



# Modifications to Accommodate Disabilities in the Child and Adult Care Food Program and Summer Food Service Program

August 2017

# Objectives

- Review civil rights legal framework for the Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP).
- Explain how Americans with Disabilities Act (ADA) Amendments Act of 2008 expanded/clarified the meaning of “disability.”
- Review USDA’s updated guidance on accommodating disabilities in CACFP and SFSP.
- Review implementation and compliance requirements for Program operators.

# Civil Rights Program Authorities

- Title VI of the Civil Rights Act of 1964
- Civil Rights Restoration Act of 1987
- Title IX of the Education Amendments of 1972
- Age Discrimination Act of 1975
- FNS 113-1 and its Appendices
- Executive Order 13166 (Limited English Proficiency)
- 28 CFR 41 (Government-wide 504 Regulation)
- USDA Departmental Regulation 4330-2

## ➤ Civil Rights Program Authorities (cont'd)

- Section 504 of the Rehabilitation Act of 1973
- Americans with Disabilities Act (ADA) of 1990
- ADA Amendments Act of 2008
- 7 CFR Parts 15, 15a, 15b and 15c
  - Link to 7 CFR Part 15b, *Nondiscrimination of the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance*, is included in the updated Medical Plan of Care form on PEARS ([www.pears.ed.state.pa.us](http://www.pears.ed.state.pa.us)), Download Forms, in the CACFP-Forms section.

# Civil Rights Program Authorities (cont'd)



## Children and Adults with Disabilities and Special Dietary Needs

Operators of the Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP) are required to make reasonable modifications to the service of Program meals or the meal service to accommodate children or adults (Program participants) with disabilities that restrict the diet.

### 1. Licensed Medical Authority's Statement for Participants with Disabilities

U.S. Department of Agriculture (USDA) regulations at [7 CFR Part 15b](#) require substitutions and modifications in Program meals for participants whose disabilities restrict their diets. Sponsors, centers, and day care homes must provide modifications for participants on a case-by-case basis when requests are supported by a written statement from a state licensed medical authority.

The third page of this document ("Medical Plan of Care for Child Nutrition Programs") may be used to obtain the required information from the licensed medical authority. For this purpose, a *state licensed medical authority* in Pennsylvania includes a:

- Physician,
- Physician assistant,
- Certified registered nurse practitioner, or
- Dentist.

The written medical statement must include:

- An explanation of how the participant's physical or mental impairment restricts the diet;
- An explanation of what must be done to accommodate the participant; and
- The food or foods to be omitted and recommended alternatives, if appropriate.



# Disability Law

- Legal framework: Section 504, ADA, implementing regulations and policy guidance.
- Duty to provide reasonable modifications:
  - Understand and accept that providing modifications is sometimes nebulous.
  - Treat each situation on a case-by-case basis.
- The focus should be on what can be done to ensure equal opportunity to participate in or benefit from the CACFP or SFSP.

# ▶ ADA Amendments Act of 2008

- Expanded and clarified the definition of disability.
- Did not change the expectation to provide a reasonable modification.
- Made it very clear that the emphasis must be on providing the reasonable accommodation.
- The disabled person does not carry a high burden of “proving” he or she has a disability.
- Most physical and mental impairments will constitute a disability.

# ▶ Disability Definition

- A person with a physical or mental impairment that substantially limits one or more major life activities;
- A person who has a record of such an impairment; *or*
- 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.
  - Requires individualized assessment.
  - Assessed 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
- Major Bodily Functions: New category of Major Life Activities:
  - Digestive
  - Immune system
  - Respiratory
  - Circulatory
  - Neurological/Brain

# ➤ Coverage of All Operations

- Just 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.

# 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 who discriminate
- Failure to provide a reasonable accommodation
- Ineffective communication
- Inaccessible facilities

# ➤ USDA Policy Memos: Updated Guidance

- CACFP 14-2017, SFSP 10-2017: *Modifications to Accommodate Disabilities in the Child and Adult Care Food Program and Summer Food Service Program* (June 22, 2017)

# Reasonable Modifications

- A change or alteration in policies, practices, and procedures to accommodate a disability.
- Duty to work with the family to reach a reasonable modification. This means simply saying “no” is almost never appropriate.
- Providing appropriate modifications is the primary objective – not searching out whether the participant has a disability or any possible abuse of the process.
- Determined on a case-by-case basis.

# Reasonable Modifications

- The modification requested should be related to the disability or limitation(s) caused by the disability.
- The modification requested does not have to be the modification provided.
- Modifications that would fundamentally alter the nature of the Program are not required. If this is a concern, Program operators should contact the Pennsylvania Department of Education (PDE) for assistance.

## Reasonable Modifications: Key Considerations

- Consider cost and total resources available.
- Consider age, maturity, mental capacity, and physical ability of the participant.
- Meal accommodations do not need to mirror the meal or meal item substituted.
- Lifestyle choices (e.g., vegetarianism) are not considered disabilities and need not be accommodated unless related to an underlying disability.



# Food Allergies

- Most food allergies fall under the definition of disability expanded by the ADA Amendments Act. The most common food allergens include:
  - Milk
  - Eggs
  - Fish
  - Crustacean
  - Shellfish
  - Wheat
  - Soy
  - Peanuts
  - Tree nuts
- Disabilities are not limited to only “life threatening” allergic reactions.
- Digestive and respiratory functions are specifically listed in the ADA Amendments Act.

# ▶ Food Allergies: Key Considerations

- Universal exclusions of specific foods or food groups (e.g., “peanut free” daycare center) is not a USDA or PDE policy, but could be appropriate depending on the circumstances.
- The decision to implement an exclusion policy is within the discretion of the facility or center.
- Meal substitutions that were previously considered “optional” may now be required if needed by a person who is considered disabled under the ADA Amendments Act.

# 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; and
  - Other effective methods that facilitate equal access.

# Integrated Environment

- Section 504 requires that disabled individuals should be accommodated in the least restrictive and most integrated setting possible.
- Consider possible stigma when considering how to safely and effectively accommodate a participant with a disability.
- Communicate with parents and medical provider to determine the best accommodation for the participant.

# Medical Statement Requirements

- Medical statement is required for meals that do not meet CACFP or SFSP meal pattern requirements.
- Medical statement is written by:
  - Licensed physician,
  - Certified registered nurse practitioner,
  - Licensed physician assistant, or
  - Licensed dentist.

## ➤ Medical Statement Requirements (cont'd)

- Program operators will be reimbursed for modified meals that are within the meal pattern, regardless of whether they have obtained a written medical statement.
- Program operators may request a written medical statement from a medical provider for all meal modification requests, if desired.

## ▶ Medical Statement Requirements (cont'd)

- The medical statement must include:
  - Information about the participant's physical or mental impairment that is sufficient to allow the Program operator to understand how it restricts the participant's diet;
  - An explanation of what must be done to accommodate the participant; *and*
  - The food or foods to be omitted and recommended alternatives, if appropriate.

## ▶ Medical Plan of Care form

- Program operators are encouraged to provide the Medical Plan of Care form when families request meal modifications.
- Access the Medical Plan of Care on PEARS ([www.pears.ed.state.pa.us](http://www.pears.ed.state.pa.us)), Download Forms, in the CACFP-Forms section.
- PDE has updated the Medical Plan of Care form to align with USDA's updated guidance.



## ▶ Example: Medical Statement for a Food Allergy

Three essential components:

- 1) The food to be avoided (allergen);
- 2) Brief explanation of how exposure to the food/allergen affects the participant; *and*
- 3) Recommended substitute(s).

# Medical Statement Guidance

- Participant's diagnosis or terms "disability"/"disabled" are not required.
- Program operators cannot request medical records or charts.
- Program operators should not be questioning whether an impairment "rises to the level of a disability."

## ➤ Medical Statement Guidance (cont'd)

- Seek clarification if instructions are inadequate or unclear.
- Clarification should not unnecessarily delay modification.
  - Delay could be characterized as harassment/denial.
  - Program operators/officials must diligently follow up with family and document communication.
  - A meal outside the regular meal pattern may be claimed for reimbursement while Program operators/officials actively work to obtain the written medical statement. (Must document process.)

# Implementation & Compliance

1. Implement procedures for families/adult participants to request reasonable modifications.
2. Train staff and volunteers on reasonable modification procedures and legal requirements.
3. Appoint a 504 Coordinator to ensure compliance and resolve grievances.
4. Assemble a team to implement guidelines and render decisions on modification requests.\*

*\*Recommended*

# Procedural Safeguards Process for Modifications

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



# PDE Contacts

Jenny Edmondson - [jeedmondso@pa.gov](mailto:jeedmondso@pa.gov)  
Kathleen Hiltwine - [khiltwine@pa.gov](mailto:khiltwine@pa.gov)

# Questions?

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To file a program complaint of discrimination, complete the [USDA Program Discrimination Complaint Form](#), (AD-3027) found online at: [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter 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;
- (2) fax: (202) 690-7442; or
- (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

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# Contact/Mission

For more information on the Child Nutrition Programs please visit PDE's website at [www.education.pa.gov/dfn](http://www.education.pa.gov/dfn)

*The mission of the department is to academically prepare children and adults to succeed as productive citizens. The department seeks to ensure that the technical support, resources and opportunities are in place for all students, whether children or adults, to receive a high quality education.*