996.

Crosswalk: Policy GBH and Policy ACG

Proposed for Deletion from GBH	Proposed for Inclusion in ACG
<p>Title: “Employment of Individuals with Disabilities”</p>	<p>Title: “Access to Employment, Services, Programs, and Activities by Individuals with Disabilities”</p>
<p>Purpose 1: “To provide a clear and comprehensive mandate for the prohibition and elimination of any discrimination against individuals with disabilities.”</p>	<p>Purpose 1: “To provide a clear and comprehensive mandate for the prohibition and elimination of any unlawful discrimination against individuals with disabilities.”</p>
<p>Purpose 2: “To ensure equal employment opportunities for job applicants who have physical or mental disabilities.”</p>	<p>Purpose 2: “To affirm a strong commitment to the goals of the <i>Americans with Disabilities Act Amendments Act of 2008</i> (ADAAA), as well as other applicable laws as they related to employees, job applicants, and access to the school system’s services by members of the public with disabilities.”</p>
<p>Purpose 3: “To ensure that every effort is made to provide for reasonable accommodation for the employment, continued employment in a presently held position, or reassignment to a vacant position for which the individual is qualified.”</p>	<p>Position 2: “MCPS will provide reasonable accommodations or modifications as required for participation in services, the job application process, employment, continued employment, or reassignment of qualified individuals with disabilities.”</p>
<p>Purpose 4: “To make clear to the citizens of the county, to staff of MCPS, and to students that the Montgomery County Public Schools are committed to the full participation of such individuals in the life and work of the schools, and that the policy of MCPS is to provide for that participation.”</p>	<p>Purpose 3: “To affirm to the citizens of the county, to staff of MCPS, and to students that the Montgomery County Public Schools are committed to the participation of such individuals in the life and work of the schools in accordance with applicable laws.”</p>
<p>Purpose 5: “To affirm a strong commitment to the goals of the <i>Americans with Disabilities Act of 1990</i> (ADA) as well as other applicable laws as they relate to employees and applicants for employment.”</p>	<p>Purpose 2: “To affirm a strong commitment to the goals of the <i>Americans with Disabilities Act Amendments Act of 2008</i> (ADAAA), as well as other applicable laws as they related to employees, job applicants, and access to the school system’s services by members of the public with disabilities. This policy is to be construed to comport with the ADAAA and its implementing regulations.”</p>

Proposed for Deletion from GBH	Proposed for Inclusion in ACG
<p>Purpose 6: “To reaffirm that present policies and regulations will be administered to ensure that the rights of individuals with disabilities will be upheld in MCPS, consistent with the long-standing interest of the Board of Education and MCPS in prohibiting discrimination against and in promoting affirmative action in employment and reassignment for individuals with disabilities.”</p>	<p>Purpose 4: “To affirm that present policies and regulations will be administered to ensure that the rights of individuals with disabilities will be upheld in MCPS, consistent with the long-standing interest on the part of the Board of Education and MCPS in prohibiting discrimination against and in promoting affirmative action in employment and reassignment for individuals with disabilities.”</p>
<p>Issue: “The Americans with Disabilities Act of 1990 (ADA) is a comprehensive civil rights statutes which provides protection to individuals with disabilities in the areas of employment, state and local government services, and telecommunications. MCPS has expressed its commitment to nondiscrimination against individuals with disabilities in policies such as human relations and nondiscrimination. With the enactment of the ADA, the board of Education seeks to reaffirm its commitment to nondiscrimination with regard to employment of individuals with disabilities.”</p>	<p>Issue: “The ADAAA is a comprehensive civil rights statute, which provides protection to qualified individuals with disabilities in the areas of employment, state and local government services, and telecommunications. By issuing a companion ADAAA policy, the Montgomery County Board of Education (Board) seeks to reaffirm its commitment to nondiscrimination in all areas for individuals with disabilities.”</p>
<p>Definitions a) <i>An individual with a disability</i> is one who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded by MCPS as having such an impairment. b) The term <i>qualified individual with a disability</i> means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.</p>	<p>Definitions Deleted from policy and included in Regulation ACG-RA; updated and expanded to align with ADAAA.</p>
<p>Desired Outcome 1: “All qualified individuals with disabilities who are seeking employment with the Montgomery County Public Schools will have equal employment opportunities.”</p>	<p>Desired Outcome 2: “All qualified job applicants, including individuals with disabilities who are seeking employment with MCPS will have equal employment opportunities.”</p>

Proposed for Deletion from GBH	Proposed for Inclusion in ACG
<p><i>Desired Outcome 2:</i> “Reasonable accommodations for the employment, continued employment in a presently held position, or reassignment to a vacant position for which an individual with disabilities is qualified will be made to ensure participation of individuals with disabilities.”</p>	<p><i>Desired Outcome 3:</i> “Individuals with disabilities, who are job applicants or employees, if requested, may receive reasonable accommodations.”</p>
<p><i>Implementation Strategy 1:</i> “Procedures for implementing these goals will be set forth in administrative regulations as needed.”</p>	<p><i>Implementation Strategy 1:</i> “Procedures for implementing these goals will be set forth in administrative regulations as needed.”</p>
<p><i>Implementation Strategy 2:</i> “The ADA Coordinator designated by the superintendent will be responsible for coordinating the efforts of MCPS to comply with and carry out its responsibilities under the ADA, including participating in investigation of any complaint, and will be available to provide guidance, and support in matters related to the rights of individuals with disabilities.”</p>	<p><i>Implementation Strategy 2:</i> “The human resources compliance coordinator designated by the superintendent will be responsible for coordinating the efforts of MCPS to comply with and carry out its responsibilities under the ADAAA, including participating in the investigation of any complaint, and will be available to provide guidance, and support in matters related to the rights of individuals with disabilities.”</p>
<p><i>Implementation Strategy 3:</i> “Complaint procedures for prompt and equitable resolution of ADA complaints will be described in administrative regulations. MCPS will not discriminate or retaliate against an individual for filing a charge or participating in an investigation or proceeding under the ADA.”</p>	<p><i>Implementation Strategy 3:</i> “Complaint procedures for prompt and equitable resolution of ADAAA complaints will be described in administrative regulations. MCPS will not discriminate or retaliate against an individual for filing a charge or participating in an investigation or proceeding under the ADAAA.”</p>
<p><i>Review and Reporting:</i> “A report regarding the status of implementation and monitoring of this policy will be prepared annually for Board review.”</p>	<p><i>Review and Reporting:</i> “A report regarding the status of MCPS ADAAA claims will be prepared quarterly for Board review.”</p>