

Modifications to Accommodate Disabilities in School Meal Programs



**Team Up for Special Dietary Needs
Institute of Child Nutrition Webinar
July 27, 2017**

Civil Rights Program Authorities

- Title VI of the Civil Rights Act of 1964
- Civil Rights Restoration Act of 1987
- Section 504 of the Rehabilitation Act of 1973
- Americans with Disabilities Act (ADA) of 1990
- ADA Amendments Act of 2008
- Title IX of the Education Amendments of 1972
- Age Discrimination Act of 1975

Civil Rights Program Authorities (cont'd)

- 7 Parts 15, 15a, 15b and 15c
- FNS 113-1 and its Appendices
- Executive Order 12250 (Disability)
- Executive Order 13166 – (LEP)
- 28 CFR 41 (Government-wide 504 Regulation)
- USDA Departmental Regulation 4330-2
- And many more...

Coverage of All Operations

Even one dollar of Federal money brings the entire scope of the operations within the jurisdiction of Section 504, even where the requested modification is not related to the part of the operations that receives Federal money.

Disability Law

- Legal Framework: Section 504, ADA, implementing regulations and policy guidance
- Duty to Provide Reasonable Modifications: understand & accept that (sometimes) providing modifications is nebulous
- Relationship between Section 504 and the ADA (Titles II & III) in light of the Americans with Disabilities Act Amendments Act.

ADA Amendments Act of 2008

- EXPANDED AND CLARIFIED the definition of Disability.
- DID NOT change the expectation to provide a Reasonable Modification.
- DID make very clear that the emphasis must be on providing the reasonable modification, and the disabled person does not carry a high burden of 'proving' he or she has a disability.

Disability Definition

- I. A person with a physical or mental impairment that substantially limits one or more major life activities.
- II. A person who has a record of such an impairment.
- III. A person who is regarded as having such an impairment.

Expanded Definition of Disability

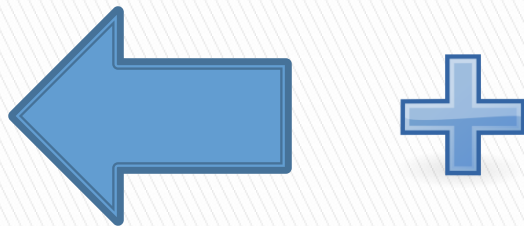
Revises “Substantially Limits”

- Need not prevent, or severely/significantly restrict a major life activity
- Individualized assessment
- Without regard to ameliorative effects of mitigating measures
- May include an impairment that is episodic or in remission if it would substantially limit a major life activity when active

Expanded Definition of Disability

➤ Major Life Activities

- Seeing, hearing,
- Walking
- Speaking, learning, reading
- Eating
- Breathing



New Category of “Major Life Activities”

➤ Major Bodily Functions

- Digestive
- Immune system
- Respiratory
- Circulatory
- Neurological/Brain

Types of Disability Discrimination

- Discrimination because of the disability
 - Denying benefits or opportunity to participate
 - Segregating individuals with disabilities
 - Aiding, perpetuating or contracting with others that discriminate
- Failure to provide a reasonable modification
- Ineffective Communication
- Inaccessible Facilities

Updated Guidance: Modifications to Accommodate Disabilities in the School Meal Programs

- Date Signed: September 27, 2016
- Covers School Meal Programs (NSLP, SBP, SMP, & FFVP)
- Copy available on FNS website at:

<http://www.fns.usda.gov/policy-memorandum-modifications-accommodate-disabilities-school-meal-programs>

- *Note:* Meal Modification Policy Memo affecting CACFP and SFSP (*CACFP 14-2017, SFSP 10-2017*) was released June 22, 2017

Reasonable Modifications

- A change or alteration in policies, practices, and procedures to accommodate a disability
- Duty to negotiate over modification. This means simply saying “no” is almost never appropriate.
- Providing appropriate modifications – not ferreting out whether the child has a disability or any possible abuse of the process – is the primary objective
- On a case-by-case basis

Reasonable Modifications

- The modification requested should be related to the disability or limitations caused by the disability
- The modification requested does *not* have to be the modification provided
- Providers must still accommodate even where the person requesting modification believes more should be done

Exception: Modifications are not required that would fundamentally alter the nature of the program. Providers are advised to consult with FNS before relying on this exception.

Reasonable Modifications: Key Considerations

- Consider costs/resources and age of the child
- “Stereotypes” regarding certain conditions or individuals can never drive decisions. Decisions must be based on facts.
- Meal accommodations do not need to mirror the meal or meal item substituted.
- “Lifestyle” choices (e.g. vegetarian) are not considered disabilities and need not be accommodated unless related to an underlying disability

Food Allergies

Many food allergies fall under the definition of disability expanded by the ADA Amendments Act (ADAAA).

- According to the CDC: “In the United States, the following eight foods or food groups account for 90% of serious allergic reactions: milk, eggs, fish, crustacean shellfish, wheat, soy, peanuts, and tree nuts.”
- Applies to much more than just “life threatening” allergic reactions
- “Digestive” and “Respiratory” functions are specifically listed in the ADAAA

Food Allergies: Key Considerations

- Universal exclusions of specific foods or food groups is not an FNS policy, but could be appropriate depending on the circumstances, and is within the discretion of recipients
- Meal substitutions, which had previously been “permissible” may be required if needed by a qualified person with a disability

Program Accessibility

- Ensure food service areas are accessible
- Provide auxiliary aids and services, if needed. Examples include–
 - Food service aides
 - Adaptive feeding equipment
 - Meal tracking assistance
 - Other effective methods

Integrated Environment

- Integration clause in Section 504 means that disabled individuals should be accommodated in the least restrictive and most integrated setting possible.
- In the food allergy context, this most often comes into play where children with food allergies are ostracized in some way during meal time.
- Providers must always balance safety vs. stigma. Age and severity of allergy are the primary considerations.

Medical Statement Requirements

- Statement provides sufficient information about impairment (diagnosis not required and should not be requested), how it restricts diet, and how to accommodate condition
- Seek clarification if inadequate or unclear
- Clarification should not unnecessarily delay modification – it could be characterized as harassment/denial
- Need not be from a physician if State law authorizes others to write prescriptions
- Cannot request medical records/charts
- Medical Statement may be requested, but is not required for substitutions within meal pattern requirements

Example: Medical Statement Supporting Modification to Accommodate a Food Allergy



Three essential components:

- 1) The food to be avoided (allergen)
- 2) Brief explanation of how exposure to the food affects the child
- 3) Recommended substitute(s)*

Implementation & Compliance

1. Develop procedures for parents/guardians to request reasonable modifications
2. Train school and food service staff on reasonable modification procedures and legal requirements
3. Appoint a 504 Coordinator to ensure compliance
4. *Assemble a Team to implement guidelines and render decisions on modification requests

**Recommended*

Procedural Safeguards

1. Provide Notice of –
 - a. Process for requesting modification
 - b. Decision
 - c. Procedural rights
2. Opportunity to examine the record and file a grievance;
3. An impartial hearing with parental participation and legal representation (if desired); and
4. A review procedure (avenue for appeal).

Questions ?

Contact Information

For more information, contact:

W. Reid Strong, Complaints Branch, Chief
william.strong@fns.usda.gov

Teresa W. Murray, Civil Rights Policy Advisor
teresa.w.murray@fns.usda.gov

Civil Rights Division
Food and Nutrition Service
Phone: 703.305.2195