

A Guide to Civil Rights Requirements in Child Nutrition Programs

United States civil rights originated upon ratification of the 13th Amendment to the Constitution. One year after, The Civil Rights Act of 1866 became law. Civil rights guarantees were expanded in 1868 with ratification of the 14th Amendment to the U.S. Constitution. In the many years since, Congress has broadened civil rights. Examples include The Civil Rights Act of 1964, The Americans with Disabilities Act, and The Age Discrimination Act of 1975. The goals of civil rights are, but not limited to:

- Equal treatment for all applicants and beneficiaries
- Knowledge of rights and responsibilities
- Elimination of illegal barriers that prevent or deter people from receiving benefits
- Dignity and respect for all

The basic premise of civil rights is protection from discrimination which is defined as 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 their protected classes. A protected class is any person or group of people who have characteristics for which discrimination is prohibited based on a law, regulation, or executive order. In the Child Nutrition Programs, there are six federally-protected classes; race, color, national origin, sex, age, and disability. Vermont Agency of Education protected bases included the federally-protected bases and gender identity, sexual orientation, marital/civil union status, and religion.

All sponsors of programs receiving federal money must implement the civil rights requirements to be in compliance and eligible to operate their respective federal program(s). Child Nutrition Programs include: National School Lunch Program (NSLP), School Breakfast Program (SBP), Special Milk Program (SMP), Fresh Fruit and Vegetable Program (FFVP), NSLP Afterschool Snack Service, Seamless Summer Option (SSO), Summer Food Service Program (SFSP), Child and Adult Care Food Program (CACFP). Since Child Nutrition Program sponsors receive federal money, this means that agencies, organizations, and institutions that operate one or more of these programs must ensure that no participant experiences discrimination. The following requirements help ensure your school food service complies with civil rights regulations.



Data Collection and Maintenance

Data collection is an important part of compliance with USDA’s civil rights requirements. There are three types of data that must be collected and maintained (1) ethnic and racial data for all participants, collected yearly; (2) ethnic and racial data for the estimated number of potential eligible beneficiaries by ethnic/racial categories for the area served by your institution, collected yearly; and (3) all records used to operate NSLP/SBP maintained for three years plus the current year. This data helps determine how effectively Child Nutrition Programs are reaching potentially eligible children, and where outreach may be needed.

Participant Data

Ethnicity and race data must be collected in two separate statements. The two-part question collects ethnicity first, then racial designations. Ethnic and racial data for schools is collected by each school and reported in the school census information web site that can be accessed by the school registrar. In the Summer Food Service Program (SFSP) sponsors complete the Racial and Ethnic Data Form for each site once every summer and once every session for each camp. In the Child and Adult Care Food Program (CACFP) this information is collected on the enrollment form that child care centers have households fill out each year. If the households do not fill out this section, it is the center’s responsibility to make a visual observation. This information is kept confidential and not shared. In all programs, children must not be asked to identify their race and ethnicity.

Potential Participant Data

The second data collection requirement is the estimated number of potential eligible beneficiaries by ethnic and racial categories for the area served by your school. To help you meet this requirement, Child Nutrition Programs provides the link to the census every year during the application renewal process.

Ethnicity

This question is to collect data on whether the child is Hispanic, Latino, or Spanish origin. The definition of Hispanic or Latino is “A person of Cuban, Mexican, Mexican American Chicano, Puerto Rican, South or Central American or other Spanish Culture or origin, regardless of race.” The term Spanish origin can be used in addition to Hispanic or Latino.

Using Ethnic and Racial Data: Comparing the ethnic/racial data collected regarding potential participants to data collected for actual participants can help

identify underserved populations, and allow targeted education and outreach to underserved populations.

Race

This question is to collect information on one or more racial categories that identify a child or adult in care. There are five categories of race: American Indian or Alaskan Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White.

Maintaining All Child Nutrition Program Records

All records used to operate the Child Nutrition Programs must be maintained for three years plus the current year. Safeguards must be in place to ensure that data is kept confidential and secure.

Public Notification

All programs must include a public notification system to inform applicants, participants, and potentially eligible persons about the program. The public notification system provides information about:

- eligibility
- benefits and services (free and reduced-price meals and snacks)
- program availability
- steps necessary for participation
- applicant rights and responsibilities
- non-discrimination policies
- procedures for filing a complaint

“And Justice for All” Non-Discrimination Poster

Public notification includes the “And Justice for All” non-discrimination poster placed in an area viewable to participants and potential participants. Areas of display include cafeterias, entrances to facilities, central offices, food service offices, or classrooms if meals are served there. Do not place the poster in the kitchen hidden away from participants and potential participants. The poster is not required in day care homes. The “And Justice for All” non-discrimination poster contains the information about filing a complaint of discrimination.

During the administrative review, the State Agency will make sure that the “And Justice for All” non-discrimination poster is displayed in any area where participants and potential participants have access to view the poster. The poster may be obtained from Vermont Agency of Education Child Nutrition Programs by contacting Cheryl Rogers at ailynne.adams@vermont.gov.

Outreach and Education

Outreach and education is an important part of the public notification system that each SFA and/or school can provide. Newsletters to households or articles in the local paper explaining the program are two examples. Providing the income application form available on line is recommended, as is explaining how the reimbursement works and the source of funding. At the very least, menu information should be publicized. Keep in mind that equal opportunity conveyance should be illustrated in program photos or graphics. This would involve depiction in the varieties of the protected bases of race, color, national origin, sex, age, or disability.

Use of the Non-Discrimination Statement

These are the official statements that SFAs/school districts/schools must include in all printed communication when referring to the Child Nutrition Programs. The complete statement must be included on all free and reduced-price meal application materials, verification materials, and on the program webpage. The Free and Reduced-price meal application materials and the verification materials with the correct non-discrimination statement are provided annually in the Vermont Appendix. Include the non-discrimination statement on child nutrition programs web sites and web sites that refer to any of the child nutrition programs. The statement does not have to be included on every page of the program information web site. However, at a minimum, the long non-discrimination statement, or a direct hyperlink to it, must be included on the home page of the program information.

The full non-discrimination statement does not have specific font-size requirements, however it should still be the same size as well, or only one or two sizes smaller, within reason so that it is legible. The full non-discrimination statement is the public notification for the complaint procedure.

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: <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint>, 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.

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The short statement must be used on all calendar menus and promotional materials. It must appear in print size no smaller than the smallest text used regularly throughout the document:

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Complaint Procedures

Civil rights complaints are allegations of discrimination based upon one or more of the protected classes (race, color, national origin, sex, age, or disability). Persons alleging discrimination based on any of the protected classes has a right to file a complaint with USDA within 180 days of the date of the alleged discriminatory action.

It is important that each institution follow the appropriate procedure for handling complaints of discrimination based on any of the protected bases and that all employees know how to handle a complaint of discrimination. A written procedure should be kept in a specific location that employees can easily access. Keep these points in mind:

- The complaint procedure is written out in the USDA non-discrimination statement. This is how complaints should be processed whenever possible.
- Complainants may choose to contact the USDA directly with their complaint, or they may notify the institution or sponsor of their complaint. If a written or verbal complaint is issued to your school food service program, the sponsor must forward the complaint to the USDA.
- All civil rights complaints, written or verbal, shall be accepted. It is necessary that the information provided be sufficient to determine the identity of the agency or individual towards which the complaint is directed and to indicate the possibility of a violation. Anonymous complaints should be handled as any other complaints.
- In the event a complainant makes the allegations verbally or through a telephone conversation and refuses to or is not inclined to place such allegations in writing, the person to whom the allegations are made shall write up the elements of the complaint for the complainant. Components of verbal complaints should include as much information as possible:
 - Contact information for the complainant
 - The specific location and name of the entity delivering the service or benefit.
 - The nature of the incident or action that led the complainant to feel that discrimination was a factor.
 - The basis on which the complainant feels discrimination exists within any of the protected classes.
 - The names, titles, and business addresses of persons who may have knowledge of the discriminatory action.
 - The date(s) during which the alleged discriminatory actions occurred or, if continuing, the duration of such actions.
- Notify the legal team at Vermont Agency of Education Child Nutrition if there are complaints of discrimination based on the state-protected bases
- Maintain a secure Complaint Log with limited access to prevent discrimination due to reprisal. Civil Rights complaints must be tracked separately than program complaints.
- Inform Vermont Agency of Education Child Nutrition Programs of any complaints.

Civil Rights Reviews

During the state administrative review of the school food service program, civil rights compliance is determined through, but not limited to, the following items:

- Whether potentially eligible persons and households have an equal opportunity to participate in the program,
- Whether program information is being made available to potentially eligible persons, program applicants, and participants
- Whether the “And Justice for All” non-discrimination poster is prominently portrayed in required locations,
- Whether the non-discrimination statement is included on all program materials such as applications, pamphlets, forms, or any other program materials distributed to the public and on websites,
- Whether actual applicant and participant racial and ethnic data are being collected,
- Whether Civil Rights complaints are being handled in accordance with requirements,
- Whether all applicable staff have received Civil Rights training,
- Whether reasonable modifications, such as meal modifications, are provided to accommodate disabilities,
- Whether student information is maintained confidentially and anonymously,
- Whether documents are maintained for three years, plus the current year.

All documentation must be on file and readily available during a review by the State Agency.

Non-Compliance Resolution

A finding of noncompliance may be the result of a routine management evaluation review, a special review, or an investigation. Noncompliance is a factual finding that any civil rights requirement, as provided by law, regulation, policy, instruction, or guidelines, is not being adhered to by a school food service program or its vendor(s). The following are general examples of discrimination:

- Denying an individual or household the opportunity to apply for FNS program benefits or services on the basis of race, color, national origin, age, sex, or disability.

- Providing FNS program services or benefits in a disparate manner on the basis of race, color, national origin, age, sex, or disability, unless the difference is necessary to comply with nondiscrimination requirements, such as disability accommodations.
- Selecting members for planning and advisory bodies in such a way as to exclude persons from membership on the basis of race, color, national origin, age, sex, or disability.
- Selecting FNS program sites or facilities in a manner that denies an individual access to FNS program benefits, assistance, or services on the basis of race, color, national origin, age, sex, or disability.

Once noncompliance is determined, steps must be taken immediately to obtain voluntary compliance. The effective date of the noncompliance finding is the date of the written notice of noncompliance by the State agency. The written notice will indicate the action required to correct the problem.

Reasonable Accommodation of Disabilities

All organizations receiving federal financial assistance must make reasonable modifications to ensure meaningful access to their programs for participants who have disabilities. The ADA Amendments Act of 2008 expanded and clarified the definition of a disability.

Individuals with Physical Disabilities

Accommodations for children or adults with physical disabilities include physical accessibility and the ability to be seated with other students. Examples include entrances and exits wide enough for a wheelchair, tables that accommodate a wheelchair and accommodations so the child can access the serving line. Other examples include program aides that can help with feeding and adaptive tableware.

Integrated Environment

Per the Integration Clause in Section 504 of the Rehabilitation Act, accommodations should be provided in the least restrictive and most integrated setting possible. It is a matter of weighing safety vs. stigma with safety being the most important factor. Allergy-free tables, such as “peanut-free” tables are acceptable, as long as they are not also “punishment” tables.

Meal Modifications

- Medical statement may be requested, but is not required for substitutions within the meal pattern requirements. A medical statement signed by a person licensed to write prescriptions can be provided that contains instructions for food substitutions. Examples include pureeing food for a student who is unable to swallow solid foods; or, nut-free foods. The medical statement must contain three parts. The food to be avoided, a brief explanation of how exposure to the food affects the child, and the recommended substitute(s) (does not have to be the particular brand). If the child's IEP or 504 Plan contain the information required in the medical statement, an additional medical statement is not required.

Limited English Proficiency

Recipients of federal funds have a responsibility to take reasonable steps to ensure meaningful access to programs for LEP individuals. When there are language barriers due to limited proficiency in English, a reasonable effort must be made to provide materials in formats that the target audiences can understand. This includes making information about program eligibility, benefits, services, and procedures for filing complaints in the appropriate translation to non-English speaking persons, and/or using an interpreter if needed. Providing alternative means of communication such as Braille, large print, or audiotape recorded available to the public, participants, and potential participants are other examples. USDA provides publications and program materials in several languages.

Customer Service

Good customer service will help reduce or eliminate chances of discrimination. Be courteous and thoughtful, patient, listen carefully, and treat all students equally. Effective communication is essential to good customer service. Know and be able to explain any requirements that must be followed.

Conflict Resolution

Remain calm, ask questions, and listen well. Effective communication is also essential to conflict resolution.

Mandatory Training

All personnel involved in the Child Nutrition Programs must receive annual (based on a calendar year) Child Nutrition-specific Civil Rights training. People involved in all levels of child nutrition program operation need to understand all the requirements. Program administrators, program managers, and frontline employees who interact with the children or adults in care, including monitors and those who supervise frontline staff, application approval staff, teachers that assist with Breakfast in the Classroom or FFVP, and any volunteers must participate in civil rights training annually. New staff should receive civil rights training before participating in program activities. Required topics to cover in training provide an understanding of what discrimination is and why civil rights are important, the protected bases, familiarity with the non-discrimination statement, where to display the “And Justice for All” non-discrimination poster, what a civil rights complaint is, the procedure for dealing with a civil rights complaint, collecting and recording ethnic and racial data and the reasons for doing so, conflict resolution, and customer service. Minimum training topics include:

- Public Notification
- Data Collection and Use
- Complaint Procedures
- Civil Rights Reviews
- Resolution of Noncompliance
- Reasonable modifications to accommodate disabilities
- Requirements for language assistance
- Conflict Resolution
- Customer Service

Assurances

Assurances are contractual agreements in which a state agency, local agency, or sub-recipients, including SFAs and Food Service Management Companies (FSMCs), legally agrees to administer FNS programs in accordance with all laws, regulations, instructions, policies, and guidance related to non-discrimination. An assurance must be included in all agreements between State agencies and local school food authorities. The on-line agreement submitted by an SFA to participate in school meals programs contains an assurance agreement. Any retail or vendor agreements entered into must include an assurance of non-discrimination. The USDA non-discrimination assurance statement for NSLP, SBP and the Special Milk Program is as follows:

"The program applicant hereby agrees that it will comply with 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), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.); all provisions required by the implementing regulations of the Department of Agriculture; Department of Justice Enforcement Guidelines, 28 CFR Part SO.3 and 42; and 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 benefits of, or otherwise be subject to discrimination under any program or activity for which the program applicant receives Federal financial assistance from FNS; and hereby gives assurance that it will immediately take measures necessary to effectuate this agreement.”

“By accepting this assurance, the Program applicant agrees to compile data, maintain records, and submit reports as required, to permit effective enforcement of non-discrimination laws and permit authorized USDA personnel during hours of program operation to review such records, books, and accounts as needed to ascertain compliance with the non-discrimination laws. If there are any violations of this assurance, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Program applicant, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from USDA. The person or persons whose signatures appear below are authorized to sign this assurance on the behalf of the Program applicant.”

For CACFP and SFSP the assurance statement is:

“The Program applicant hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by the regulations of the Department of Agriculture (7 CFR Part 15), DOJ (28 CFR Parts 42 and 50) and FNS directives or regulations issued pursuant to that Act and the regulations, to the effect that, no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity for which the Program applicant received Federal financial assistance from USDA; and hereby gives assurance that it will immediately take any measures necessary to fulfill this agreement.”

“This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing

of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.”

“By accepting this assurance, the Program applicant agrees to compile data, maintain records, and submit reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review such records, books, and accounts as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Program applicant, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from USDA. The person or persons whose signatures appear below are authorized to sign this assurance on the behalf of the Program applicant.”

For additional resources see: [USDA Food and Nutrition Instruction 113-1](#) “Civil Rights Compliance and Enforcement – Nutrition Programs and Activities.”

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