

## **SCHOOL NUTRITION PROGRAM CIVIL RIGHTS COMPLIANCE REQUIREMENTS**

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and sex or reprisal or retaliation for prior civil rights activity. The USDA regulations at 7 CFR 15 require school food authorities (SFAs) participating in the National School Lunch Program (NSLP), School Breakfast Program (SBP), or Special Milk Program (SMP) to comply with requirements respecting nondiscrimination. SFAs must comply with the following:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);
- Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);
- Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);
- Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189);
- Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency" (August 11, 2000);
- All provisions required by the implementing regulations of the Department of Agriculture (USDA) (7 CFR Part 15 et seq.);
- Department of Justice Enforcement Guidelines (28 CFR Parts 35, 42 and 50.3);

Additionally, SFAs must comply with Food and Nutrition Service (FNS) directives and guidelines to the effect that, no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity for which the Program applicant receives Federal financial assistance from USDA.

Specific directions for implementing these statutes and regulations are contained in the FNS Instruction 113-1, Civil Rights Compliance and Enforcement-Nutrition Programs and Activities, November 8, 2005. Areas of compliance are required as spelled out by FNS Instructions 113-1.

## LIMITED ENGLISH PROFICIENCY (LEP)

1. Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance from discriminating against or otherwise excluding individuals on the basis of race, color, or national origin in any of their activities.
2. Title VI and its regulations require State and local agencies to take reasonable steps to ensure “meaningful” access to the information and services they provide.

Meaningful access generally refers to the provision of reasonable language assistance services that enable a Limited English Proficient (LEP) individual to have substantially equal participation in and access to the benefits of a recipient’s programs and activities. The USDA LEP Policy Guidance provides elements or characteristics of “meaningful access,” such as reasonable, timely, appropriate, competent/qualified language assistance (p. 70772). Language assistance services are meaningful when they are “provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person.” Department of Justice (DOJ) LEP Guidance at 41461.

Reasonable steps to ensure meaningful access will be contingent on several factors.

- a) The number or proportion of LEP persons eligible to be served or likely to be encountered within the area serviced by the program or grantee;
  - b) The frequency with which LEP individuals come in contact with the program or activity;
  - c) The nature and importance of the program, activity, or service provided by the program to people’s lives; and
  - d) The resources available to the grantee/recipient and cost.
3. A federal interagency website, [www.LEP.gov](http://www.LEP.gov), offers recipients a variety of resources regarding language access, including the ability to create state and county-specific maps from U.S. Census data that shows the number of individuals with LEP by language spoken <http://www.lep.gov/maps/>.
  4. After completing an analysis considering the four factors identified in item 2 and deciding what language assistance services are appropriate, an SFA may benefit from developing a language access implementation plan with policies and procedures to address the identified needs of the LEP populations it serves.
  5. The USDA policy guidance titled, "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons", published in 79 FR 70771 - 70784 (November 28, 2014), and the USDA FNS Policy Memo SP 37-2016: Meaningful Access for Persons with Limited English Proficiency in the School Meal Programs: Guidance and Q&As provides guidance on key elements of a language access plan, including the use of qualified, competent interpreters and translators when communicating vital information to individuals with LEP.

## DISABILITY COMPLIANCE

SFAs must make modification to accommodate disabilities. Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) prohibits discrimination on the basis of disability in programs and activities that receive Federal financial assistance, such as the Child Nutrition Programs. Title II of the Americans with Disabilities Act of 1990, as amended (ADA) prohibits discrimination based on disability in the provision of State and local government services, such as public schools. Title III of the ADA prohibits discrimination based on disability by private entities that provide public accommodations, including private schools. The ADA applies regardless of whether or not a school receives Federal financial assistance. Section 504, Title II, and Title III require recipients of Federal financial assistance, such as SFAs, to make reasonable modifications to accommodate children with disabilities, including reasonable modifications to meals and the meal service.

USDA regulations at 7 CFR 15b, “Nondiscrimination on the Basis of Handicap in Programs and Activities receiving Federal Financial Assistance” implements Section 504’s nondiscrimination requirements. 7 CFR 15b.26(d) requires recipients of Federal financial assistance, such as SFAs, to serve special meals at no extra charge to children with disabilities. In addition, Program regulations at 7 CFR 210.10(m) and 220.8(m) require SFAs to make substitutions to meals to accommodate children with disabilities that restrict their diet.

Section 504, the ADA, and Departmental Regulations at 7 CFR part 15b define a person with disability as any person 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 as having such impairment.”

## SUBSTITUTIONS AND OTHER REASONABLE MODIFICATIONS

1. SFAs must make reasonable modifications to the meal, including providing special meals at no extra charge, to accommodate disabilities which restrict a child’s diet.
2. SFAs must provide modifications for children with disabilities on a case-by-case basis only when requests are supported by a written statement from a State licensed healthcare professional, such as a physician or nurse practitioner (medical statement). See 7 CFR 210.10(m), and 220.8(m). In addition, meals that do not meet the Program meal pattern are not eligible for reimbursement unless supported by a medical statement.
3. SFAs may choose to accommodate requests related to a disability that are not supported by a medical statement if the requested modifications can be accomplished within the Program meal pattern.
4. SFAs may consider expense and efficiency in choosing an appropriate approach to accommodate a child’s disability. SFAs are not required to provide the specific substitution or other modification requested but must offer a reasonable modification that effectively accommodates the child’s disability and provides equal opportunity to participate in or benefit from the program.
5. SFAs must provide all meal services in the most integrated setting appropriate to the needs of the disabled child.

## REIMBURSEMENT

Reimbursement for modified meals served to children with disabilities that restrict their diet is at the appropriate rate based on the child's eligibility for free, reduced price, or paid meals for the applicable Program, regardless of the meal modification.

## ACCESSIBILITY

SFAs are responsible for the accessibility of food service areas and for ensuring the provision of food service aides, where needed, to assist in preparing and serving meal accommodations.

## PROCEDURAL SAFEGUARDS

1. The SFA must notify parents and guardians of the process for requesting meal modifications to accommodate a child's disability and arrange for an impartial hearing process to resolve grievances related to requests for modifications based on a disability.
2. LEAs that employ 15 or more individuals must designate at least one person to coordinate compliance with disability requirements. The Section 504 Coordinator who is responsible for addressing requests for accommodations in the classroom may also be responsible for ensuring compliance with disability requirements related to meals and the meal service.

## EQUAL OPPORTUNITY FOR RELIGIOUS ORGANIZATIONS

1. Faith-based and community-based organizations have a long history of involvement in Federal nutrition assistance programs and a tradition of supporting low-income people by providing a wide range of social services.
2. This regulation ensures a level playing field for the participation of faith-based organizations and other community organizations in USDA programs by:
  - a) Prohibiting discrimination for or against an organization on the basis of religion, religious belief, or religious character in the administration or distribution of Federal funds;
  - b) Allowing a religious organization that participates in USDA programs to retain its independence and continue to carry out its mission, provided that direct USDA funds do not support any inherently religious activities such as worship, religious instruction, or proselytization; and,
  - c) Clarifying that faith-based organizations can use space in their facilities to provide USDA funded services without removing religious art, icons, scriptures, or other religious symbols.

## ASSURANCES

To qualify for Federal financial assistance, an application must be accompanied by a written assurance that the entity to receive financial assistance will be operated in compliance with all nondiscrimination laws, regulations, instructions, policies, and guidelines.

1. FNS obtains a written assurance from the Georgia Department of Education (GaDOE) and requires the GaDOE to obtain assurance from each SFA and
2. A civil rights assurance must be incorporated in all agreements between GaDOE and SFA.

By completing the SFA Sign-Off in the School Approval Module (SAM), the SFA agrees to these assurances.

### **PUBLIC NOTIFICATION PROGRAM**

The purpose of a public notification system is to inform applicants, participants, and potentially eligible persons of the program availability, program rights and responsibilities, the policy of nondiscrimination, and the procedure for filing a complaint.

1. Ensure that all forms of communication, web-based program information, and printed program information that are disseminated include the following elements:
  - a) The statement that informs the public that program benefits and services are available to all children without regard to race, color, national origin, age, disability, and sex.
  - b) The procedure for filing a complaint, which includes whom to contact.
2. Inform parents, as well as the local minority and grass roots organizations of the nondiscrimination policy and all significant changes in requirements that pertain to program eligibility and benefits.
3. Display the "And Justice for All" poster in a prominent place.
4. Provide vital information, including web-based information, in alternative formats for persons with disabilities.
5. Ensure meaningful access to vital information, program requirements and procedures for filing a complaint and web-based information, in appropriate language(s) for people with limited English proficiency. This can be accomplished using qualified, competent interpreters and materials translated in frequently encountered languages by qualified, competent translators.

### **DATA COLLECTION AND REPORTING**

1. Develop a method for collection of actual numbers of children by race and ethnicity applying for free and reduced price meals. Methods include determination by a school official through observation, personal knowledge, or voluntary self-identification by an applicant on the free and reduced price meal application form.
2. Self-identification or self-reporting is the preferred method of obtaining characteristic data. Ethnicity must be collected first. Respondents must be offered the option of selecting one or more designations for race. The minimum designations for race and ethnicity collection must be consistent with guidance from OMB and the U.S. Census Bureau. As of 2010, the minimum designations for collection are as follows:
  - a) Ethnicity:
    - Hispanic or Latino
    - Not Hispanic or Latino

## b) Race:

- American Indian or Alaskan Native
- Asian
- Black or African American
- Native Hawaiian or Other Pacific Islander
- White

3. In instances where demographic data, specifically racial/ethnic data, is collected via an online system, provisions must be made for the program applicant/participant to self-identify. Once the data is collected via the online system, the program applicant/participant must then be able to verify this data by signing some type of summary printout of this information or by attesting to the correctness and accuracy of the data in some manner.
4. Program applicants and participants should be encouraged to provide the information by explaining the statistical data is requested solely to determine the SFA's compliance with Federal civil rights laws.
5. Maintain information on file for five (5) years plus the current year.
6. Establish procedures to ensure that the information is made available only to authorized state and federal personnel during reviews.

### **CIVIL RIGHTS TRAINING**

The SFA shall be responsible for training all school-level personnel in all areas of civil rights compliance as it relates to school nutrition programs and activities.

1. Individuals identified as front-line staff must be trained annually, specific subject areas include, but are not limited to:
  - a) Collection and use of data
  - b) Effective public notification systems
  - c) Complaint procedures
  - d) Compliance review techniques
  - e) Resolution of non-compliance
  - f) Civil Rights training
  - g) Requirements for reasonable modifications for persons with disabilities
  - h) Requirements for language assistance for individuals with LEP
  - i) Conflict resolution and
  - j) Customer service

### **COMPLAINT PROCEDURES**

A complaint is defined as a verbal or written allegation of discrimination which indicates that any NSLP, SBP, or SMP is administered or operated in such a manner that it results in disparity of treatment, benefits, or services being provided to a child or group of children because of their race, color, national origin, sex, age, disability, or for reprisal/retaliation for participating in a prior Civil Rights activity.

All complaints, either written or verbal, alleging discrimination on the basis of race, color, national origin, sex, age, disability, or reprisal/retaliation including anonymous ones, which are filed at the school level must be processed in accordance with the FNS 113-1. This includes, but is not limited to the following obligations:

1. Refer all complaints alleging unlawful discrimination in the basis of race, color, national origin, sex, and disability to FNS Civil Rights Director (CRD) for processing within five (5) calendar days of receipt of the complaint.
2. Forward all complaints alleging unlawful discrimination on the basis of age, regardless of whether other bases are alleged, to FNS-CRD within five (5) working days after receipt. FNS CRD will refer the complaint to the Federal Mediation and Conciliation Service (FMCS) for mediation within 10 calendar days of initial receipt.
3. Maintain a copy of any correspondence regarding the complaint for at least five (5) years plus the current year after the date the SFA is notified that the complaint is closed.
4. Provide necessary documents, evidence, and the SFA position statement regarding complainant's allegations to FNS CRD within the timeframes established by FNS guidance or within a reasonable time if FNS CRD has not identified a timeframe.
5. Make its employees available to FNS CRD to be interviewed as necessary during investigations, including for purposes of providing sworn testimony and clarifying general information.
6. Grant FNS CRD access to SFA facilities and complaint, communications, records, and other systems, as necessary during investigations.
7. Participate in attempts to resolve the complaint.
8. Provide communication assistance, other modifications or accommodations, and/or alternative formats when communicating with individuals who have limited English proficiency, individuals with disabilities, or individuals who are illiterate.
9. To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: [https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-](https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf)

[Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf](https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf), from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA.

The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation.

The completed AD-3027 form or letter must be submitted to USDA by:

1. mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; or

2. fax: (833) 256-1665 or (202) 690-7442; or 3. email: [program.intake@usda.gov](mailto:program.intake@usda.gov)

10. A written complaint should simply be forwarded as received; if the complaint is verbal, the attached form should be completed and mailed. Verbal complaints should be written up by the person to whom the complaint is made. Every effort should be made to have the complainant provide the information on the attached form.

### COMPLIANCE REVIEWS

1. SFAs are subject to routine compliance reviews in accordance with FNS Instruction 113-1 and program-specific regulations, policies, instructions, and guidelines. The State agency may expand the scope of the review to address potential compliance concerns.
2. SFAs must review their subrecipients as required by current program regulations and Civil Rights requirements.
3. At all levels, a Civil Rights Compliance Review will result in notification of findings to the agency or organization being reviewed. If there are no findings, this may be in the form of a letter to the agency or organization. If there are findings and/or observations, the notification letter normally will be accompanied by a more detailed compliance review report.
4. Findings that indicate probable noncompliance with Civil Rights requirements must be handled in accordance with the procedures for resolving noncompliance contained in FNS Instruction 113-1.
5. SFAs must maintain reports on file and must be made available during subsequent Civil Rights reviews, in accordance with records management guidance.