



DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH

ROY COOPER
GOVERNOR

MANDY COHEN, MD, MPH
SECRETARY

DANIEL STALEY
DIRECTOR

July 5, 2017

CACFP 17-09(a)

Memorandum

To: Institutions Participating in the Child and Adult Care Food Program

From: Arnette Cowan, Head 
Special Nutrition Programs

Subject: Policy Memorandum on Modifications to Accommodate Disabilities in the Child and Adult Care Food Program

This memorandum outlines the requirements for Child and Adult Care Food Program (CACFP) institutions and facilities to provide reasonable modifications to Program meals or the meal service to accommodate children or adults (participants) with disabilities. This memorandum supersedes FNS Instruction 783-2, Rev. 2. With the release of this memorandum, FNS Instruction 783-2, Rev. 2 has been rescinded.

BACKGROUND

This guidance only addresses modifications required to accommodate disabilities that restrict a participant's diet. Program operators 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 Program operators to ensure that breakfast, lunch, snack, or milk (meals) offered through the CACFP meet the respective meal pattern requirements established in the Program regulations. Federal law and USDA regulations further require Program operators to make reasonable modifications to accommodate participants with disabilities. This includes providing special meals, at no extra charge, to participants with a disability that restricts the participant's diet.

Program operators are required to make substitutions to meals for participants with a disability that restricts participant'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 or nurse practitioner, 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.

Schools that operate the CACFP may need to follow additional requirements that are not outlined in this memorandum. Due to their larger size, schools must have in place certain administrative functions that are not required for smaller operations. For additional guidance specific to schools, including procedural safeguards required to ensure parents and children are aware of the procedure for requesting meal modifications, and the process for resolving disputes, refer to SP 59-2016 "*Modifications to Accommodate Disabilities in the School Meal Programs*" (<http://www.fns.usda.gov/sites/default/files/cn/SP59-2016os.pdf>).

GOVERNING STATUTES

Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) prohibits discrimination on the basis of a 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 (ADA), as amended, prohibits discrimination based on a disability in the provision of State and local government services, such as public schools. Title III of the ADA prohibits discrimination based on a disability by private entities that provide public accommodations, including child care centers, emergency shelters, and day care homes. The ADA applies regardless of whether or not a Program operator receives Federal financial assistance. Section 504, Title II, and Title III require covered entities, such as CACFP institutions and facilities to make reasonable modifications to accommodate participants with disabilities, including reasonable modifications to meals and the meal service.

Preschool children, infants, and toddlers with disabilities have additional rights under the Individuals with Disabilities Education Act (IDEA). Under section 619 of the IDEA, preschool children with disabilities are entitled to a free and appropriate public education through special education and related services that comply with the child's individualized education program. Under Part C of the IDEA, appropriate early intervention services are made available to all eligible infants and toddlers ages 1 through 2 years old with disabilities and their families through an individualized family service plan. Questions regarding the IDEA's requirements should be directed to the U.S. Department of Education, which is the Federal agency responsible for the administration and enforcement of the IDEA.

PROGRAM REGULATIONS

USDA regulations at 7 CFR Part 15b, "Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance" implements Section 504's nondiscrimination requirements. 7 CFR 15b.26(d) requires recipients of Federal financial assistance, such as sponsors, centers, and day care homes, to serve special meals at no extra charge to participants with disabilities that restrict their diet. In addition, Program regulations at 7 CFR 225.16(f)(4) and 226.20(g) require Program operators to make substitutions to meals to accommodate participants with disabilities that restrict their diet.

I. Participants with Disabilities

The question of whether a participant has a disability for the purposes of this memorandum has

been simplified by the ADA Amendments Act, and should no longer require extensive analysis. Program operators should not engage 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 Program operators 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 a 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 does not need to be life threatening to constitute a disability. It is enough that the impairment limits a major life activity. For example, digestion is 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 of the impairment. For example, the fact that a participant 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, rather than due to Celiac disease, 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

Program operators must make reasonable modifications to the meal, including providing special meals at no extra charge, to accommodate disabilities which restrict a participant’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. Program operators 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 participants. However, in other cases, the needs of a participant with a disability may involve requests for accommodations that result in the service of meals that do not meet the Program meal pattern requirements.

A. Requiring a Medical Statement

Program regulations require Program operators to provide modifications for participants 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 226.20(g)). Meals that do not meet the Program meal pattern requirements are not eligible for

reimbursement unless supported by a medical statement. However, Program operators 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. Such meals are reimbursable.

The medical statement should include a description of the participant's physical or mental impairment that is sufficient to allow the Program operator to understand how it restricts the participant'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 that need to be omitted and recommending alternatives. In other cases, more information may be required. For example, if an infant requires the substitution of a Food and Drug Administration exempt infant formula in place of iron-fortified infant formula to accommodate a disability, this information must be included in the statement.

When Program operators 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. Program operators may consider using the services of a Registered Dietitian, when available, to assist in implementing meal modifications, as appropriate. Program operators may also contact their State administering agency for guidance.

B. Assessing Requests for Substitutions and other Modifications

Program operators are not required to provide the exact substitution or other modification requested. However, they must work with the parent, guardian, participating adult, or a person acting on behalf of an adult participant, to offer a reasonable modification that effectively accommodates the participant's disability and provides equal opportunity to participate in or benefit from the Program. When determining what an appropriate modification is, the age, maturity, mental capacity, and physical ability of the participant should be considered. For instance, younger children may need greater assistance with selecting and eating their meals, whereas older children and participating adults may be able to take a greater level of responsibility for some of their dietary decisions. Program operators may also consider expense and efficiency when choosing the most appropriate approach to accommodate a participant's disability. For example, a participating adult with an allergy to a specific ingredient found in a menu item may request that the Program operator provide a particular brand name version as a substitute. Generally, the Program operator is not required to provide the brand name item identified, but they must offer a substitute which does not contain the specific allergen that affects the participating adult.

Program operators are not required to make modifications that would result in a fundamental alteration in the nature of the Program. FNS recognizes that, unlike the School Meal Programs, the CACFP may be operated by very small entities with extremely limited staff and resources. In these situations, some meal modifications may be so expensive that providing the modification would fundamentally alter the nature of the Program. Modifications that are so expensive that they would make continued operation of the Program unfeasible constitute a fundamental alteration in the nature of the Program and are, therefore, not required. Program operators should be aware that the expense of a modification is measured against the total resources available to that particular Program operator. For example, providing an expensive medical infant formula to accommodate an infant's disability may be so financially burdensome for a CACFP day care home with one staff member that it would make operating the Program unfeasible, and consequently would fundamentally alter the nature of the Program. In this example, the CACFP day care home would not be required to provide the requested medical infant formula.

Program operators faced with a very expensive request should first consider engaging in further dialogue with the participant and the participant's parents or guardian. As discussed above, Program operators are

not required to provide the exact substitution or other modifications requested. However, they must work with the parent, guardian, participating adult, or a person acting on behalf of an adult participant to offer a reasonable modification that effectively accommodates the participant's disability and provides equal opportunity to participate in or benefit from the Program.

Program operators concerned that a requested modification would fundamentally alter the nature of the Program should contact their State agency for assistance. Generally, the emphasis should be on working with parents, guardians, participating adults or a person acting on behalf of the adult participant to develop an alternative approach that will be effective for the participant.

C. Serving Meals in an Integrated Setting

Program operators must provide all meal services in the most integrated setting appropriate to the needs of the disabled participant. (See 7 CFR 15b.26(d).) Exclusion of any participant from the Program environment is not considered an appropriate or reasonable modification. For example, a child may not be excluded from the area where meals are served and required to sit in another room during the meal service. 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 that table to segregate children as punishment for misconduct.

III. Reimbursement

Reimbursement for modified meals served to participants with disabilities that restrict their diet is at the appropriate rate 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.

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." Program operators 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 CACFP 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 food service account. Sources of supplemental funding may include special education funds if specified in the Program operator's general account.

V. Procedural Safeguards

Program operators are encouraged to implement procedures for parents, guardians, participating adults, or persons acting on behalf of adult participants to request modifications to meal service for participants with disabilities and to resolve grievances. These procedures should include providing a written final decision on each request. Program operators should notify participants and parents or guardians of the procedure for requesting meal modifications. At a minimum, Program operators must provide notice of nondiscrimination and accessible services as outlined in 7 CFR 15b.7. Additionally, Program operators should ensure that center, day care home, and volunteers as applicable, understand the procedures for handling requests for meal modifications.

Program operators that employ 15 or more individuals must designate at least one person to coordinate compliance with disability requirements. (See 7 CFR 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 center or day care home may also be responsible for ensuring compliance with disability requirements related to meals and the meal service. A separate Section 504 Coordinator responsible only for meal modifications is not required. FNS recommends that Program operators that employ less than 15 individuals have someone on staff who can provide technical assistance to centers and day care homes when they are making meal modifications for participants with disabilities.

Program operators that employ 15 or more individuals must also establish grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints as set forth in 7 CFR 15.b(6)(b).

VI. Team Approach

When it is possible, FNS strongly encourages Program operators to take a team approach when implementing the guidelines in this memorandum and providing modifications for participants with disabilities. Developing a team that includes individuals from the sponsoring organization, center or day care home and the Section 504 Coordinator (when there is one) will help ensure consistent decisions, implementation, and tracking of meal modifications. The most effective team may also include others with training in this area, such as a nurse or Registered Dietitian. Any request for a modification related to the meal or meal service should be reviewed by the team and forwarded to the Section 504 Coordinator, when there is one.

The team will work with the child's parents or guardian, participating adult, or a person acting on behalf of the adult participant to review the request and develop a solution as quickly as possible. The 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.