I. **SCOPE**

This policy governs any assessment of a Student With a Disability that is intended to determine whether that individual poses a Direct Threat to the health and safety of others because of his/her disability.

II. **POLICY STATEMENT**

Arcadia University is committed to providing equal opportunity to all students, including students with disabilities, and complying with its obligations under Section 504 of the Rehabilitation Act of 1973, Title III of the Americans With Disabilities Act, and applicable Pennsylvania laws.

Arcadia University has existing policies and procedures that seek to provide a safe and secure environment for all members of the University community, including, its students, faculty, staff, employees and guests. The policies and procedures that address potential risk to others by students, based upon a student’s conduct, behavior or other factors, are applied equally to all students, without regard to disability. When the potential risk of injury to the health or safety of others is based, in whole or in part, on the medical conditions of a student (physical or mental), it is critical that the rights of those students be protected and that decisions are made based upon objective information, not assumptions or stereotypes. The purpose and intent of this Direct Threat Assessment Policy for Students with Disabilities is not to single out students with disabilities from other students, but to provide protection for students with disabilities before any adverse action based upon a determination that the student poses a Direct Threat to the health or safety of others.

III. **POLICY**

1. **Scope of this Policy**

   (a) Under Section 504 and ADA Title III, the University may exclude a Student With a Disability from, or place special conditions on a student’s participation in, some or all of its programs or activities when the University concludes that the student, because of his/her disability, presents a Direct Threat (i.e. a high probability of substantial harm) to the health or safety of others.

   (b) This Policy applies when a University employee is considering placing any restrictions or special conditions on the participation of a Student With a Disability in any University program or activity, because the nature of a student’s actual, past or perceived disability or physical or mental impairments poses a risk to the health and safety of others. Examples of situations that might be covered under this policy include:
A physical or mental impairment that may interfere with a student’s ability to perform certain cognitive or physical activities involved in a particular program or activity, and thereby pose a risk to the health or safety of others.

(iii) A medical condition, such as meningitis, that by its nature may cause a risk to the health of others.

(iii) The potential side effects of medication that may interfere with a student’s ability to perform certain cognitive or physical activities involved in a particular program or activity, and thereby pose a risk to the health or safety of others.

(iv) A reasonable belief that a particular person with a mental impairment may pose a threat to the health or safety of others.

(c) This policy does not apply to assessments or decisions involving students with disabilities based upon their inability to perform essential requirements of a program or activity, after consideration of possible accommodations or modifications. This policy does not apply to assessments or decisions based upon violations of neutral conduct and behavior rules that are applied equally to all students.

2. Interim Actions

Pending the outcome of the Individualized Assessment under Section 3 of this Policy, the University may set interim restrictions on the student, up to and including removal from campus. The student must be afforded minimal due process (i.e., notice of the proposed action, the opportunity to present information on his or her behalf, and a right to appeal) either prior to, or in emergency situations, as soon as reasonably practical after, any interim conditions are imposed.

3. Individualized Assessment

(a) When the University has a reasonable basis for believing that a student with a physical or mental impairment poses a Direct Threat to the health and safety of others, the University will make an Individualized Assessment of the risk posed by the student. This risk assessment must be based on reasonable judgment and objective factors that rely on current medical knowledge or on the best available objective evidence, to ascertain:

(i) The nature, timing, probability, and severity of the risk; and

(ii) Whether reasonable modifications of the University’s policies, practices, or procedures will mitigate the risk.

(b) During the Individualized Assessment, the University will provide the student an opportunity to present relevant information.

(c) If the University makes a determination based upon its Individual Assessment that the student does pose a Direct Threat to the health and safety of others, the student will be provided a further opportunity and/or forum to review the basis for this determination. If the student wishes to challenge this determination, the student will be provided an opportunity and/or forum to present any additional relevant evidence. After consideration of any additional information from the student, the University shall make a final determination.

4. Requirements When There is No Direct Threat

If the University determines as a result of its Individualized Assessment, or thereafter, that the student does not pose, or no longer poses, a Direct Threat to the health or safety of others, the University will:
(a) Provide written notification to the student of this determination;
(b) Promptly reinstate the student at the same academic level, restore all of the student’s privileges, and place the student in the same position he/she was in prior to the determination of Direct Threat or imposition of any interim conditions; and
(c) Not exclude the student from, or place special restrictions upon, participation in the University’s programs or activities based upon the prior determination or reasonable belief that he/she was a Direct Threat.

5. Requirements When a Direct Threat Exists

(a) If the University makes a final determination that the student poses a Direct Threat to the health or safety of others, it shall promptly communicate that determination in writing to the student.

(b) This notice must communicate in detail the nature of the restrictions (e.g. leave of absence from the University, exclusion, or other restrictions, on participation in particular programs or services). The notice must also communicate to the student the exact circumstances, terms or conditions and timetables (if applicable) under which the student would no longer be considered a Direct Threat, reaffirm the student’s status as a qualified individual with a disability, and would be allowed to return to the University or to participate, without restrictions, in any programs of the University.

(c) The University may condition the student’s return to the University, future receipt of a benefit or service, or participation in a particular program, upon the student’s provision of documentation showing that the student is no longer a Direct Threat. Such evidence may include, but not be limited to, a treatment plan or periodic reports from a physician.

(d) In considering whether to restore a student after a determination of a Direct Threat, the University may not condition the provision of a benefit or service, or participation in any program, upon a showing by a student that he or she has eliminated behaviors that are a manifestation of a disability, unless such behaviors significantly contributed to the determination that the student was a Direct Threat to the health or safety of others.

6. Evaluation/Documentation

Under this policy, or in connection with any direct threat assessment, the University will not require any Student With a Disability to provide a comprehensive mental health evaluation and/or similar documentation as a condition of participation in, or continued participation in, the University’s programs, except:

(a) in the course of conducting an Individualized Assessment under this Policy of whether student poses a Direct Threat to the health or safety of others, when it has a reasonable basis to believe the student may pose such a threat;
(b) as otherwise reasonably necessary for the University to comply with its obligations under Section 504 or ADA Title III (e.g. in connection with a request for modifications or accommodations, or following a medical leave of absence).

IV. DEFINITIONS

ADA Title III is ADA Title III of the Americans With Disabilities Act, applicable to the University as a place of public accommodation. This definition includes the applicable regulations of the U.S. Department of Justice, which enforces ADA Title III.

Section 504 is Section 504 of the Rehabilitation Act of 1973, which applies to the University as a recipient of federal financial assistance. This definition includes the applicable regulations of the U.S. Department of Education, Office of Civil Rights, which enforces Section 504 for colleges and universities receiving federal financial
assistance through that Department, including student financial aid.

**Student With a Disability** is a student who has a “disability” within the meaning of Section 504 and ADA Title III. The definition of “person with a disability” is an individual who (a) has a physical or mental impairment that substantially limits one or more major life activities; (b) has a record of such an impairment or (c) is regarded as having such an impairment. This definition, and this policy, are not limited to students who have self-identified as students with disabilities in order to seek accommodations.

The ADA Amendments Act modified how this definition is to be interpreted, and those principles are applied under both Section 504 and ADA Title III. The ADA Amendments Act significantly expanded the number of individuals who might have a “disability” under these laws. As just one example, under the ADA Amendments Act a physical or mental impairment may be substantially limiting even if it is not permanent or long-term.

**Direct Threat** is a high probability of substantial harm to the health and safety of others. This definition is to be interpreted in accordance with Section 504 and ADA Title III.

**Individualized Assessment** is an assessment made of the risk potentially posed by a Student With a Disability. This assessment must be made of the particular individual and particular programs and services. This assessment must be based upon objective factors, not assumptions or speculation. An Individualized Assessment must include conferring with individuals who have in-depth knowledge of, and experience in, the area of the student’s disability; ascertaining the nature, timing, probability, and severity of the risk; and considering whether reasonable modifications of the University’s policies, practices and procedures will mitigate the risk to below the level of a Direct Threat.

**University** is Arcadia University, its colleges, schools, affiliates, divisions and subsidiaries.

V. **EFFECTIVE DATE** Policy Approval Date

VI. **SIGNATURE, TITLE AND DATE OF APPROVAL**

By: [Signature]

VII. **DATES OF REVIEW**

- August 14, 2018; Approved by Vice President for Enrollment Management and Student Affairs, Mark Lapreziosa.