

Civil Rights Training

Child Nutrition programs

Presented by Child & Adult Nutrition Services
SD Department of Education

Based on presentation by USDA Food and
Nutrition Services May 2018



Presentation topics:

- Civil Rights coverage and legal authorities
- Areas of compliance
 - Assurances
 - Public notification requirements
 - Racial and ethnic data collection
 - Limited English Proficiency (LEP)/English Language Learners (ELL)
 - Disability Discrimination
 - Equal Opportunities for Religious Organizations
 - Civil Rights Training
 - Complaints of Discrimination
 - Compliance Reviews
 - Resolution of Noncompliance

Abbreviations

- ▶ CFR = Codified Federal Regulation
- ▶ CR = Civil Rights
- ▶ DOJ = Department of Justice
- ▶ ELL- English Language Learners
- ▶ FNS = Food and Nutrition Services
- ▶ NSLP = National School Lunch Program
- ▶ SBP = School Breakfast Program
- ▶ SD = South Dakota
- ▶ SDCL = SD Codified Law
- ▶ SMP = Special Milk Program
- ▶ USDA = United States Department of Agriculture

Civil Rights Program Authorities

- Title VI of the Civil Rights of 1964
 - ▶ race, color, and national origin
- Civil Rights Restoration Act of 1987
 - ▶ clarifies the scope of the Civil Rights Act of 1964
- Sections 504 & 508 of the Rehabilitation Act of 1973 and Americans w/ Disabilities Act
 - ▶ disability
- Title IX of the Education Amendments of 1972
 - ▶ sex
- Age Discrimination Act of 1975
 - ▶ age

Civil Rights Program Authorities

- 7 CFR Parts 15, 15a & 15b
- 7 CFR Part 210 (NSLP)
- 7 CFR Part 215 (SMP)
- 7 CFR Part 220 (SBP)
- 7 CFR Part 245 (NSLP/SMP/SBP) [Eligibility Regs]
- 7 CFR Part 247 and 250 (CSFP)

Civil Rights Program Authorities

- 28 CFR Part 42: Nondiscrimination in Federally Assisted Programs
- FNS Instruction 113-1 Appendix B (NSLP, SMP, SBP); and C (Commodities)- Provides information on Civil Rights compliance and enforcement
- Executive Order 13166 - addresses/improves access requirements for persons with Limited English Proficiency (LEP)
- 7 CFR Part 16, “Equal Opportunity for Religious Organizations” - allows religiously affiliated organizations to compete equally for USDA assistance.
- USDA Departmental Regulation 4330-2 - prohibits discrimination in programs and activities funded in whole or part by the USDA.

What is discrimination?

DEFINITION:

Different treatment which makes a distinction of one person or a group of persons from others; either intentionally, by neglect, or by the actions or lack of actions based on...



Protected Bases for FNS Child Nutrition Programs

- 1) Race
- 2) Color
- 3) National Origin
- 4) Age
- 5) Sex
- 6) Disability
- 7) Religion

Civil Rights Compliance Areas

- Assurances
- Public Notification
- Civil Rights Training
- Racial/Ethnic Data Collection
- Compliance Reviews
- Complaints of Discrimination
- Resolution of Noncompliance
- Customer Service
- Conflict Resolution
- Serving Clients with Disabilities
- Serving Clients with Limited English Proficiency

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.
- A civil rights assurance statement must be incorporated in all agreements between State and local agencies.

Assurances

- State agencies must obtain assurance from each school or local agency. FNS will obtain a written assurance from each State agency.
- Vendor agreements and any other contracts must also include an assurance of nondiscrimination.

Contract with Food Service Management Companies (FSMC) to provide food service to students. Thus, the SFA or responsible individual would be charged with ensuring that their FSMC is in compliance with CR requirements.

- This assurance is 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.

Title VI requires that....

“No person in the United States shall, on the ground of **race, color, or national origin**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

-Civil Rights Act of 1964, Title VI, 42 U.S.C. §
2000d

**...SHALL ON THE GROUND OF RACE,
COLOR, OR NATIONAL ORIGIN...**

**We now go beyond the obvious
that was in the original law:**

**“[R]ace, color or national origin”
includes any perceived race, color, or
national origin.**



...ANY PROGRAM OR ACTIVITY

Program or activity means:

“[A]ll of the operations of...

State and local governments

Educational institutions

Corporations & private organizations

...that receive federal financial assistance.”

This means all Child Nutrition Programs

...BE EXCLUDED FROM PARTICIPATION IN, BE DENIED THE BENEFITS OF, OR BE SUBJECTED TO DISCRIMINATION...

- Recipients may not administer their programs or activities in a manner that “den[ies] any individual any . . . benefit provided under the program,” or “restrict[s] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any . . . benefit under the program.”
- Recipients may not “utilize criteria or methods of administration **which have the effect** of subjecting individuals to discrimination because of their race, color, or national origin”

Subrecipient Pre-award

- Prior to signing an agreement with a sub recipient, a pre-award review must be conducted.
- These reviews are conducted by the State Agency and are usually done as desk reviews of information provided by applicants in their official application to operate an FNS Federally-assisted program.
- No Federal funds shall be made available to a State or an entity until a Pre-Award Compliance Review has been conducted and the applicant has been determined to be in compliance with Title VI requirements.

Public Notification

- All FNS assistance programs must include 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 policy of nondiscrimination and
 - ▶ the procedure for filing a complaint.

Elements of Public Notification

Complaint Information

- ▶ Advise applicants and participants at the service delivery point of their right to file a complaint, how to file a complaint, and the complaint procedures.

Nondiscrimination Statement

- ▶ All informational materials and sources, including websites, used by FNS, State agencies, local agencies, SFAs or other sub recipients to inform the public about FNS programs must contain a Nondiscrimination Statement. The statement is not required to be included on every page of the program Web site. At a minimum, the Nondiscrimination Statement or a link to it must be included on the home page of the program information.

****Filing a complaint for nutrition programs are part of US Department of Agriculture and is different than the one for education programs, which are Part of US Department of Education.****

Methods of Public Notification

State agency and/or School Food Authority must:

- ▶ Prominently display the “And Justice for All” poster.
- ▶ 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 other graphics that are used to provide program or program-related information.
- ▶ Provide appropriate information in alternative formats for persons with disabilities and in the appropriate languages for LEP persons.

Nondiscrimination

October 2015

► Non-Discrimination Statement

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.

Nondiscrimination Statement

At a minimum, the full Nondiscrimination Statement should be on:

- Application Form(s)
- Notification of Eligibility or Ineligibility
- Expiration of Certification Notification
- Discontinuance Notification
- Program (Home) Web Page
- Public Information materials including media

It does not have to be on menus that are sent home.

Nondiscrimination Statement

- ▶ The Nondiscrimination Statement should be used as is. Do not move it into paragraph format.
- ▶ You may shrink the spacing between the lines a little bit.
- ▶ It now may be in a smaller font than other font on the document, but must be easily readable.
- ▶ Can be found in 22 Non-English Languages at <https://www.fns.usda.gov/fns-nondiscrimination-statement>

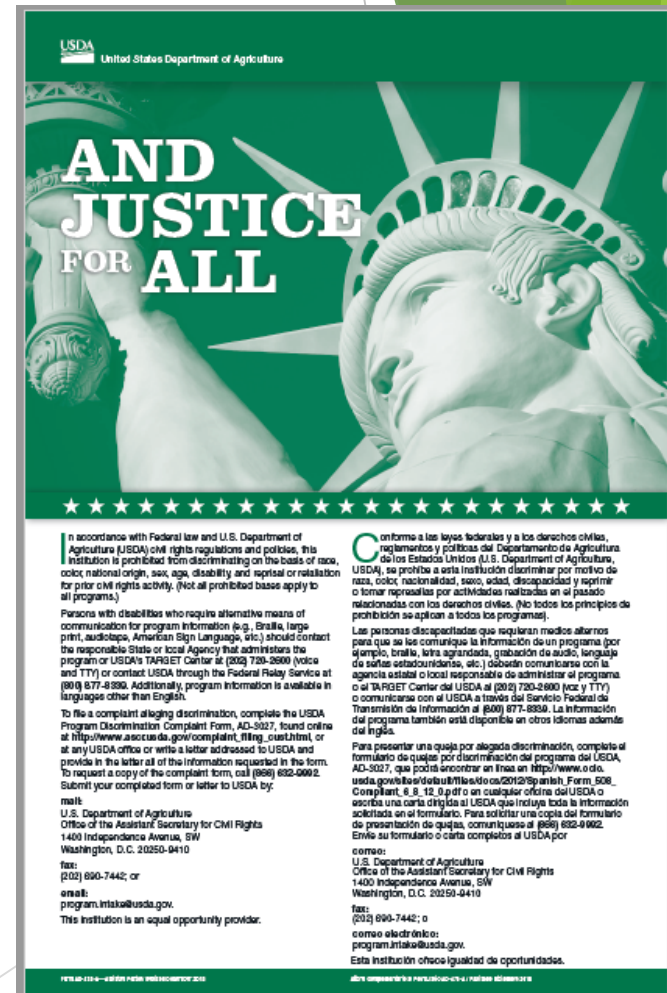
“And Justice For All...” Poster

All sites must display the poster in a prominent location for all to view.

Display in classrooms if students don't visit the cafeteria.

Local reproduction is not authorized. USDA provides copies of poster to State agencies for distribution.

This is the current poster.



Racial/Ethnic Data Collection

“...State agencies, local agencies, and other sub recipients are required to obtain data by race and ethnic category on potentially-eligible populations, applicants, and participants in their program service area...Systems for collecting actual racial and ethnic data must be established and maintained for all programs.”

Racial/Ethnic Data Collection

NSLP, SBP, and SMP:

DATA COLLECTION : 1 NSLP, SBP, and SMP

- ▶ The collection and reporting of data on the actual number of children applying for free and reduced-price meals or free milk, by ethnic/racial group, is required by DOJ Regulations, 28 CFR Part 42, and 9 AR.
- ▶ (a) The SFA or other program recipient agency will:
 - ▶ (1) Develop a method for data collection. Methods include determination of the information by a school official through observation, personal knowledge, or voluntary self-identification by an applicant on the free and reduced-price meal or free milk application. State agencies may also use data or information collected by other Federal and State agencies (e.g., Department of Education).
 - ▶ (2) Maintain information on file for 3 years.
 - ▶ (3) Establish procedures to ensure that the information is made available only to authorized State and Federal personnel as requested, or as part of Office of Management and Budget (OMB) approved surveys.

Racial/Ethnic Data Collection

- ▶ (b) The State agency, or FNSRO where applicable, will:
 - ▶ (1) Ensure that each SFA or other program recipient agency under its jurisdiction complies with the requirements set forth in the above paragraph.
 - ▶ (2) Review and evaluate the data during the civil rights compliance phase of the monitoring and review activities required by program regulations; and identify SFAs or other program recipient agencies that need closer review to determine their compliance with the CR laws and with the requirements of this Instruction

Racial/Ethnic Data Collection

- ▶ Purpose: To determine how effectively FNS programs are reaching potentially eligible persons and beneficiaries
- ▶ Applicants shall be assured that the information is required for and used for statistical purposes only and has no effect on eligibility criteria.
- ▶ The data should be collected at the point of application.
- ▶ Ensure that access to data is limited to authorized personnel.

Racial/Ethnic Data Collection

- If an applicant/parent does not consent to the self-identification method, the individual taking the application will, through visual observation, determine the applicant's race or ethnicity and mark the appropriate category.
- Children are not to be surveyed.
- State and local agencies should compare their participant data with potentially eligible persons within their service areas.
- Conduct outreach as needed.

Race and Ethnic Categories - Two Question Format

1. Ethnicity

- ▶ *Hispanic or Latino*
- ▶ *Not Hispanic or Latino*

2. Race (one or more of the following)

- ▶ *American Indian or Alaskan Native*
- ▶ *Asian*
- ▶ *Black or African American*
- ▶ *Native Hawaiian or Other Pacific Islander*
- ▶ *White*

Bilingual Requirements and Program Access

- Title VI and its regulations require State agencies, local agencies, or other sub recipients to take reasonable steps to assure “meaningful” access to their programs and activities by Limited English Proficient persons.
- This requirement applies to Program information used by state and local agency staff.
- The State agency shall also ensure that all rights and responsibilities are written in a language appropriate and understood by a ELL applicant or participant.

Bilingual Requirements and Program Access

- Factors to consider in when ensuring “meaningful” access:
 - Number or proportion of ELL persons served or encountered in the eligible population.
 - Frequency with which ELL 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.
 - State agencies must conduct assessments to determine language profile for their state, taking into account regional differences and updating as appropriate.
 - Translation of vital documents is required.
 - Oral translation and notification of free interpretation services is required.
 - Staff training regarding how to provide LEP populations with meaningful access is paramount (frontline staff).

Bilingual Requirements and Program Access

- ELL- Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.
- Applicants and participants cannot be asked to bring their own interpreters
- Children should not be used as interpreters
 - Use qualified, competent language resources
- The term “program or activity” is broadly defined. There is no numerical threshold that must be met before provisions of the Civil Rights Act, prohibiting discrimination based on *national origin*.

Bilingual Requirements and Program Access

- Population data sources
 - US Census Data
<http://www.census.gov/2010census/data/>
 - American Community Survey
<http://www.census.gov/acs/>
 - Migration Policy Institute's National Center on Immigrant Integration Policy
<http://www.migrationpolicy.org/>

School statistics collected by the U.S Department of Education.

Definition of Disability

- Any 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.
- To constitute a “disability” a condition must substantially limit a major life activity.
 - ▶ A major life activity means functions such as caring for one’s self, performing manual tasks, walking, talking, seeing, hearing, speaking, eating, breathing, learning and working.

Definition of Disability Cont.

- Physical or mental impairment means (1) any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting any one or more of the body systems.
- ▶ Functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, and reproductive functions.
- ▶ ADA Amendments Act of 2008

Disability Discrimination Prohibited

- Section 504 states that “no otherwise qualified individual with a disability in the United States...shall solely by reason of his or her disability, be excluded from, denied the benefits of, or be subjected to discrimination under” any program or activity that either receives Federal financial assistance or is conducted by any Executive agency or the United States Postal Service.”
- In addition, the 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.
- Section 508 states that “Federal agencies to make their electronic and informational technology accessible to people with disabilities.
- These civil rights laws protect persons with disabilities if they are potential applicants or participants in any FNS funded programs.

Disability Discrimination Prohibited

- ▶ There is an obligation to ensure that members of the public are provided with reasonable modifications in order to access program information, applications, and assistance (i.e. Braille, large print, and audio tape).
- ▶ Providing qualified sign language interpreters or other auxiliary aids and services for persons with hearing disabilities may be necessary to effectively communicate with these applicants and participants.
- ▶ In providing food services to any of its students, a recipient may not discriminate on the basis of disability;
- ▶ **FOOD SERVICE:**
 - ▶ Recipients (SFAs) shall serve alternative/special meals at no extra charge to students whose disability restricts their diet. Recipients should require students to provide a medical certification from a recognized medical authority that documents a special meal is required due to a dietary disability. (7 CFR 15b.26(d))

Disability Discrimination

Visual/Mobile Impairments

- It is imperative that websites, including state and local agency websites, and online application systems are readily accessible to and useable by persons with visual impairments and other disabilities.
- In addition, programs must ensure accessibility to the program, particularly to persons in wheelchairs or other mobility disabilities.
- At times, different or special treatment may actually be necessary in order to ensure effective aids, benefits, and services are adequate.
- Programs must permit service animals to accompany people with disabilities in all areas where the public is allowed to go.

Current Memos

▶ School Nutrition Programs

- ▶ USDA memo [SP40-2017](#) issued July 25, 2017 and new [Guidance](#) issued same date.
- ▶ [SP 59-2016](#) *Modifications to Accommodate Disabilities in the School Meal Programs*
- ▶ [SP 26-2017](#) *Accommodating Disabilities in the School Meal Programs: Guidance and Questions and Answers*

▶ Child & Adult Care & Summer Food Service

- ▶ [Combined](#) CACFP 14-2017, SFSP 10-2017
- ▶ Issued June 22, 2017
- ▶ Supersedes FNS Instruction 783-2, rescinded

South Dakota specifics

- ▶ See SD numbered memo “Special Diet Statements in Child Nutrition Programs (Revised)”

[CACFP-240.1/ CACFPDCH-240.1](#)

[NSLP – 232-1 / SFSP – 240.1-](#) refers to Special Diet Orders- Required and Special Diet Orders-Optional

- ▶ It is on CANS website at <http://www.doe.sd.gov/cans/> under numbered memos

Equal Opportunity for Religious Organizations

- Ensures a level playing field for the participation of faith-based organizations and other community organizations in USDA programs.
- Prohibiting discrimination for or against an organization on the basis of religion, religious belief, or religious character in the administration & distribution of Federal funds;
- Allowing religious organizations that participate in USDA programs to retain its independence and continue to carryout its mission, provided that direct USDA funds do not support any inherently religious activities such as worship, religious instruction, or proselytization;⁴¹

Equal Opportunity for Religious Organizations

- 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; and
- Ensuring that no organization that receives direct Federal financial assistance can discriminate against a program beneficiary, or prospective beneficiary, on the basis of religion or religious beliefs.

Civil Rights Training

- State agencies are responsible for training staff, and beneficiaries/sub recipients whom hold an agreement with the State Agency on an annual basis.
- Beneficiaries/sub recipients are responsible for training their staff working with the program including supervisors and “frontline staff” who interact with applicants or participants on an annual basis.
- New employees should be trained on Civil Rights requirements before participating in Program activities or within the first 30-days of hiring.

Civil Rights Training

Specific subject matter required, but not limited to:

- ▶ Collection and use of data;
- ▶ Effective public notification systems;
- ▶ Complaint procedures;
- ▶ Compliance review techniques;
- ▶ Resolution of noncompliance;
- ▶ Requirements for reasonable accommodation of persons with disabilities;
- ▶ Requirements for language assistance;
- ▶ Conflict resolution; and
- ▶ Customer service.

Civil Rights Training

- ▶ Staff should be able to identify a civil rights complaint if received;
- ▶ They should know what to do if they receive a complaint; and
- ▶ Understand that it is the basic right of the individual to file a complaint.
- ▶ Have sign in sheets to document all training. These will be assessed during administrative reviews. CR training also counts toward the professional standards training requirements

Complaints of Discrimination

- A Civil Right complaint is a verbal or written allegation of discrimination that a Food and Nutrition Services program is administered or operated in a manner that results in disparate treatment or services being provided to persons or groups of persons because of their protected class.
- All civil rights complaints shall be accepted and forwarded to the Office of the Assistant Secretary for Civil Rights. The complainant must file a complaint within 180 days of the alleged act of discrimination.
- Complaints may be written, verbal, or anonymous.
- State agencies or local agencies may develop their own complaint forms, but the use of such forms cannot be a prerequisite for acceptance of a complaint as the use of a complaint form is not required.
- Confidentiality is extremely important and must be maintained.

The Civil Rights Complaint Process

Complaint information should include:

- Name, address, and telephone number or other means of contacting the person alleging discrimination;
- The location and name of the organization or office that is accused of the discriminatory practices;
- The nature of the incident or action or the aspect of program administration that led the person to allege discrimination;

The Civil Rights Complaint Process

- 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; and
- The basis for the alleged discrimination (race, color, national origin, age, sex, and or disability).

Compliance Reviews

- To examine the activities of State agencies, Local agencies, and Sub recipients to determine Civil Rights compliance.
- FNS Civil Rights and Program staffs review both State and local agencies.

Local agencies review their sub recipients holding agreements. (such as FMCS)

- State agencies must report significant findings to the reviewed entity and to FNS.

Compliance Reviews

- There are three types of compliance reviews completed by State and federal agencies:
 1. Pre-Award Compliance Reviews
 2. Routine (Post-Award) Compliance Reviews
 3. Special Compliance Reviews

Pre-Award Compliance Reviews

- These reviews are conducted by the State Agency and are usually done as desk reviews of information provided by applicants in their official application to operate an FNS Federally-assisted program.
- No Federal funds shall be made available to a State or an institution until a Pre-Award Compliance Review has been conducted and the applicant has been determined to be in compliance with Title VI.

Routine(Post- Award) Compliance Reviews

- FNS and State agencies must conduct routine compliance reviews as identified by FNS Instruction 113-1 and program-specific regulation and policies.
- The office performing the review must advise the reviewed entity, in writing, of the review findings and recommendations.
- Sample post-award review questions:
 - Do printed materials contain the nondiscrimination statement?
 - Is the “And Justice For All” poster displayed appropriately?
 - Are program informational materials available to all?
 - Is data on race and ethnicity collected appropriately?
 - How are applicants and participants advised of their rights to file a Civil Rights complaint of discrimination?
 - Are reasonable modifications appropriately made for people with disabilities?

Post-Award Compliance Reviews

- 1) Review of lower-level agencies;
- 2) Data collection process and that records have restricted access;
- 3) Program requirements are applied uniformly;
- 4) Public notification;
- 5) Complaint process;
- 6) Training of agency personnel;
- 7) Nondiscrimination Statement usage;
- 8) Participation in State agency training of local agencies;
- 9) Analysis of denied applications;
- 10) Vendor compliance;
- 11) Serving students with dietary disabilities and;
- 12) Language assistance for Limited English proficiency students and applicants.

Special Compliance Reviews

- A Special Compliance Review may be conducted by the USDA Office of the Assistant Secretary for Civil Rights staff and/or FNS when there are significant Civil Rights concerns which have a direct impact on the delivery of FNS program services and/or benefits.
- Statistical data indicates that a particular minority group is not participating in or benefiting from the Program to an extent indicated by the population of potentially-eligible to participate in or benefit from the Program.
- Reports of noncompliance made by other agencies need to be substantiated.
- Patterns of complaints of discrimination have developed that require follow-up.

Resolution of Noncompliance

Definition of “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 subrecipient.

Steps must be taken immediately to obtain *Voluntary* compliance.

A finding’s effective date is the date of notice to the reviewed entity.

Voluntary Resolution Agreement

- A Voluntary Resolution Agreement (VRA) is an agreement that recipient(s) are willfully consenting to undertake remedial actions to address identified areas of noncompliance or in violation with applicable civil rights laws and/or regulations.
- The VRA may be between multiple parties such as the officials in authority to regulate civil rights laws (Food and Nutrition Service Civil Rights Division, (FNS CRD)), recipient or sub-recipient (State Agency), and program participants (Complainant).
- Voluntary Resolution Agreements may be used to closeout a Civil Rights Compliance Review at the discretion of FNS CRD in lieu of issuing a written Compliance Review report with findings.

The following individuals completed Civil Rights Training

- ▶ Date: _____
- ▶ SFA (agency): _____
- ▶ Individuals: _____
- ▶ _____
- ▶ _____

Certificate for Civil Rights Training
Keep this or similar documentation on file

Civil Rights Training for Child Nutrition

Based on presentation by the Civil Rights Division,
USDA Food and Nutrition Service in June 2015, and
November 2015 instructions/policies.

This training credits for 1 hour of training in
Key Area 3 – Administration 3000, 3200 Program Management
Professional Standards Training Credit

Date of Training:

Print Name:

If you have questions about this presentation, contact
Child & Adult Nutrition Services at
605-773-3413 (phone) or
doe.schoollunch@state.sd.gov