



Food and
Nutrition
Service

Park Office
Center

3101 Park
Center Drive
Alexandria
VA 22302

DATE: September 27, 2016

SUBJECT: Policy Memorandum on Modifications to Accommodate
Disabilities in the School Meal Programs

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

The attached policy memorandum, “*Modifications to Accommodate Disabilities in the School Meal Programs*,” includes important updates to requirements related to accommodating children with disabilities participating in the School Meal Programs. Previous Food and Nutrition Service (FNS) guidance on this issue was included in FNS Instruction 783-2, Rev. 2, *Meal Substitutions for Medical or other Special Dietary Reasons*. The attached memorandum supersedes that Instruction as it relates to the National School Lunch Program, School Breakfast Program, Special Milk Program for Children, and the Fresh Fruit and Vegetable Program. Instruction 783-2, Rev. 2 remains in effect for the Child and Adult Care Food Program and the Summer Food Service Program until further guidance is issued, at which time Instruction 783-2 will be rescinded.

The Americans with Disabilities Act (ADA) Amendments Act of 2008 made important changes to the meaning and interpretation of the term “disability.” The changes demonstrated Congress’s intent to restore the broad scope of the ADA by making it easier for an individual to establish that he or she has a disability. After the passage of the ADA Amendments Act, most physical and mental impairments constitute a disability. Therefore, rather than focusing on whether or not a student has a disability, schools should focus on working collaboratively with parents to ensure an equal opportunity to participate in the School Meal Programs and receive program benefits. The attached memorandum clarifies changes made by the ADA Amendments Act and reflects the position FNS will take in compliance reviews and enforcement actions.

Of note, the memorandum retains previous requirements regarding submission of a note from a State licensed healthcare professional documenting the disability. However, the policy memorandum clarifies that any person who is authorized to write medical prescriptions under State law qualifies as a State licensed healthcare professional. For example, in many States, this will include licensed nurse practitioners as well as licensed physicians.

Regional Director

State Director

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The memorandum also explains procedural safeguards required to ensure parents and children have notice of the procedure for requesting meal modifications and the process for resolving disputes. Use of approved existing procedures designed to address requests to accommodate students with disabilities in the classroom will meet these requirements. The memorandum also notes that school food service staff must be made aware of the procedures for handling requests for meal modifications.

State agencies are reminded to distribute this memorandum to Program operators immediately. Local educational agencies, school food authorities, and other Program operators should direct any questions concerning this guidance to their State agency. State agencies with questions should contact the appropriate FNS Regional Office.



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Director
Policy and Program Development Division
Child Nutrition Programs



Roberto Contreras
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Civil Rights Division

Attachment



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MEMO CODE: SP 59-2016

SUBJECT: Modifications to Accommodate Disabilities in the School Meal Programs

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

This memorandum outlines the requirements for school food authorities (SFAs) and local educational agencies (LEAs) participating in the National School Lunch Program, School Breakfast Program, Special Milk Program for Children, or the Fresh Fruit and Vegetable Program (School Meal Programs) to provide reasonable modifications to Program meals or the meal service to accommodate children with disabilities. This memorandum supersedes FNS Instruction 783-2, Rev. 2, *Meal Substitutions for Medical or other Special Dietary Reasons* for the School Meal Programs. Instruction 783-2, Rev. 2 remains in effect for the Child and Adult Care Food Program and the Summer Food Service Program until further guidance is issued, at which time Instruction 783-2 will be rescinded.

This guidance only addresses modifications required to accommodate disabilities. However, SFAs have the option to accommodate special dietary needs that do not constitute a disability, including those related to religious or moral convictions or personal preference. Additional guidance on accommodating special dietary needs and preferences that are not related to a disability will be provided separately.

Program regulations require SFAs to ensure that breakfast, lunch, snack, or milk (meals) offered through the School Meal Programs meet the respective meal pattern requirements established in the Program regulations. Federal law and USDA regulations further require SFAs to make reasonable modifications to accommodate children with disabilities. This includes providing special meals, at no extra charge, to children with a disability when the disability restricts the child's diet.

SFAs are required to make substitutions to meals for children with a disability that restricts the child's diet on a case-by-case basis and only when supported by a written statement from a State licensed healthcare professional, such as a physician, who is authorized to write medical prescriptions under State law (State licensed

healthcare professional). The American with Disabilities Act Amendments Act of 2008, P.L. 110-235 (ADA Amendments Act) clarified that Congress intends the term disability to be broad and inclusive.

GOVERNING STATUTES

Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) prohibits discrimination on the basis of disability in programs and activities that receive Federal financial assistance, such as the Child Nutrition Programs. Title II of the Americans with Disabilities Act of 1990, as amended (ADA) prohibits discrimination based on disability in the provision of State and local government services, such as public schools. Title III of the ADA prohibits discrimination based on disability by private entities that provide public accommodations, including private schools. The ADA applies regardless of whether or not a school receives Federal financial assistance. Section 504, Title II, and Title III require recipients of Federal financial assistance, such as SFAs and LEAs, to make reasonable modifications to accommodate children with disabilities, including reasonable modifications to meals and the meal service.

SFAs and LEAs should also be aware that the Individuals with Disabilities Education Act of 1990, as amended (IDEA) imposes requirements on States which may affect them, including the service of meals, even when such service is not required by the School Meal Programs. For example, the individualized education program (IEP) developed for a child under the IDEA may require a breakfast to be served in a school that does not participate in the School Breakfast Program. While these meals may not be claimed for Federal reimbursement because the school does not participate in the program, funds from the non-profit school food service account may be used to cover the cost associated with providing a meal required by the IDEA.

Additionally, the SFA may use the same food service facilities or food service management company to provide the meals required under an IEP as it uses to provide Program meals. Inquiries regarding the IDEA's requirements should be directed to the U.S. Department of Education, which is the agency responsible for the IDEA's administration and enforcement.

PROGRAM REGULATIONS

USDA regulations at 7 CFR 15b, "Nondiscrimination on the Basis of Handicap in Programs and Activities receiving Federal Financial Assistance" implements Section 504's nondiscrimination requirements. 7 CFR 15b.26(d) requires recipients of Federal financial assistance, such as SFAs, to serve special meals at no extra charge to children with disabilities. In addition, Program regulations at 7 CFR 210.10(m) and 220.8(m) require SFAs to make substitutions to meals to accommodate children with disabilities that restrict their diet.

I. Children with Disabilities

The question of whether a child has a disability for purposes of this memorandum has been simplified by the ADA Amendments Act, and should no longer require extensive analysis. SFAs and LEAs should not be engaged in weighing medical evidence against the legal standard to determine whether a particular physical or mental impairment is severe enough to qualify as a disability. After the passage of the ADA Amendments Act, most physical and mental impairments will constitute a disability. The central concern for SFAs should be ensuring equal opportunity to participate in or benefit from the program

Section 504, the ADA, and Departmental Regulations at 7 CFR part 15b define a person with disability as any person who has a physical or mental impairment which substantially limits one or more “major life activities,” has a record of such impairment, or is regarded as having such impairment." (*See* 29 USC § 705(9)(b); 42 USC § 12101; and 7 CFR 15b.3.) “Major life activities” are broadly defined and include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. “Major life activities” also include the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. (*See* 29 USC § 705(9)(b) and 42 USC § 12101.)

A physical or mental impairment need not be life threatening to constitute a disability. It is enough that it limit a major life activity. For example, digestion is an example of a bodily function that is a major life activity. A child whose digestion is impaired by lactose intolerance may be a person with a disability regardless of whether or not consuming milk causes the child severe distress. Further, an impairment may be covered as a disability, even if medication, or another mitigating measure may reduce the impact on the impairment. For example, the fact that a child may be able to control an allergic reaction by taking medication should not be considered in determining whether the allergy is a disability. General health concerns, such as a preference that a child eat a gluten-free diet because a parent believes it is better for the child, are not disabilities and do not require accommodation.

Whether a physical or mental impairment constitutes a disability must be determined on a case-by-case basis. The determination must be made without regard for whether mitigating measures may reduce the impact of the impairment.

II. Substitutions and other Reasonable Modifications

SFAs must make reasonable modifications to the meal, including providing special meals at no extra charge, to accommodate disabilities which restrict a child’s diet.

Some disabilities may require modifications to the service provided at meal time. For example, a child with diabetes may require help tracking what he or she eats at each meal. SFAs may consider taking steps to design a meal plan within the Program meal pattern to accommodate common disabilities. In many cases, disabilities can be managed within the Program meal pattern requirements when a well-planned variety of nutritious foods is available to children. In other cases, however, the needs of a Program participant with a disability may involve requests for accommodations that result in the service of meals that do not meet the Program meal pattern.

A. Requiring a Medical Statement

Program regulations require SFAs to provide modifications for children with disabilities on a case-by-case basis only when requests are supported by a written statement from a State licensed healthcare professional, such as a physician or nurse practitioner (medical statement). *See* 7 CFR 210.10(m), and 220.8(m). In addition, meals that do not meet the Program meal pattern are not eligible for reimbursement unless supported by a medical statement. However, SFAs may choose to accommodate requests related to a disability that are not supported by a medical statement if the requested modifications can be accomplished within the Program meal pattern.

The medical statement should include a description of the child's physical or mental impairment that is sufficient to allow the SFA to understand how it restricts the child's diet. It should also include an explanation of what must be done to accommodate the disability. In the case of food allergies, this means identifying the food or foods to be omitted and recommending alternatives. In other cases, more information may be required. For example, if the child would require caloric modifications or the substitution of a liquid nutritive formula to accommodate a disability, this information must be included in the statement.

When SFAs believe the medical statement is unclear, or lacks sufficient detail, they must obtain appropriate clarification so that a proper and safe meal can be provided. SFAs may consider using the services of a Registered Dietitian, when available, to assist in implementing meal modifications, as appropriate. SFAs may also contact their State administering agency for guidance.

B. Assessing Requests for Substitutions and other Modifications

SFAs may consider expense and efficiency in choosing an appropriate approach to accommodate a child's disability. SFAs are not required to provide the specific substitution or other modification requested, but must offer a reasonable modification that effectively accommodates the child's disability and provides equal opportunity to participate in or benefit from the program.

For example, a child with an allergy to a specific ingredient found in a menu item may request that the SFA provide a particular brand name version as a substitute. Generally, the SFA is not required to provide the brand name item identified, but must offer to provide a substitute which does not contain the specific allergen that affects the child.

When determining what is appropriate, the age and maturity of the child should factor into all decisions. For instance, younger children may need greater assistance with selecting and eating their meals, whereas older children may be able to take a greater level of responsibility for some of their dietary decisions.

SFAs are not required to provide modifications that would fundamentally alter the nature of the program; however, this should very rarely be the case. SFAs concerned that a requested modification would fundamentally alter the nature of the program should contact their State agency for assistance. Instead, generally, the emphasis should be on working with parents and guardians to develop an approach that will be effective for the child.

C. Serving Meals in an Integrated Setting

SFAs must provide all meal services in the most integrated setting appropriate to the needs of the disabled child. *See* 7 CFR part 15b.26(d). Exclusion of any child from the Program environment is not considered an appropriate or reasonable modification. For example, a child may not be excluded from the classroom and required to sit in the hallway during the service of “breakfast in the classroom” as this is not an appropriate or reasonable modification. Similarly, while it may be appropriate to require children with very severe food allergies to sit at a separate table to control exposure, it is not appropriate to simultaneously use this table to segregate children as punishment for misconduct.

III. Reimbursement

Reimbursement for modified meals served to children with disabilities that restrict their diet is at the appropriate rate based on the child’s eligibility for free, reduced price, or paid meals for the applicable Program, regardless of the meal modification. As noted above, these meal modifications do not have to meet the Program meal pattern requirements in order to be claimed for reimbursement if they are supported by a medical statement. However, SFAs should ensure that meal modifications meet the nutritional needs of the child.

Any instruction or services included in a child’s IEP related to a child’s nutritional needs that are deemed necessary for the child to receive a “free appropriate public education” must be provided at public expense and at no cost to the parents or guardians. Part B of IDEA funds may be used for this purpose. Inquiries regarding the

IDEA's requirements should be directed to the U.S. Department of Education, <http://idea.ed.gov>.

IV. Accessibility

7 CFR 15b.26(d)(2) provides: "Where existing food service facilities are not completely accessible and usable, recipients may provide aides or use other equally effective methods to serve food to handicapped persons." SFAs and LEAs are responsible for the accessibility of food service areas and for ensuring the provision of food service aides, where needed, to assist in preparing and serving meal accommodations.

No additional School Meal Program reimbursement is available for these types of accommodations. However, any additional costs for adaptive feeding equipment or for aides are considered allowable costs for the nonprofit school food service account. Sources of supplemental funding may include special education funds if specified in the child's IEP or the LEA's general account.

V. Procedural Safeguards

LEAs must work with the school food service staff to implement procedures for parents or guardians to request modifications to meal service for children with disabilities and to resolve grievances. *See* 7 CFR 15b.25 and 15b.6(b). Procedures in place to address requests to accommodate students with disabilities in the classroom in compliance with Section 504 or the IDEA may be used to fulfill this requirement.

At a minimum, the LEA must notify parents and guardians of the process for requesting meal modifications to accommodate a child's disability and arrange for an impartial hearing process to resolve grievances related to requests for modifications based on a disability. The hearing process must include the opportunity for the child's parent or guardian to participate, be represented by counsel, and examine the record. It must also include notice of the final decision, and a procedure for review.

LEAs that employ 15 or more individuals must designate at least one person to coordinate compliance with disability requirements. *See* 7 CFR part 15b.6. This position is often referred to as the Section 504 Coordinator. The Section 504 Coordinator who is responsible for addressing requests for accommodations in the classroom may also be responsible for ensuring compliance with disability requirements related to meals and the meal service. A separate 504 Coordinator responsible only for meal modifications is not required. However, LEAs should ensure that school food service staff understand the procedures for handling requests for meal modifications and know how to contact the Section 504 Coordinator.

VI. Team Approach

When implementing the guidelines in this memorandum, a team approach to providing modifications for children with disabilities is strongly encouraged. Developing a team that includes the Section 504 Coordinator, representation from schools and school medical personnel, such as a school nurse, as well as school food service staff will help ensure consistent decisions and implementation and tracking of meal modifications. The most effective team will include school food service staff, a principal or Program Director, a school nurse, and others with training in this area, such as a school nutritionist. Any request for a modification related to the meal or meal service should be forwarded to the Section 504 Coordinator, and reviewed by the 504 team.

The 504 team will work with the child's parents or guardian to review the request and develop a solution as quickly as possible. The 504 team is encouraged to develop policies and practices that allow for the disabilities they most commonly encounter to be quickly and consistently addressed. The team should be advised that any medical information obtained must be kept confidential.

State agencies are reminded to distribute this memorandum to Program operators immediately. LEAs, SFAs, and other Program operators should direct any questions concerning this guidance to their State agency. State agencies with questions should contact the appropriate FNS Regional Office.



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