

Civil Rights Training Child Nutrition programs

Presented by Child & Adult Nutrition Services
SD Department of Education

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



The intent and goal of this training is to provide a general overview of the Civil Rights requirements that State and local agencies should know about their Civil Rights requirements for administering the program.

This is based on a presentation by the Civil Rights Division, USDA Food and Nutrition Service, in June, 2015 and more recent instructions/policies.

Presentation topics:

- Civil Rights coverage and legal authorities
- Areas of compliance
 - Assurances
 - Public notification requirements
 - Complaints of discrimination
 - Civil Rights training
 - Racial and ethnic data collection
 - Reasonable accommodation
 - Limited English Proficiency (LEP)/English Language Learners (ELL)
 - Compliance reviews

Yes, this is a long list. We will touch upon every subject matter but spend a little more time on others.

LEP is now referred to in education circles as English Language Learners (ELL)

Abbreviations

- ▶ CFR = Codified Federal Regulation
- ▶ CR = Civil Rights
- ▶ DOJ = Department of Justice
- ▶ 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

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Section 508 was enacted to eliminate barriers in information technology to make available new opportunities for people with disabilities, and to encourage development of technologies that will help achieve these goals. The law applies to all Federal agencies when they develop, procure, maintain, or use electronic and information technology.

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 250 and 247 (USDA Foods)

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)
- 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 receiving Federal financial assistance from USDA.

New Policy Memo on statement

<http://www.fns.usda.gov/civil-rights>

See Also

- [And Justice for All Posters](#)
- [FNS Nondiscrimination Statement \(For State/Local Agency Use\)](#)
- [USDA Guidance for Filing Discrimination Complaints](#)
- [Diversity and Inclusion](#)
- [Learn about Alternative Dispute Resolution](#)
- [Laws, Regulations & Other Guidance](#)
- [Limited English Proficiency](#)
- [FNS Data Posted Pursuant to the No Fear Act](#)
- [Civil Rights Policies](#)
- [Frequently Asked Questions](#)
- [About the FNS Office of Civil Rights](#)
- [Civil Rights Directory](#)
- [Links to Related Federal Programs](#)

Civil Rights



The Office of Civil Rights mission is to ensure compliance with applicable laws, regulations, and policies for FNS customers and employees regardless of race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA. (Not all prohibited bases will apply to all programs and/or employment activities.) Remedies and complaint filing deadlines vary by program or incident. The Office of Civil Rights also facilitates equal and timely access to FNS programs and services for all customers.

Our vision is to provide superior customer service while ensuring equity for all.

Last Published: 11/20/2015

FNS Nondiscrimination Statement

Tuesday, November 17, 2015

The Nondiscrimination Statement (NDS) is for use by State and local agencies and their subrecipients for all FNS Programs.

All documents, pamphlets, websites, etc. should be updated as follows:

1. Websites must be updated by December 31, 2015;
2. Documents, pamphlets, brochures, etc. using NDS language prior to 2013 must be updated by December 31, 2015;
3. Documents, pamphlets, brochures, etc. using 2013 NDS language should be updated when supplies are exhausted or by September 30, 2016; and
4. All new printing must use the 2015 NDS.

File Upload:

- FNS Nondiscrimination Statement (44.94 KB)
- FNS Nondiscrimination Statement (Spanish) (43.5 KB)

USDA Mission

Food and Nutrition Service Vision:
To End Hunger and Improve Nutrition in America

And

Food Nutrition Service Mission:
We work with partners to provide food and nutrition
education to people in need in a way that inspires
public confidence and supports American
Agriculture.

Lets begin with the FNS Mission statement – why they exist. You and your work are appreciated It is because of you that America’s kids are healthy and well fed. Our role is to keep our programs free of discrimination.

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...



Lets take a look at the definition of discrimination.

Protected Bases for FNS Child Nutrition Programs

Six protected bases of Discrimination:

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

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All persons working within the program should be aware of the legal basis which an applicant or participant can file a complaint.

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

This is the foundation and the Heart of the law!

**...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.**



The original law only covered Race, Color and 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”

• *Title VI Regulation*

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

Areas of Compliance.

Note that the racial/ethnic data collection and submission requirements vary by program.

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 the CR laws and implementing nondiscrimination regulations.”
- A civil rights assurance must be incorporated in all agreements between State and local agencies.

The Assurance Agreement is the document that gives FNS and the State agency right to visit your offices, review your records and enforce Civil Rights laws.

The States are required to include the standardized CR language in each agreement that is renewed. It is important that we explain the CR obligations with program sponsors (schools, institutions, sponsors) so that you are keenly aware of your obligations under Title VI.

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.

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.

It is critically important that State Agencies conduct a pre-award Civil Rights review of each entity that is interested in participating in the program to ensure that they have not been found to be discriminatory prior to apply for federal funds, or that they have practices in place that may cause different treatment so those can be changed prior to starting on the program.

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

- **Program Availability**
Inform applicants, participants, and potentially eligible persons of their program rights and responsibilities and the steps necessary for participation.
- **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 Web sites, 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.

Does your local agency website have the new statement on it?

This would most likely be where the food service page is located.

Note that the nondiscrimination statement and how to file a complaint for nutrition programs, which are part of US Department of Agriculture, 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.
- Include the required Nondiscrimination Statement on all appropriate FNS and agency publications, Web sites, posters and informational materials used for public information.
- Convey the message of equal opportunity in all photos and other graphics that are used to provide program or program-related information.

The Equal Opportunity Public Notification policy have been updated by the Department. The posters are in development for printing. will be reprinted. We don't have a time line at this point, and will distribute them when they come to us.

Make sure you have some type of poster with the nondiscrimination statement on it until the new poster is available. It is not acceptable to not have a poster because you are waiting for the new one.

Methods of Public Notification

- Include the Nondiscrimination statement on the application.
- Make program information available to the public upon request and Provide the information in alternative formats for persons with disabilities.
- Have the capability of providing informational materials in the appropriate language concerning the availability and nutritional benefits of the program(s).

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.

This is the statement from the Department. It is on the CANS website.

All complaints should be forwarded to the Office of the Assistant Secretary for Civil Rights.

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.

Use of our prototypes should assure it is there.

If you are using a computer-developed prototype, be sure the statement is included. Work with the software company to get it updated.

If you notice the statement is missing from documents, please contact our office for clarification.

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.

“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 authorized.

This is the old poster. Use it until new poster is available.



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 “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.

Bilingual Requirements and Program Access

Definition:

- Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.
- Recipients of Federal financial assistance have a responsibility to take “reasonable steps” to ensure meaningful access to their programs and activities by persons with Limited English Proficiency – *now called English Language Learners (ELL)*.
- 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

- Factors to consider in addressing ELL:
- 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.

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Title VI requires State and local agencies to take reasonable steps to assure “meaningful” access to the information and services they provide. What constitutes reasonable steps will be contingent on a number of factors. They include:

- 1) One factor in determining what language services participants should provide is the number or proportion of ELL persons from a particular language group served or encountered in the eligible service population. The greater the number of ELL persons, the more likely language services are needed.
- 2) Recipients should assess how frequently with which they have or should have contact with an ELL individual from different languages seeking assistance. Reasonable steps for a recipient that serves an ELL person on a one-time basis will be very different from those expected from a recipient that ELL persons daily.
- 3) The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. Communicating program eligibility requirements can serve as a good example of such. (The obligations to communicate program rights to an individual or a group is different than say communicate rules to how to play volleyball or operate a DVD player.)
- 4) A recipient's level of resource and the costs may have an impact on the various steps to take. Smaller recipients with limited budgets are not expected to provided similar language services with larger budgets. At the same time, reasonable steps may cease to be reasonable if the costs exceed the benefits.

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 the information and services they provide.
- 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 LEP applicant or participant.

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All schools must have the capability of providing informational materials in the appropriate translation concerning the availability and nutritional benefits of the Nutrition Assistance program.

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.

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Population Data Sources – Here are some links that agencies can utilize to view current trends and determine where bilingual services might be needed in their communities.

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;

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Faith-based and community organizations have a long history of involvement with Federal nutrition assistance programs. These organizations are important to USDA's efforts to provide nutrition assistance to those in need. 7 CFR Part 16, "Equal Opportunity for Religious Organizations," ensures that no organization will be discriminated against in a USDA-funded program on the basis of religion and that USDA-funded programs are available to all regardless of religion.

South Dakota has a long history of working with faith-based agencies successfully operating the child nutrition programs.

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.

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This is a two-way protection (program side vs. religious side) because anyone who participates in USDA programs agree not to discriminate.

In essence, a faith-based organization cannot provide a benefit only to members of your own church or religion. It must be same treatment for all participants.

Disability Discrimination Prohibited

- Sections 504 and 508 of the Rehabilitation Act of 1973 and USDA implementing Regulation, 7 CFR Part 15b, prohibits discrimination based on disability in programs or activities receiving Federal financial assistance.
- 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.
- These civil rights laws protect persons with disabilities if they are potential applicants or participants in any FNS funded programs.

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.
- 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.

Definition of Disability Cont.

- 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.
- Has a record of such an impairment means has a history of, or has been classified as having, a mental or physical impairment that substantially limits one or more major life activity.

Definition of Disability Food Service

- The Americans with Disabilities Act Amendments Act of 2008 (P.L. 110-325) impacts NSLP, SMP, SBP, CACFP and SFSP as it expanded the definition of “disability”.
- Major Life Activities now also include: “Major Bodily Functions”, such as “...function of the immune system,...digestive, bowel, bladder functions and reproductive systems”
- Individuals who take mitigating measures to improve or control any of the conditions recognized as a disability, are still considered to have a disability and require an accommodation.

Food Services

- In providing food services to any of its students, a recipient may not discriminate on the basis of disability;
- 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))

South Dakota specifics

- ▶ See SD numbered memo “Special Diet Statements in Child Nutrition Programs (Revised)”
CACFP-45.2 / CACFPDCH–29.2 /
NSLP – 47.2 / SFSP – 24.2
 - It is on CANS website at <http://www.doe.sd.gov/cans/>
under numbered memos

- ▶ In SD, the recognized medical authority is an MD (Medical Doctor) or DO (Doctor of Osteopathy).

The South Dakota Department of Education office of Child and Adult Nutrition Services (CANS) has determined that, in keeping with licensing regulations set forth in South Dakota Codified Law (SDCL), the statement of need for a **required** diet change/adaptation must be signed by a physician who is licensed pursuant to SDCL 36-4-9.

The licensing of physicians pursuant to SDCL 36-4-9 does not include chiropractors, opticians, dentists, orthodontists, or physical therapists. Although some of the above-named healthcare providers use the title “Dr.” in front of their name, only physicians licensed pursuant to SDCL 36-4-9 may append the letters M.D. or D.O. to their name (SDCL 36-4-9). Therefore, signatures on Special Diet Orders will be considered valid only if the physician uses, or is licensed to use, M.D. or D.O. after his/her name. A parent who is an M.D. or D.O. may sign his or her own child’s statement of need.

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.

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Services shall be provided in the most integrated setting appropriate to the needs of the disabled individual. The school/center is responsible for assisting disabled students where assistance is needed.

Each recipient shall serve special meals, at no extra charge, to students whose disability restricts their diet....Recipients may require the students to provide a medical certification from a recognized authority that alternative meals are needed, and the statement shall identify the alternative

Disability Discrimination Alternate Formats

- There is also an obligation to ensure that members of the public (sponsors/providers) are provided accommodations in order to access program information, applications and assistance (i.e. Braille, large print, and audio tape)
- Providing American Sign Language (ASL) interpreters for persons with hearing disabilities may be necessary to be able to adequately communicate with these applicants and participants.

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A recipient agency shall make a reasonable accommodation to the known physical or mental limitations of an otherwise qualified disabled applicant or employee.

Racial/Ethnic Data Collection

(1 of 5)

“...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.”

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and Appendix B Section F (1))

F 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.

(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

NSLP, SBP, and SMP:

(2 of 5)

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

(3 of 5)

- ▶ (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

(4 of 5)

- Purpose: To determine how effectively FNS programs are reaching potentially eligible persons and beneficiaries
- As a means of monitoring civil rights compliance, state agencies shall establish a system for the collection of racial/ethnic data of each person applying for and receiving benefits.
- 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.

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Why do programs have to collect racial/ethnic data?

Racial/Ethnic Data Collection

(5 of 5)

- 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.

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The data must be protected from unauthorized use and maintained on file for 3-years.

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*

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State agency may have categories for race in addition to the ones required by FNS; however, the additional categories must be mapped and extracted to the required categories.

The preference is for staff to ask the applicant/participant what their racial & ethnic make-up is. If the applicant/participant chooses not to identify, then the program staff member has an obligation to decide based on visual identification.

Race: A social category based on similar physical appearance. It is intended to identify those people who have origins in particular parts of the world.

Ethnicity : A social category based on shared culture or cultural heritage. It is another classification that attempts to recognize that although persons may have origins in certain parts of the world, they may identify as being of part of another subset.

Complaints of Discrimination

- 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.
- FNS must investigate complaints within 90 days.

- Refer age complaints to Federal Mediation and Conciliation Service (FMCS);
- Review and evaluate facts of investigation; and
- Write decision informing complainant of follow-up or closure action and provide appeal information.
- Refer age complaints to Federal Mediation and Conciliation Service (FMCS);
- Review and evaluate facts of investigation; and
- Write decision informing complainant of follow-up or closure action and provide appeal information.

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 adherence with civil rights and program requirements.
- FNS Civil Rights and Program staffs review both State and local agencies.
 - Local agencies review their sub recipients holding agreements.
- State agencies must report significant findings to the reviewed entity and to FNS.

Compliance Reviews

- There are three types of compliance reviews:
 1. Pre-Award Compliance Reviews
 2. Post-Award (Routine) 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.

Post-Award Compliance Reviews

- Routine CR Compliance Reviews are a component of the FNS Management Evaluation Review process.
- Conducted jointly or independently by the CR staff
- Examine the activities of State and Local agencies/ subrecipients to determine if FNS-funded programs are being administered in accordance with civil rights requirements.
- The office performing the review must advise the reviewed entity, in writing, of the review findings and recommendations.

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.

Post–Award Compliance Reviews

A review of materials on site will include a look at:

- 1) If eligible students/applicants and households have an equal opportunity to participate;
- 2) Display of the “And Justice for All” poster in a prominent location;
- 3) nondiscrimination statement inclusion on program materials such as application, notices, brochures.
- 4) availability of program information to eligible persons, program applicants and participants;
- 5) racial and ethnic data collection, and 3–year record maintenance;
- 6) complaint processing; and
- 7) Documentation of training.

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Here are some examples of materials that we will ask for while on-site.

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.

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Special Reviews are conducted by the USDA's Office of the Assistant Secretary for Civil Rights, Office of Adjudication, independently or in conjunction with FNS staff.

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.

Resolution of Noncompliance

- Steps must be taken immediately to obtain *voluntary* compliance; and
- Effective date of the Finding of Noncompliance is the date of notice to the State agency, local agency, or other subrecipient.

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FNS has the responsibility to work with the state agency to achieve compliance and the state agency must do the same with local agencies.

Recommendations

- During reviews, evaluate each school's current policies and practices regarding the request for a "Reasonable Accommodation".
- Ensure that schools work with the person that holds the key to the appropriate training and instructions regarding meal substitutions.
- Review all of the states Civil Rights procedures and polices to ensure compliance.

The parent should be included in the discussion for alternative meals when providing a reasonable Accommodation for a child.

Recommendations Cont.

- During the renewal of agreements make sure that the person signing the agreement knows their obligations under Title VI of the Civil Rights Act.
- Ensure that all staff working with the program are trained to know the complaint procedures and how to assist a person in filing 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.

The following individuals completed
Civil Rights Training

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

Certificate for Civil Rights Training
Keep on file for documentation.
Complete Survey by January 29 at
<https://www.surveymonkey.com/r/JW6KRVX>

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