

Civil Rights in Child Nutrition Programs

Vermont Agency of Education
Child Nutrition Programs

Topics Covered

- Legislation
- Assurances
- Public Notification
- Data Collection
- Language Assistance
- Modifications to Accommodate Disabilities
- Complaint Procedure
- Civil Rights Reviews and Resolution
- Training
- Customer Service
- Conflict Resolution

Objectives

- By the end of this presentation, you will be able to:
 - Operate your Child Nutrition Programs in a compliant and non-discriminatory manner.
 - Including providing reasonable modifications to accommodate disabilities.
 - Have completed required annual Civil Rights training.

Definition of Discrimination

- Different treatment which makes a distinction of one person or a group of persons from others; either intentionally, by neglect, or by action or lack of actions based on a protected class.
- For the Food and Nutrition Service (FNS) programs administered by Vermont Agency of Education (AOE) there are 6 federally-protected bases and;
- 2 additional Vermont AOE-specific protected bases.

Federally-Protected Bases

1. Race
2. Color
3. National Origin
4. Sex (including gender identity and sexual orientation)
5. Age
6. Disability

Vermont Agency of Education

Protected Bases

- Includes all federal bases and:
 1. Religion
 2. Marital/Civil Union Status

Eligibility Requirements vs. Discrimination

- These programs have been established to serve a certain group of people.
- It is not considered discrimination to exclude those who do not meet the eligibility requirements for these programs.
- For example, there are various age limits in the programs, and it is not age discrimination to exclude or not serve those that do not meet the age requirements.

Legislation

Civil Rights Legislation ¹

- Title VI of the Civil Rights Act of 1964
 - Race, color, and national origin
- Civil Rights Restoration Act of 1987
 - Clarifies the scope of the Civil Rights Act of 1964
- Section 504 of the Rehabilitation Act of 1973 & Americans with Disabilities Act of 1990 and ADA Amendments Act of 2008
 - Disability
- Title IX of the Education Amendments of 1972
 - Sex
- Age Discrimination Act of 1975
 - Age

Civil Rights Legislation ²

- Executive Order 12250 (Disability)
- Executive Order 13166 (August 11, 2000)
 - Improving Access to Services for Persons with Limited English Proficiency (LEP)
- “USDA Guidance to Federal Financial Assistant Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency” (LEP Policy Guidance) (79 FR 229, November 28, 2014)
- USDA Departmental Regulation 4330-002
 - Prohibits discrimination in programs and activities receiving federal financial assistance
- USDA Departmental Regulation 4330-003
 - Equal Opportunity Public Notification Policy
- FNS Instruction 113-1 & FNS Instruction 113-1 Appendix B (School Meals, SFSP, & CACFP) & FNS Instruction 113-1 Appendix C (USDA Foods)
- Meal Modification Memo CACFP and SFSP (SFSP 10-2017 & CACFP 14-2017)
- Executive Order 13988 – “Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation” (86 FR 7023, January 20, 2021)

Equal Opportunity for Religious Organizations

- 7 CFR Part 16 “Equal Opportunity for Religious Organizations” allows religiously affiliated organizations to compete equally for USDA funds.
- Ensures a level playing field for the participation of faith-based organizations and other community organizations in USDA programs.

Implementing Equal Opportunity for Religious Organizations

- This can be accomplished by:
 - Prohibiting discrimination for or against an organization on the basis of religion, religious belief, or religious character in the administration and distribution of federal funds.
 - Allowing a religious organization that participates in USDA programs to retain its independence and continue to carryout its mission, provided that direct USDA funds do not support any “explicitly religious activities such as worship, religious instruction, or proselytization.”
 - Clarifying that faith-based organizations can use space in their facilities to provide USDA-funded service without removing religious art, icons, scriptures, or other religious symbols.
 - Ensuring that no organization that receives direct federal funds can discriminate against a program beneficiary, or prospective beneficiary, on the basis of religion or religious belief.

Civil Rights Legislation ³

- Richard B. Russell National School Lunch Act of 1946
- Child Nutrition Act of 1966
- 28 CFR Part 35- (Covers nondiscrimination on the basis of disability in State/local government services (public entities))
- 28 CFR Part 36 (Covers nondiscrimination on the basis of disability by public accommodations)
- 28 CFR Part 41 (DOJ's coordination of Federal 504 Regulations)
- 28 CFR Part 42 (Covers nondiscrimination in Federally assisted programs)
- 7 CFR Parts 15, 15a, 15b, and 15c
 - USDA implementing regulation for federally assisted programs
- 7 CFR Parts 210, 215, & 220 (NSLP, SMP, SBP)
- 7 CFR Part 225 (SFSP)
- 7 CFR Part 226 (CACFP)
- 7 CFR Part 245 (NSLP, SMP, SBP) [Eligibility]
- 7 CFR Part 250 (Food Distribution)

Assurances

Civil Rights Assurances

- To qualify for Federal financial assistance, the program application must be accompanied by a written assurance that the program or facility will be operated in compliance with all nondiscrimination laws, regulations, instructions, policies, and guidelines.
 - The Program/Permanent Agreements contain the assurance language.
- Recommend using the “Assurance of Civil Rights Compliance” in [FNS-74: Federal-State Agreement Child Nutrition and Food Distribution Programs](#). Replace “State agency” with “organization”.
- FNS Instruction 113-1 Appendix B(D)(1) for NSLP, SBP, and SMP and D(2) for CACFP and SFSP and Appendix C(F) for USDA Foods contains required assurances.
- A civil rights assurance must be incorporated into all agreements between federal and State agencies, State agencies and program operators, and between program operators and sub-recipients (if applicable).

Assurances When Contracting With Vendors

- Retailer and vendor agreements must include an assurance of nondiscrimination.
 - For example, many School Food Authorities (SFAs) contract with Food Service Management Companies (FSMC). The SFA is responsible for ensuring the FSMC is in compliance with civil rights requirements.
 - For example, many SFAs/sponsor have contracts with online menu planning software companies or online F&R application approval systems.

Purpose of Assurances

- Assurances help to:
 - Clarify expectations
 - Eliminate discrimination against applicants, participants, and beneficiaries
 - Prevent future discrimination
 - Address effects of past discrimination
- Assurances are binding on the program applicant and its successors, transferees, and assignees, as long as they receive assistance or retain possession of any assistance from USDA.

Public Notification

Public Notification System

- All FNS programs must have a public notification system.
- The purpose of this system is to inform applicants, participants, and potentially-eligible persons of:
 - Program availability
 - Program rights and responsibilities
 - The nondiscrimination policy
 - The procedure for filing a complaint of discrimination
- Make program information available to the public upon request.

Public Notification Requirements

State agencies, Program operators, and subrecipients must:

- Notify persons with disabilities about the availability of reasonable modifications and auxiliary aids and services.
- Notify persons with limited English proficiency (LEP) of their right to free language assistance services.

Elements of Public Notification

- Prominently display the “And Justice For All” (AJFA) non-discrimination poster in all required areas.
- Inform potentially eligible persons, applicants, participants, and grassroots organizations of programs or changes in programs.
- Convey the message of equal opportunity in all photos and graphics used to provide program information.
- Provide information in alternative formats for persons with disabilities.
- Provide information in the appropriate language(s) for Limited English Proficiency (LEP) persons.
- Include the required nondiscrimination statement on all appropriate materials, publications, websites, posters, and informational materials.

“And Justice For All” Non-Discrimination Poster

- It must be the official poster. Local reproduction is not authorized.
- The poster should be displayed in prominent locations throughout the site, such as the cafeteria, bulletin board in the main building entrance, or the school office and at the SFA or sponsor central office.
- Posters should be included on field trips where meals are served.
- The poster is not required in CACFP day care homes.
- This poster is developed by USDA and is one of the most recognized forms of public notification of the non-discrimination requirements and procedure for filing a complaint of discrimination.

Ordering “And Justice For All” Non-Discrimination Posters

- This is a picture of the required poster.
- To get posters, please contact Marc Grimes at Marc.Grimes@vermont.gov.



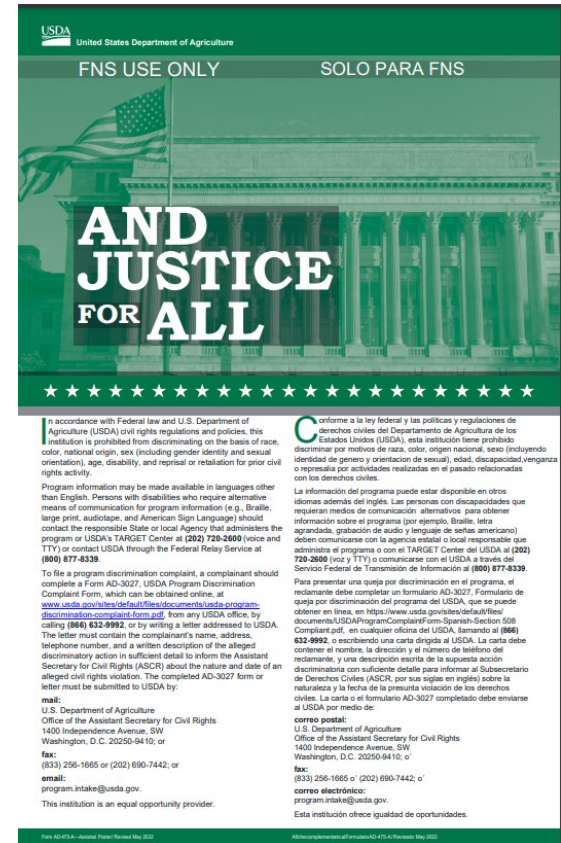
New Poster

To reflect the updated nondiscrimination statement, the poster is in the process of being updated.

We have ordered copies of the new poster, but do not know when we will receive them.

Programs will need to update their posters when we have them available, but until then,

please continue to display the current poster.



AJFA Poster in Other Languages

- [And Justice for All Posters \(Guidance and Translations\)](#)
 - “And Justice for All” Posters in Other Languages
- The translated language may be printed and displayed next to the standard poster.
- Please be sure to use the “AD-475A” version.

Nondiscrimination Statement

- At a minimum, the complete nondiscrimination statement must be on vital materials related to benefit level, necessary for participation:
- For the School Meals Programs:
 - Free and Reduced-Price Meal Application Materials
 - Free and Reduced-Price Meal Application
 - Meal Application Cover Letter
 - Notification of Direct Certification Pre-Approval
 - Notification of Approval or Denial of Meal Benefits
 - Reminder Regarding Expiration of Previous Year Eligibility Benefits

Nondiscrimination Statement Continued

- The complete nondiscrimination statement must be on:
 - Verification Process Materials
 - Verification Notice
 - Verification Results Letter
 - *The Free and Reduced-Price Meal Application Materials and the Verification Materials with the correct nondiscrimination statement are provided annually on the [Vermont Agency of Education Child Nutrition Programs Free and Reduced Meals webpage](#).
 - Program Webpage
- For the Child and Adult Care Food Program (CACFP):
 - Income Eligibility Form
 - Notice to Households
 - Enrollment Form
 - Program Webpage
- For the Summer Food Service Program (SFSP):
 - Media Release (if sponsor chooses to do one)
 - Program Webpage
 - For camps and closed-enrolled sites in non-area eligible locations, the Meal Application & Meal Application Cover Letter

Program Webpage

- Web pages must contain the non-discrimination statement or the direct hyperlink. It cannot link to a closed PDF or Word document. Do not hyperlink to the USDA or FNS pages, but may direct hyperlink to [VTAOE CNP statement](#).
 - Include statement on school/site and SFA/sponsor-level pages
- The one exception would be if the meals program is not referenced in absolutely any way, but that is unlikely and not recommended, as websites are a great way to promote the program and increase participation.
- Social media pages do not need to contain the non-discrimination statement if they can be accessed from the program webpage.

English Nondiscrimination Statement

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotope, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

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/ad-3027.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

This institution is an equal opportunity provider.

Spanish Nondiscrimination Statement

Para todos los demás programas de asistencia de nutrición del FNS, agencias estatales o locales y sus subreceptores, deben publicar la siguiente Declaración de No Discriminación:

De acuerdo con la ley federal de derechos civiles y las normas y políticas de derechos civiles del Departamento de Agricultura de los Estados Unidos (USDA), esta entidad está prohibida de discriminar por motivos de raza, color, origen nacional, sexo (incluyendo identidad de género y orientación sexual), discapacidad, edad, o represalia o retorsión por actividades previas de derechos civiles.

La información sobre el programa puede estar disponible en otros idiomas que no sean el inglés. Las personas con discapacidades que requieren medios alternos de comunicación para obtener la información del programa (por ejemplo, Braille, letra grande, cinta de audio, lenguaje de señas americano (ASL), etc.) deben comunicarse con la agencia local o estatal responsable de administrar el programa o con el Centro TARGET del USDA al (202) 720-2600 (voz y TTY) o comuníquese con el USDA a través del Servicio Federal de Retransmisión al (800) 877-8339.

Para presentar una queja por discriminación en el programa, el reclamante debe llenar un formulario AD-3027, formulario de queja por discriminación en el programa del USDA, el cual puede obtenerse en línea en: <https://www.usda.gov/sites/default/files/documents/ad-3027s.pdf>, de cualquier oficina de USDA, llamando (866) 632-9992, o escribiendo una carta dirigida a USDA. La carta debe contener el nombre del demandante, la dirección, el número de teléfono y una descripción escrita de la acción discriminatoria alegada con suficiente detalle para informar al Subsecretario de Derechos Civiles (ASCR) sobre la naturaleza y fecha de una presunta violación de derechos civiles. El formulario AD-3027 completado o la carta debe presentarse a USDA por:

1. correo:
U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410; o
2. fax:
(833) 256-1665 o (202) 690-7442; o
3. correo electrónico:
program.intake@usda.gov

Esta institución es un proveedor que ofrece igualdad de oportunidades.

Nondiscrimination Statement in Other Languages

- The [Nondiscrimination Statement is available in a number of languages](#).
- This website is currently being updated.

Short Version of Nondiscrimination Statement

- English:
 - This institution is an equal opportunity provider.
- Spanish:
 - Esta institución es un proveedor que ofrece igualdad de oportunidades.

Using the Short Nondiscrimination Statement

- If short statement is used, it must be the current version.
- Can be used on documents for public distribution, such as brochures or flyers.
- It must be no smaller than the smallest font used elsewhere in the document.
- It is not required on calendar menus, unless they contain “program information”. Vermont is requiring it be included on the calendar menu because “program information” is a broad term.

Data Collection

Race and Ethnicity Data Collection

- The purpose is to determine how effectively FNS programs are reaching potentially eligible persons and to determine if additional outreach is necessary.
- Applicants shall be assured that the information is only for statistical purposes and has no effect on eligibility.
- USDA Foods is exempt from this data collection requirement per FNS Instruction 113-1 Appendix C.

Race and Ethnicity Data Policy Change

On May 17th, 2021, USDA released [CACFP 11-2021, SFSP 07-2021 Collection of Race and Ethnicity Data by Visual Observation and Identification in the Child and Adult Care Food Program and Summer Food Service Program – Policy Recission](#)

Race and Ethnicity Data cannot be collected by visual observation.

Race and Ethnicity Policy Change Q&A

On June 13th, 2022, USDA released [CACFP 09-2022, SFSP 05-2022 Questions and Answers Related to CACFP 11-2021, SFSP 07-2021 Collection of Race and Ethnicity Data by Visual Observation and Identification in the Child and Adult Care Food Program and Summer Food Service Program- Policy Recission](#)

Race and Ethnicity Data Collection Process

- For the School Meals Programs, for schools, data is collected by the registrar at the time of student enrollment. Households may also report this information on the back of the Free and Reduced-Price Meal Application.
- In the Summer Food Service Program (SFSP), SFA sponsors may use Race and Ethnicity data obtained during the school year. Non-profit sponsors may use the information for their local SFA(s). Camps and closed-enrolled sites in non-area eligible locations may use the information on the back of the Free and Reduced-Price Meal Application.
- In the Child and Adult Care Food Program (CACFP), this information is collected on the enrollment form that child care centers and day care homes have households fill out each year and the intake form at adult day centers.
- In all programs, children must not be asked to identify their race and ethnicity.

Race and Ethnicity Data in the Online Application Packet

- County-level Race and Ethnicity Data is reported by organizations in the Ethnic and Racial Data tab of the Organization Application section of the program Application Packet, using the “Race and Hispanic Origin” section of the [US Census Quick Facts](#).
- Site-level Race and Ethnicity Data for the organization is reported in the Ethnic and Racial Data tab of the Site Application(s) of the program Application Packet.
- Actual data provided by the SFAs/sponsors is compared to county-wide data to assess efficacy of outreach.

Race and Ethnicity Categories

- Ethnicity
 - Hispanic or Latino
 - Not Hispanic or Latino
- Race (may select one or more of the following)
 - American Indian or Alaska Native
 - Asian
 - Black or African American
 - Native Hawaiian or Other Pacific Islander
 - White

Population Data Sources

- [U.S. Census Data](#)
 - Conducted once every 10 years
- [American Community Survey](#)
 - Conducted annually

Language Assistance

Bilingual Requirements and Program Access

- Limited English Proficiency (LEP)
 - Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English because of their national origin.
- Recipients of federal funds have a responsibility to take reasonable steps to ensure meaningful access to programs for LEP individuals.
- Each SFA has an English Learner (EL) contact.

What is Meaningful Access?

- Meaningful access is accomplished by providing reasonable, timely, appropriate, competent, qualified, accurate, and effective language services at no cost to individuals with LEP when accessing programs and services.
- For LEP individuals, meaningful access denotes access that is not significantly restricted, delayed, or inferior as compared to programs or activities provided to English proficient individuals. (See [DOJ Language Access Plan](#)).
- [SP 37-2016 Meaningful Access for Persons with Limited English Proficiency \(LEP\) in the School Meal Programs: Guidance and Q&As](#)

Factors to Consider in Addressing LEP

- The number or proportion of LEP persons eligible to be served or likely to be encountered within the area serviced by the recipient.
- Frequency with which LEP individuals come in contact with the program.
- Nature and importance of the program, activity, or service provided by the program.
- Resources available to the recipient and costs.

Assistance Tagline Translations

- [Assistance Tagline Translations](#)
- “If you have difficulty understanding English or have a disability, free language assistance or other aids and services are available upon request. Please call:” in a number of languages.

Translation Resources

- “And Justice for All” Poster language is available in [a number of languages](#).
- Non-Discrimination Statement is available in [a number of languages](#).
- Other program materials may need translation.
- Foreign language teachers, community organizations, and volunteers may be used.
- Make sure they understand the confidentiality requirements.
- Interpreter hotlines are another option.
- Children should not be used as interpreters to translate program requirements.

SNP Translated Materials

- On our [F&R webpage](#):
 - Free and Reduced-Price Meal Applications are available in [English](#), [Nepali](#), [Russian](#), [Spanish](#), or [Ukrainian](#)
 - Non-Pricing Meal Application Cover Letter in a number of languages
 - Non-Pricing Notification of Direct Certification Pre-Approval for Free School Meals Template, Non-Pricing Notification of Direct Certification Pre-Approval for Reduced-Price School Meals Template, Non-Pricing Benefit Notification Letter Template, Non-Pricing Reminder of School Meal Eligibility Expiration in Traditional Chinese, Simplified Chinese, and Spanish.
- Application and cover letter in a [number of languages](#) through USDA.

CACFP Translated Materials

- On the [Child and Adult Care Food Program webpage](#):

Child Care Centers:

- [CACFP Enrollment Form \(Spanish\)](#)
- [Notice to Households- Parents & Guardians, Non-Pricing \(Spanish\)](#)
- [Notice to Households- Parents & Guardians, Pricing \(Spanish\)](#)
- [Child Care Income Eligibility Form \(Spanish\)](#)

Day Care Homes:

- [Notice to Providers – Tier 1 Day Care Homes \(Spanish\)](#)
- [Notice to Households – Tier II Day Care Homes \(Spanish\)](#)
- [DCH Provider Income Eligibility Form \(Spanish\)](#)
- CACFP Meal Benefit Income Eligibility Form in [a number of languages](#).

Language Assistance Resources

- State of Vermont has contracts with Language Link, Telelanguage Inc., and Worldwide Interpreters Inc. to provide translation and interpretation services.
- [Migration Policy Institute's National Center on Immigrant Integration Policy](#)
- [Department of Justice: LEP.gov](#)

Vermont-Specific Resources

- [Vermont Refugee Resettlement Program \(USCRI\)](#)
- [Vermont 2-1-1, United Way run service database](#)

Most Frequent Languages other than English in Vermont

1. Nepali
2. Spanish
3. Somali
4. Maay Maay
5. Swahili
6. Chinese
7. Arabic.

Modifications to Accommodate Disabilities

Disability Discrimination Legislation

- The following Civil Rights laws protect persons with disabilities who are potential applicants or participants in FNS programs:
 - Section 504 and 508 of the Rehabilitation Act of 1973 and USDA implementing regulation, 7 CFR Part 15b
 - Americans with Disabilities Act (ADA), 28 CFR Part 35, Title II, Subtitle A
 - Prohibits discrimination on the basis of disability in all services, programs, and activities provided to the public by state and local governments.
 - ADA Amendments Act of 2008

ADA Amendments Act of 2008

- This act clarified the definition of a disability.
- It did not change the expectation to provide a Reasonable Modification.
- The disabled person does not have the burden of “proving” the disability exists.
- It made very clear that the emphasis must be on providing the reasonable modification.

Definition of Disability

A person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

Clarified Definition of Disability

- Revises “Substantially Limits”
 - Need not prevent, or severely/significantly restrict a major life activity.
 - Based on an individualized assessment.
 - Determination is regardless of the effects of any mitigating measures. Mitigating measures include medications or assistive devices that an individual uses to reduce the effects of an impairment.
 - May include an impairment that is episodic or in remission if it would substantially limit a major life activity when active.

Major Life Activity

- Major life activity includes functions such as:
 - Caring for one's self
 - Performing manual tasks
 - Walking
 - Seeing
 - Hearing
 - Speaking
 - Breathing
 - Learning
 - Working
 - Reading
 - Eating

Major Life Activity Continued: Major Bodily Functions

- As result of the ADA Amendments Act of 2008 also includes functions of:
 - The immune system
 - Normal cell growth
 - Digestive
 - Bowel
 - Bladder
 - Reproductive functions
 - Neurological
 - Brain
 - Respiratory
 - Circulatory
 - Cardiovascular
 - Endocrine

Coverage of All Operations

Even one dollar of federal money brings the entire scope of the operations within the jurisdiction of Section 504, even when 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 opportunities to participate
 - Segregating individuals with disabilities
 - Aiding, perpetuating or contracting with others that discriminate
- Failure to provide a reasonable modification
- Ineffective communication
- Inaccessible facilities

Ensuring Accessibility

- There is an obligation to ensure members of the public are provided accommodations in order to access program information, Free and Reduced-Price Meal Applications, and assistance (i.e. Braille, large print, and audio tape).
- Providing qualified sign language interpreters for persons with hearing disabilities may be necessary to effectively communicate with these applicants and participants.

Ensuring Accessibility ²

- It is important that websites and online application systems are accessible and usable by persons with visual impairments and other disabilities.
- Programs must ensure physical accessibility for buildings and facilities, particularly to persons with mobility disabilities with wheelchairs and other power-driven mobility devices.
- At times, different or special treatment may actually be necessary in order to ensure effective aids, benefits, and services.

Guidance on Meal Modifications

- [SP 59-2016 Policy Memorandum on Modifications to Accommodate Disabilities in the School Meal Programs](#)
- [Accommodating Children with Disabilities in the School Meal Programs Manual](#)
- [CACFP 14-2017, SFSP 10-2017 Policy Memorandum on Modifications to Accommodate Disabilities in the Child and Adult Care Food Program and Summer Food Service Program](#)

Reasonable Modifications

- A change or alteration in policies, practices, and procedures to accommodate a disability.
- Modifications are provided on a case-by-case basis.
- SFAs/sponsors have a duty to work with the requested modification. This means simply saying “no” is never appropriate.
- It is not about determining whether or not the child or program recipient has a disability or whether or not the process is being abused.

Reasonable Modifications ²

- 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, however some kind of accommodation must be provided.
- Providing appropriate modifications is the primary objective.
- Exception: Modifications that would fundamentally alter the nature of the program are not required.

Fundamental Alterations

- Modifications are not required that would fundamentally alter the nature of the program.
- If the modification requested would cause undue financial burden on the program that would make continued operation of the program unfeasible, the modification need not be provided.
- Must consult with VT AOE CNP before denying a modification under the fundamental alteration exception.

Reasonable Modifications: Key Considerations

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

Food Allergies

- Many food allergies fall under the definition of disability under the clarified definition in the ADA Amendments Act of 2008 (ADAAA).
- Applies to much more than just “life threatening” allergic reactions
- “Digestive” and “Respiratory” functions are specifically listed in the ADAAA
- According to the CDC and the FASTER Act of 2021: In the United States, the following nine food groups account for 90% of serious allergic reactions:
 - Milk
 - Eggs
 - Fish
 - Crustacean shellfish
 - Wheat
 - Soy
 - Peanuts
 - Tree Nuts
 - Sesame

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 within the discretion of the recipients.
- Program operators should consider their ability to consistently maintain an allergen-free facility.

Milk

- Lactose-free fluid milk is always an allowable milk choice.
- Nutritionally equivalent milk alternatives can be served without a medical statement in the School Meals Programs, CACFP, and sponsors following the School Meals Meal Pattern in SFSP.
- [Crediting Milk in Child Nutrition Programs Tip Sheet](#)

Fluid Milk Substitute Nutrient Requirements	
Nutrient	Per cup (8 fl. oz.)
Calcium	276 mg.
Protein	8 g.
Vitamin A	500 IU.
Vitamin D	100 IU.
Magnesium	24 mg.
Phosphorus	222 mg.
Potassium	349 mg.
Riboflavin	0.44 mg.
Vitamin B-12	1.1 mcg.

Note: The FDA required that fact labels for vitamins change from being measured in International Units (IU) to micrograms (mcg) or milligrams (mg).

Access to the Program

- 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 mealtime.
 - Allergy-free tables, such as peanut-free tables, are acceptable, as long as other children, whose food does not contain that allergen, can sit there and they are not also “punishment” tables.
- Programs must always balance safety vs. stigma. The severity of the allergy and age and ability of the child or program recipient are the primary considerations.

Reimbursement while waiting for a Medical Statement

- Medical statement may be requested, but is not required for substitutions within the meal pattern requirements.
- SFA/sponsor should begin providing a reasonable modification and request the family provide the medical statement to support it.
- Document the initial interaction with the household and continue to follow up with the household until they submit documentation.
- SFAs/sponsors may receive reimbursement for meals served during this time.

Medical Statement Requirements

- The medical statement must come from a professional licensed by the State to write prescriptions.
- If a statement is unclear, seek clarification, but this should not unnecessarily delay the modification; that could be characterized as harassment/denial.
- Statement must provide sufficient information about the impairment (diagnosis not required and should not be requested), how it restricts diet, and how to accommodate the condition.
- Cannot request medical records or charts.

Licensed Medical Professionals in Vermont

- Dentist
- Naturopathic Physician, as authorized by law
- Nurse Practitioner, as authorized by law
- Optometrist
- Osteopath
- Physician
- Physician's Assistants, as authorized by law
- Podiatrist
- Scientific investigator
- Veterinarian
- Certified Nurse Midwife as permitted by law
- Pharmacists, limited prescriptive authority per [26 V.S.A. § 2023](#)
- Others as permitted by Vermont and federal law

Assessing the Medical Statement

- Medical Statement must have 3 parts:
 - Food to be avoided
 - Brief explanation of how exposure to the food affects the child or program recipient
 - Recommended substitute(s) (does not have to be that particular brand)
- Recommended [Vermont Medical Statement Form Template](#)
- *It is not about “proving” whether or not they have a disability, but what can be done to modify the program.

Vermont Medical Statement Form Template

Special Dietary Medical Statement
Vermont Agency of Education Child Nutrition Programs

Date: _____
Child Name: _____
Parent/Guardian Name: _____
Contact Information: _____

Does the child's IEP or 504 Plan contain the information required as outlined below?
 Yes No If No, please continue to fill out the form. If Yes, stop here.

Meal Modifications Made Outside the Meal Pattern
(Accommodation that alters the USDA meal pattern)

Foods to be Avoided/Omitted:

Brief explanation of how exposure to this food affects the child:

Recommended Substitute to this Food:

Modified Texture Needed:
Special Utensils Needed:
Tube Feeding Required:
Tracking Assistance:
Other Accommodations needed:

Signature of Licensed Medical Professional Printed Name of Licensed Medical Professional

For additional information, please refer to Pages 14 & 15 of USDA-FNS Accommodating Children with Disabilities in the School Meals Programs: Guidance for School Food Service Professionals, July 25, 2017

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IEP or 504 Plan

- If the child's Individualized Education Program (IEP) or 504 Plan contain the information required in the medical statement, an additional medical statement is not required.

Duration of the Medical Statement

- SFAs do not have to obtain updated medical statements on a regular basis.
- SFAs will continue to receive reimbursement as long as the medical statement is on file.
- SFAs are responsible for ensuring medical statements reflect the current needs of children or program recipients.

Process for Implementation and Compliance

- Develop procedures for households to request reasonable modifications.
- Train school and food service staff on the procedures and legal requirements.
- The 504 Coordinator is responsible for ensuring compliance. Contact them for assistance.
- The coordinator is often part of a team that is assembled to implement modification guidelines and decisions.

Process for Requesting Modification

- Must have a procedure in place to ensure households know how to request a modification and understand their right to file a grievance should a requested modification not be granted.
- Provide notice in appropriate languages and formats.

For CACFP and SFSP

- Program operators that employ 15 or more individuals must designate at least one person to coordinate compliance with disability requirements, often referred to as a 504 Coordinator.
- Program operators that employ 15 or more individuals must establish grievance procedures.

Process for Filing a Grievance

- The notice provided to the household must include their rights to:
 - File a grievance
 - Receive prompt and equitable resolution of said grievance
 - Request and participate in an impartial hearing to resolve their grievances
 - Be represented by counsel at the hearing
 - Examine the record; and
 - Receive notice of the final decision and a procedure for review, i.e., right to appeal the hearing's decision.
- SFAs may use the IEP/504 grievance process and appeal process if it meets all the legal requirements.

Complaint Procedure

Complaints of Discrimination

- Never discourage individuals or groups from filing complaints or voicing allegations of discrimination.
- Complaints regarding federal civil rights bases must be submitted to the USDA (not just to the local level or State agency, who must track complaints).
 - The nondiscrimination statement provides instructions.
- Complaints may be written or verbal.
- Complaints may be anonymous.

Reporting Complaints of Discrimination

- All civil rights complaints shall be accepted and forwarded to the USDA Office of the Assistant Secretary for Civil Rights (OASCR).
- Forward complaints based on race, color, national origin, sex (including gender identity and sexual orientation), and disability within 5 calendar days of receipt.
- Forward complaints based on age (or a combination of age and other bases) within 5 business days of receipt.

Reporting Complaints of Discrimination Continued

The complainant must file within 180 days of the alleged act of discrimination.

USDA will receive, review, and process Civil Rights complaints and may investigate if appropriate.

USDA Discrimination Complaint Form

- [English version of the complaint form](#)
- [Spanish version of the complaint form](#)

Reporting Complaints Related to the Vermont Agency of Education Protected Bases

- Please contact:

Emily Simmons, General Counsel

emily.simmons@vermont.gov

(802)-828-1518

Vermont Agency of Education Nondiscrimination Policy

The Agency of Education does not discriminate on the basis of race, color, national origin, creed, marital status, sex, disability, age, gender identity, or sexual orientation in its programs and activities.

The following person has been designated to handle requires regarding the nondiscrimination policies:

Emily Simmons, General Counsel

(802)-828-1518

emily.simmons@vermont.gov

For further information on notice of nondiscrimination, visit US Department Education, Office of Civil Rights for the address and phone number of the office that serves your area, or call (800)-421-3481.

SFA/Sponsor Complaint Procedure

- SFAs/Sponsors must have a written procedure for receiving and processing complaints alleging discrimination in the federal meal programs.
- Use [SFA or Sponsor Civil Rights Complaint Procedure Template](#)
- The SFA/sponsor must keep a Civil Rights Complaint Log.
- Maintaining confidentiality is crucial.
- Notify Child Nutrition Programs at VT AOE.

Documenting Complaints

Obtain as much information from complainant as possible:

- Name and contact information of complainant
- Description of incident including date, time, location, and persons present
- Relevant Protected Base(s)

Additional information to include in log:

- Name of organization and individuals alleged to have engaged in discrimination
- Date of referral to USDA OASCR
- The findings of any investigation conducted
- Description of the final disposition of the complaint including any corrective action planned or taken

Reprisal and the Complaint Procedure

- There is language about reprisal in the nondiscrimination statement.
- This is why it is required to keep a separate complaint log and not put the information into case files/IT systems for which all employees have access.
- Restricted access may limit the potential for real/perceived retaliation or reprisal issues.
- While all employees should be confident in the complaint process and how to advise individuals of the policy and procedure, they should not all have access to complaint information.

Reprisal in Department of Justice Regulation

- “[n]o recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by [Title VI], or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing ...” 28 C.F.R. § 42.108(e)

Reprisal in USDA

Departmental Regulation 4330-002

“c. No recipient of USDA financial assistance will retaliate against or intimidate a person because they:

(1) File a discrimination complaint against a recipient of financial assistance from USDA or participate in the processing of such a complaint;”

Reviews and Resolution

Reviews

- Examine the activities of State agencies, sub-recipients, and local sites to determine Civil Rights compliance.
 - FNS Civil Rights and program staff review state agencies.
 - FNS staff and State agencies review local agencies.
 - Local agencies review their sub-recipients, such as FSMCs.
- State agencies must report significant findings in writing to the reviewed entity and FNS.

Types of Reviews

- Pre-Award Civil Rights Review
- Routine (Post-Award) Civil Rights Reviews/Administrative Reviews
- Special Civil Rights Reviews

Pre-Award Civil Rights Reviews

- State agencies, sub-recipient agencies, and local sites must be in compliance with Civil Rights requirements prior to approval for receiving federal funds.
 - Pre-Award Civil Rights Questionnaire
- No federal funds shall be made available to an institution until the Pre-Award Civil Rights Questionnaire Review has been completed and the applicant has been determined to be in compliance with federal Civil Rights statutes and regulations.

Routine (Post-Award) Civil Rights Reviews/Administrative Reviews

- State agency or FNS reviews of local agencies include the following areas:
 - Eligible persons and households have an equal opportunity to participate
 - Availability of program information to eligible persons, program applicants, and participants
 - “And Justice for All” non-discrimination poster is prominently displayed in the required locations
 - Nondiscrimination statement included on program materials
 - Race and ethnicity data collection
 - Written Complaint Procedure and materials, e.g. complaint log
 - Civil Rights training and documentation
 - Reasonable Modifications to Accommodate Disabilities
 - Confidentiality and anonymity of eligibility status
 - Maintenance of documents for 3 years, plus the current year. Local rules may require records be maintained longer.

Special Civil Rights Reviews

- Special Civil Rights Reviews may be scheduled or unscheduled and be conducted by USDA OASCR staff and/or FNS when:
 - Significant Civil Rights concerns which have a direct impact on the delivery of the FNS program and/or benefits.
 - Statistical data indicates that a particular minority group is not participating in or benefitting from the program to the extent indicated by the population potentially eligible to participate in or benefit from the program.
 - To follow up on previous findings of noncompliance.
 - To investigate reports of noncompliance by other agencies, media, or grassroots organizations.
 - May be specific to an incident or policy.
 - History of statistical underrepresentation of particular group(s).
 - Patterns of complaints of discrimination have developed that require follow-up.

Resolution of Noncompliance

- Noncompliance: a factual finding that any civil rights requirement, as provided by law, regulation, policy, instruction, or guidelines, is not being adhered to by a State agency, local agency, or other sub-recipient.
- Immediate steps must be taken to obtain compliance.
- A finding's effective date is the date of notice to the reviewed entity.
- Reviewers will work with the reviewed entity to ensure compliance.

Common Civil Rights Findings during Administrative Reviews

- Not all staff involved in CNP operation have received training
- Missing Civil Rights Complaint Procedure
- Current and correct “And Justice for All” non-discrimination poster not publicly posted
- Missing non-discrimination statement from website
- Calendar menu has incorrect short non-discrimination statement

Training

Civil Rights Training

- SFAs and sponsors are responsible for annually, based on a calendar year, training all staff involved in any and all aspects of the Child Nutrition programs including:
 - All food service professionals
 - Eligibility determination and verification process personnel
 - Teachers responsible for meals in the classroom, such as Breakfast in the Classroom and the Fresh Fruit and Vegetable Program (FFVP)
 - Administrative personnel involved in the program, like Business Managers
 - Any program volunteers
- New employees must be trained before involvement in Child Nutrition duties.

Civil Rights Training for Teachers

- Depending on the structure of meal service, teachers could be involved in meal program operation.
- Could do a light touch of all required topics and then a deeper dive of relevant topics.
- They do not need training on Legislation and Assurances. Topics like Data Collection and Civil Rights Reviews could be briefly covered, with more time spent on topics such as Public Notification and Complaint Procedure. It is recommended they are given the PowerPoint to read through.

Civil Rights Training Documentation

- Training must be documented with dates, names, signatures, and topics covered.
- [Child Nutrition Programs Civil Rights Training Documentation](#) sign-in sheet is available on the VTAOE CNP homepage.

Purpose of Civil Rights Training

- Training is required so that individuals involved in all levels of administration of programs that receive Federal financial assistance understand Federal laws, regulations, instructions, policies, and other guidance.

Training Topics to Cover

- Specific subject matter required, but not limited to:
 - Effective public notification systems
 - Collection and use of data
 - Requirements for language assistance for individuals with limited English proficiency
 - Requirements for reasonable modifications to accommodate disabilities
 - Complaint procedures
 - Civil Rights reviews
 - Resolution of noncompliance
 - Customer service
 - Conflict resolution

Training on Complaint Procedure

- Staff should be able to identify a civil rights complaint if received.
- They should know what to do if they receive a complaint.
- Staff must understand that it is the basic right of persons to file a complaint of discrimination.

Professional Standards Coding for School Meals

- Civil Rights counts towards the annual training standards.
 - 2200- Serving Food: 2210- Identify/serve portions of food items according to USDA school meal pattern requirements and diet restrictions.
 - 3400- Human Resources and Staff Training: 3410- Understand and apply human resource management practices.
3420- Implement current personnel policies and procedures.

Ways to Receive Training

- Watch this webinar live
- Watch the recording of this webinar
- Read through the [Vermont Child Nutrition Programs Civil Rights Training PowerPoint](#)
- Incorporate the PowerPoint into your organization's online training modules
- Receive approval from VTAOECNP to use an alternative Civil Rights Training

Customer Service

Customer Service ¹

- Treat customers with respect and dignity.
- Be patient and listen carefully.
- Speak calmly and slowly.
- Respond to questions in a non-threatening manner.
- Avoid interruptions.
- Recognize changes in a customer's demeanor.
- Recognize and appreciate a customer's needs and resources.
- Identify the problem and determine a solution.
- Know and be able to communicate rules, rights, and responsibilities.

Describe what customer service means to you!

- Take a few minutes to think about what good customer service means to you and how you plan to implement it this program year.

Conflict Resolution

Conflict Resolution ¹

- Turn problems into possibilities.
- Demonstrate empathy.
- Be appropriately assertive.
- Remain calm.
- Ask questions to gather information.
- Listen and repeat back to be sure you understand.
- Manage emotions internally and externally
- Get help from authority figures if there are threats or if violence is possible.

Additional Information

Separation by Gender during Meal Service

Per [SP31 CACFP12 SFSP14-2015 Guidance on Prohibition of Separation by Gender during Child Nutrition Program Meal Service](#):

- Schools and school-based sites may request separation by gender during meal service for religious reasons with approval from FNS. Non-religious reasons require specific FNS approval.
- Other programs may email jamie.curley@vermont.gov to request separation by gender during meal service and specify which reason and why necessary:
 - religious institutions operating under the rules of the affiliated religion
 - juvenile correctional facilities where combining genders presents a potential safety risk
 - facilities that fully separate by gender as part of their normal operations (for example, gender-separated summer camps)

Citizenship or Immigration Status

- Verification of immigration status should never give rise to discrimination.
- Information provided on Free and Reduced-Price Meal Applications is confidential and will not be shared with Department of Homeland Security (DHS)/Immigration and Customs Enforcement (ICE).
- Applicants without Social Security numbers are still eligible to apply for free and reduced-price meal benefits.

Record Retention

- All records must be maintained on file for 3 years, plus the current year, and kept confidential, as necessary.
- Local rules may require records be maintained longer.

Vermont Agency of Education Child Nutrition Programs Contact Information

Jamie Curley
Child Nutrition Coordinator
jamie.curley@vermont.gov
(802)-828-2010

Vermont Agency of Education
Child Nutrition Programs
1 National Life Drive, Davis 5
Montpelier, VT 05620-2501

USDA FNS NERO Contact Information

Stephen Miliano

U.S. Department of Agriculture

Food and Nutrition Service

Regional Civil Rights Officer in the
Northeast Regional Office

10 Causeway Street, Suite 501

Boston, MA 02222

(617)-565-6424

stephen.miliano@usda.gov

Complete Non-Discrimination Statement

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotope, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

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/ad-3027.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

This institution is an equal opportunity provider.