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Civil Rights Compliance In Child Nutrition Programs For School Food Authorities



Arizona Department of Education
Health and Nutrition Services

Agenda

- Goals
- Mission and Laws
- Protected Classes
- Types of Discrimination
- FNS Instruction 113-1
- Situations

Goals of Civil Rights

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

Civil Rights Mission

Civil Rights Division's mission is to ensure compliance with applicable laws, regulations, and policies for Food and Nutrition Services (FNS) customers and employees regardless of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, protected genetic information, or because all or part of an individual's income is derived from any public assistance program.

Civil Rights Laws

- **Title VI of the Civil Rights Act of 1964** which prohibits discrimination based on *race, color, and national origin* in programs and activities receiving Federal financial assistance; and USDA Implementing Regulation 7 CFR Part 15, Subpart A and Subpart C.
- **Title IX of the Education Amendments Act of 1972** which prohibits discrimination based on *sex* under any education program or activity receiving Federal financial assistance; and USDA Implementing Regulation 7 CFR Part 15 a.
- **Section 504 of the Rehabilitation Act of 1973** which prohibits discrimination based on *disability*; and USDA Implementing Regulation 7 CFR Part 15 b.

Civil Rights Laws

- **Age Discrimination Act of 1975** which prohibits discrimination based on *age* in programs or activities receiving Federal financial assistance.
- **Civil Rights Restoration Act of 1987** which clarifies the intent of Congress as it relates to the scope of Title VI of the Civil Rights Act of 1964 (*race, color & national origin*) and related nondiscrimination statutes to ensure nondiscrimination in all programs and activities of a recipient, whether those programs and activities are federally funded or not.
- **Americans with Disabilities Act** (28 CFR Part 35, Title II, Subtitle A) which prohibits discrimination on the basis of *disability* in all services, programs, and activities provided to the public by State and local governments, except public transportation services.

What is a Protected Class?

A protected class refers to any person or group of people who have a characteristic for which discrimination is prohibited based on a law, regulation, or executive order.

Protected classes in the Child Nutrition Programs:

- Race
- Color
- National Origin
- Sex (Gender)
- Age
- Disability

What is Discrimination?

Discrimination is defined as different treatment which makes a distinction of one person or a group of persons from others; either intentionally, by neglect, or by the actions or lack of actions based on six protected classes: race, color, national origin, sex, age, or disability.

Types of Discrimination

- Disparate Treatment violation is made when an individual of a protected group is shown to have been singled out and treated less favorably than others similarly situated on the basis of an impermissible criterion under Title VII.
- Disparate Impacts are practices that may be considered discriminatory and illegal if they have a disproportionate "adverse impact" on members of a minority group.

A disparate impact is *unintentional*, whereas a disparate treatment is an *intentional* decision to treat people differently based on their race or other protected characteristics.

Types of Discrimination

- Reprisal/Retaliation: All laws make it illegal to fire, demote, harass, or otherwise “retaliate” against people because they filed a charge of discrimination.

FNS Instruction 113-1

- Technical Assistance and Training
- Data Collection and Reporting
- Public Notification Systems/Outreach
- Complaint Procedures
- Compliance Review Techniques
- Resolution of Noncompliance
- Disability and Reasonable Accommodations
- LEP and Language Assistance
- Conflict Resolution
- Customer Service

Civil Rights Training

- Training is required on an annual basis.
- 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 accommodations for persons with disabilities*
 - *Requirements for language assistance*
 - *Conflict resolution*
 - *Customer service*

Data Collection and Reporting

- Child Nutrition Programs (CNP) are required to obtain data by race and ethnic category on potentially eligible populations, applicants, and participants in their program service area.
- The purpose is to determine how effectively FNS programs are reaching potential eligible persons and where outreach may be needed.
- Data must be collected and retained by the service delivery point for each program specified in the program regulations, instructions, policies and guidelines.
- Records must be maintained for 5 years.
- Access is restricted to authorized personnel only.
- This requirement is met through the collection of **enrollment applications** and the information provided on the Civil Rights **data collection/compliance form**.

Race and Ethnic Categories

- Race categories:

American Indian/Alaskan Native

Asian

Black/African American

Native Hawaiian/Other Pacific Islander

White

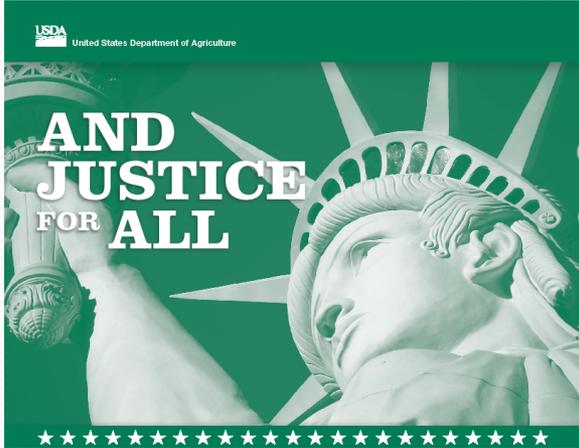
- Ethnicity categories:

Hispanic or Latino

Non Hispanic or Latino

Public Notification

- Prominently display the USDA nondiscrimination (“And Justice for All”) poster.



USDA
United States Department of Agriculture

AND JUSTICE FOR ALL

In accordance with Federal law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this Institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, disability, and reprisal or retaliation for prior civil rights activity. (Not all prohibited bases apply to all programs.)

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 responsible State or local Agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information is available in languages other than English.

To file a complaint alleging discrimination, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or 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:

mail:
U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410

fax:
(202) 690-7442; or

email:
program.intake@usda.gov.

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Conforme a las leyes federales y a los derechos civiles, reglamentos y políticas del Departamento de Agricultura de los Estados Unidos (U.S. Department of Agriculture, USDA), se prohíbe a esta institución discriminar por motivo de raza, color, nacionalidad, sexo, edad, discapacidades y represión o tomar represalias por actividades realizadas en el pasado relacionadas con los derechos civiles. (No todos los principios de prohibición se aplican a todos los programas).

Las personas discapacitadas que requieren medios alternos para que se les comunique la información de un programa (por ejemplo, braille, letra agrandada, grabación de audio, lenguaje de señas estadounidense, etc.) deberán comunicarse con la agencia estatal o local responsable de administrar el programa o el TARGET Center del USDA al (202) 720-2600 (voz y TTY) o comunicarse con el USDA a través del Servicio Federal de Transmisión de Información al (800) 877-8339. La información del programa también está disponible en otros idiomas además del inglés.

Para presentar una queja por alegada discriminación, complete el formulario de quejas por discriminación del programa del USDA, AD-3027, que podrá encontrar en línea en http://www.ocio.usda.gov/files/default/files/dpsca/2012/Spanish_Form_308-Complaint_6_8_12_0.pdf o en cualquier oficina del USDA o escriba una carta dirigida al USDA que incluya toda la información solicitada en el formulario. Para solicitar una copia del formulario de presentación de quejas, comuníquese al (866) 632-9992. Envíe su formulario o carta completos al USDA por correo:

U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410

fax:
(202) 690-7442; o

correo electrónico:
program.intake@usda.gov.

Esta Institución ofrece igualdad de oportunidades.

Form AD-3027—Revised Public Notice December 2015

Alto cumplimiento de requisitos de CTS-4 / Revised December 2015

Program Availability

- Provide appropriate information in alternative formats for persons with disabilities.
- 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, posters and informational materials.
- Convey the message of equal opportunity in all photos and other graphics that are used to provide program or related information.
- Provide a **public release** to inform potentially eligible persons of program eligibility, benefits and services, the location of delivery, and hours of service.
- **Websites** must contain the nondiscrimination statement, or a link to it, on the home page of the program information.

USDA Nondiscrimination 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.

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Public Notification

If the material is too small to permit the full statement, the following may be used in a print size no smaller than the text of the document:

“This institution is an equal opportunity provider.”

Complaints Procedure

- Any person has the right to file a **discrimination** complaint
- The verbal or written complaint must contain:
 - Contact information** (name, address, phone number)
 - Location** of incident
 - Nature** of incident
 - Basis** for alleged discrimination
 - Names**, titles, and business addresses of persons who may have knowledge of the discriminatory action
 - Date(s)** during which the alleged actions occurred
- Complaint must be filed within **180** days from the alleged act of discrimination

Complaints Procedure

To file a complaint :

1. Contact your local school district
2. Contact ADE –Civil Rights Coordinator: Miranda Graves
1535 West Jefferson Street, Bin #7
Phoenix, AZ 85007
Miranda.Graves@azed.gov
602-364-1965
- 3.
4. Contact USDA, Office of the Assistant Secretary for Civil Rights:
1400 Independence Avenue SW,
Washington, D.C. 20250-9410
Fax: 202-690-7442
program.intake@usda.gov

Complaints Procedure

- If a complaint of discrimination is received, the person alleging the complaint must be provided with the nondiscrimination statement and a copy of the **procedure** for complaints of discrimination.
- Document all potential complaints in a Civil Rights Complaint Log and keep the complaint log and forms in a central location.
- Complaints should be forwarded promptly to the State Agency Civil Rights Coordinator.
- The complaint will be recorded in the State Agency's Civil Rights Complaint Log and then forwarded on to USDA for investigation.

Compliance

- To examine the civil rights activities to determine their adherence with the requirements
- FNS Region will review the state agencies and their compliance with civil rights
- State agency must also review their own operations
- 3 types of Compliance reviews:
 - Pre-approval or Pre-Award*
 - Post-award or routine*
 - Special*

Compliance Review

- Pre-Award: A CNP's review of Civil Rights procedures to determine compliance prior to receipt of **federal funds**.
- Post-Award: A CNP's routine review which includes an evaluation of Civil Rights compliance.
- Special: A Federal review conducted when Civil Rights concerns having a direct effect on the delivery of CNP **services or benefits** have been identified.

Resolution of Noncompliance

- Once noncompliance is determined, steps must be taken immediately to obtain **voluntary** compliance.
- The effective date of the finding of noncompliance is the date of the **written** notice of compliance to the State Agency, local agency, or other subrecipient.
- The State Agency must provide immediate written notice to the local agency or other subrecipient indicating the area of noncompliance and the action required to correct the situation.
- Corrective action must be completed within **60** days of finding.
- Failure or refusal can result in loss of federal assistance from all federal sources.

Disability and Reasonable Accommodations

- In order to provide an **equal opportunity** for program participation, Child Nutrition Programs must make reasonable accommodations to the known physical or mental limitations of an otherwise qualified applicant/employee who has a disability unless the accommodation would impose an undue hardship on the operation of the program.
- **Auxiliary aides and services** may include, but are not limited to; providing qualified interpreters, taped text, braille, removing physical barriers and accommodating service animals.
- Meal modifications to child nutrition program meals or the meal service.

Disability and Reasonable Accommodations

The ADA Amendments Act of 2008 (Public Law 110-325, ADAAA) amended the Federal definition of disability, broadening it to cover additional individuals.

The ADAAA broadened the list of “Major Life Activities” for purposes of identifying individuals with disabilities and added a new category called “Major Bodily Functions”, 42 USC 12102(2)(B). As amended by the ADAAA, Major Life Activities now also includes “Major Bodily Functions” such as: “functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, and reproductive functions.” It is important to point out that 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.

It is still a requirement that participants seeking an accommodation for a disability that is food-related must provide a statement from a licensed physician (as licensed by the State) identifying the food-related disability and indication the required meal accommodation.

Meal Modifications

- USDA Memo SP 59-2016 outlines requirements for School Food Authorities to provide reasonable modifications to program meals or the meal service to accommodate children with disabilities.
<http://www.azed.gov/hns/memos/>
- This includes providing special meals, at no extra charge, to children with a disability when the disability restricts the child's diet. This includes but is not limited to food allergies and intolerances.
- School Food Authorities, at a minimum, must notify parents and guardians of the process for requesting meal modifications to accommodate children with disabilities.

Limited English Proficiency (LEP)

- Definition: Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.
- The State agency and 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.
- Child Nutrition program activities include, but are not limited to:
 - applications*
 - outreach*
 - nutrition education*

Language Assistance

- Generally service must be provided, but there is flexibility on *how* it is provided.
- How it is provided may be determined by:
 - An **assessment of needs**
 - Number or proportion of LEP persons served or encountered in the eligible population
 - Frequency with which LEP individuals come in contact with the program
 - Nature and importance of the program, activity, or service provided by the program
 - Resources available to the recipient and costs
- In general, each certification office that provides service to an area containing approximately 100 single-language minority low-income households must routinely provide both **bilingual** certification materials and bilingual staff or interpreters.

Language Assistance - Materials

- **Certification materials** in Spanish can be found on the ADE website.

<http://www.azed.gov/hns/nslp/forms/>

- Free and Reduced Application
 - Instructions for Household Application
 - Parent Letters
 - Verification Letters
 - Online Trainings
- For certification materials in languages other than Spanish go to:
<https://www.fns.usda.gov/school-meals/translated-applications>



The screenshot shows the USDA Food and Nutrition Service website. The header includes the USDA logo and navigation links: About FNS, Ask the Expert, Contact Us, Other Languages, and En Español. A search bar is present with a 'Search' button. Below the header is a navigation menu with links for Programs, Data, Newsroom, Research, Forms, and Grants. The main content area is titled 'School Meals' and features a 'Print' button. Underneath, there is a section for 'Translated Applications' with a brief description: 'This page features foreign language translations of the Prototype Application for Free and Reduced Price School Meals for CY2016-2017. They are provided by USDA as a template to assist State and local...

LEP Interpreters and Resources

- Children should not be used as interpreters.
- Bi-Lingual volunteers may be used, but make sure they are qualified and understand interpreter ethics – particularly confidentiality!
- Language line phone services may be available for a subscription fee through your local telephone service provider.
- A shortage of resources does not eliminate the interpretation or translation requirement.
- LEAs may share resources to save money:
 - Use an interpreter from another area
 - Train bilingual staff to be interpreters
 - Contact grassroots organizations to discuss translation or assistance from within the community

Conflict Resolution

- USDA encourages the **resolution of complaints** at the lowest possible level and as quickly as possible.
- Create a written code of conduct and post it with your policy for dealing with unacceptable behavior and conflict.
- Use alternative dispute resolution (ADR) techniques.

Conflict Resolution Skills

- Use a win/win approach and solve the conflict as partners rather than opponents.
- Transform problems into creative opportunities.
- Develop communication tools to build rapport and use listening to clarify understanding.
- Apply strategies to attack the problem and not the person.
- Plan and apply effective strategies to reach agreement.

Go to www.crnhq.org for more ideas.

Customer Service

- Live by the platinum rule: “Treat others the way *they* want to be treated.”
- Good customer service will help reduce or eliminate complaints of discrimination.
- All **participants** must be treated in the same manner (i.e. seating arrangements, serving lines, services and facilities, assignment of eating periods, methods of selection for application approval processes).
- All **participants** must be allowed equal opportunities to participate in Child Nutrition programs regardless of race, color, national origin, sex, age, or disability.

Food for Thought

In order to reduce the risk of a civil rights discrimination complaint, ask yourself the following questions each time an applicant and/or participant comes to your program.

- Am I treating this person in the same manner I treat others?
- Have I given this person the opportunity to clarify all relevant factors or inconsistencies?
- Have I told this person exactly what information I need to make a determination on the application?
- Have I provided the person with the information he or she needs to make necessary decisions?

Situations

Is this a Civil Rights Complaint?

They may be valid and important, but some are not covered by the rules for Civil Rights complaints.

Is this a Civil Rights Complaint?

Situation 1:

A complaint is received from a site that someone who came to conduct a review was rude and disrespectful. The complaint states that the reviewer's tone was demeaning and generally unpleasant.

Is this a civil rights complaint and should it be reported?

Answer:

Depends. It needs to be investigated to see if the rude behavior was because of a protected class. People can discriminate someone of their own race.

When in doubt of whether it is a civil rights violation, always provide complaint information.

Is this a Civil Rights Complaint?

Situation 2:

To meet the annual training requirement for site supervisors, the sponsor develops a computer based training program that everyone will be required to complete.

Is this a civil rights violation and should it be reported?

Answer:

No, as long as reasonable accommodations are provided.

Is this a Civil Rights Complaint?

Situation 3:

A community group approaches a Summer Food Service Program sponsor and asks for a list of Hispanic children so it can provide holiday presents to them.

Is this a civil rights violation and should it be reported?

Answer:

Yes, this is a confidential list and raises issues of national origin.

Is this a Civil Rights Complaint?

Situation 4:

A parent of a child alleges program discrimination by a site and wants to file a complaint. You know that the site does not discriminate.

Is this a civil rights complaint and should it be reported?

Answer:

Yes, if discrimination is alleged, you must provide the complaint information.

Is this a Civil Rights Complaint?

Situation 5:

A sponsor is very angry that someone filed a frivolous discrimination complaint and took up a lot of her time and made her look bad. She tells her site supervisor to watch out for this “troublemaker.” The next time the person visits, he encounters “attitude” from the co-provider.

Is this a civil rights violation and should it be reported?

Answer:

Yes, this is reprisal and retaliation. There is also a confidentiality issue.

Is this a Civil Rights Complaint?

Situation 6:

A parent complains about the choices provided during breakfast and demands that gluten-free products be provided for her child.

Is this a civil rights complaint and should it be reported?

Answer:

Yes, this relates to civil rights if it is a disability defined by a physician special rule that provides accommodating food when there is a disability.

Is this a Civil Rights Complaint?

Situation 7:

A parent contacts the School Food Service Director and says their child is being denied their religious right to be able to eat only vegetarian meals.

Is this a civil rights complaint and should it be reported?

Answer:

No. Religion is not a protected class in Child Nutrition Programs under FNS Instruction 113-1 Civil Rights Compliance and Enforcement Nutrition Programs.

It is suggested that the SFA try to work with the complainant and try to accommodate their religious needs.

Is this a Civil Rights Complaint?

Situation 8:

A minority high school football player approaches the cafeteria manager and says he isn't getting enough food when he selects a reimbursable meal and would like larger servings.

Is this a civil rights complaint and should it be reported?

Answer on next slide...

Is this a Civil Rights Complaint?

Answer:

No. Just because the student is a minority student does not mean he automatically is considered to be alleging discrimination. He did not state that he was not getting adequate servings because of his minority status. He only wants a larger serving.

If he had said that he was not getting a large enough serving because of his racial/ethnic background, then, yes, it would be a complaint and you would need to report it.

Civil Rights “Must Do” List

- ✓ Provide Child Nutrition Programs in a nondiscriminatory manner
- ✓ Must offer meals to all children and meal substitutions to participants with disabilities
- ✓ Prominently display the “*And Justice for All*” poster
- ✓ Annually complete the Civil Rights Data Collection/Compliance Form

Civil Rights “Must Do” List

- ✓ Non-discrimination statement must be on all printed materials available to the public which mention USDA and/or SFSP, including websites
- ✓ Provide informational materials in the appropriate translation concerning the availability and nutritional benefits of the SFSP

Civil Rights “Must Do” List

- ✓ Train staff annually on Civil Rights and complete a training form
- ✓ Develop & fully implement your Civil Rights Complaint Procedure
- ✓ Make available to all staff: Civil Rights complaint forms, Civil Rights Log and Civil Rights complaint procedure
- ✓ Refer all Civil Rights complaints to ADE Civil Rights Coordinator

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