



Modifications to Accommodate Disabilities in School Meal Programs

May 2017

Objectives

- Review civil rights legal framework for the federal School Nutrition Programs (SNP).
- 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 SNP.
- Review implementation and compliance requirements for SNP sponsors.

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 12250 (Disability)
- 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 on PEARS (www.pears.ed.state.pa.us) under Applications tab in Feeding Students with Disabilities and Special Dietary Needs section.

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 SNP.

▶ 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

- SP 59-2016: *Modifications to Accommodate Disabilities in the School Meal Programs* (September 27, 2016)
- SP 26-2017: *Modifications to Accommodate Disabilities in the School Meal Programs: Guidance and Questions and Answers* (April 25, 2017)
- Guidance covers School Meal Programs, with similar guidance forthcoming for the other Child Nutrition Programs

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 is the primary objective – not searching out whether the child 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.
- Exception: Modifications are not required that would fundamentally alter the nature of the program. If this is a concern, school food authorities (SFAs) should contact PDE for assistance.

Reasonable Modifications: Key Considerations

- Consider costs/resources and age of the child.
- Modification decisions must be based on facts.
- 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

- Many 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
- Applies to much more than just “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 is not a USDA policy, but could be appropriate depending on the circumstances.
- The decision to implement an exclusion policy is within the discretion of the school or local education agency (LEA).
- 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 child with a disability.
- Communicate with parents and medical provider to determine the best accommodation for the student.

Medical Statement Requirements

- Medical statement is required for meals that do not meet SNP meal pattern requirements.
- Statement is written by licensed physician, certified registered nurse practitioner, physician assistant, or dentist.
- SFAs will be reimbursed for modified meals that are within the meal pattern, regardless of whether they have obtained a written medical statement.
- SFAs may request a written medical statement from a medical provider for all meal modification requests, if desired.

Medical Statement Requirements

- The medical statement must include:
 - Information about the child’s physical or mental impairment that is sufficient to allow the SFA to understand how it restricts the child’s diet;
 - An explanation of what must be done to accommodate the child; and
 - The food or foods to be omitted and recommended alternatives, if appropriate.
- PDE will update the Medical Plan of Care template and instructions to align with the updated guidance.
- Refer to PEARS (www.pears.ed.state.pa.us) under Applications tab in Feeding Students with Disabilities and Special Dietary Needs section.

▶ 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 child; and
- 3) Recommended substitute(s).

Medical Statement Guidance

- Student's diagnosis or terms "disability"/"disabled" are not required.
- School cannot request medical records/charts.
- Seek clarification if inadequate or unclear.
- Clarification should not unnecessarily delay modification.
 - Delay could be characterized as harassment/denial.
 - School officials must diligently follow up with family and document communication.
 - A meal outside the regular meal pattern may be claimed for reimbursement while school officials actively work to obtain the written medical statement. (Must document process.)

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 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 parental participation and legal representation (if desired); and
4. A review procedure (avenue for appeal).

PDE Contacts

Jenny Edmondson - jeedmondso@pa.gov
Kathleen Hiltwine - khiltwine@pa.gov



Questions?

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

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, 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.

This institution is an equal opportunity provider.

Contact/Mission

For more information on the School Nutrition Programs please visit PDE's website at 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.