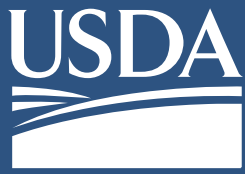




United States Department of Agriculture

Modifications to Accommodate Disabilities in School Meal Programs

**FNS CRD Training Webinar
November 29, 2022**

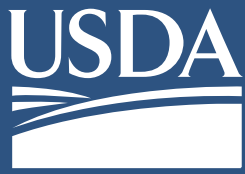


Civil Rights Program Authorities

- Title VI of the Civil Rights Act of 1964
- Civil Rights Restoration Act of 1987

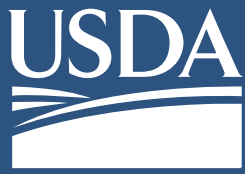
- ✓ **Section 504 of the Rehabilitation Act of 1973**
- ✓ **Americans with Disabilities Act (ADA) of 1990**
- ✓ **ADA Amendments Act of 2008**

- Title IX of the Education Amendments of 1972
- Age Discrimination Act of 1975



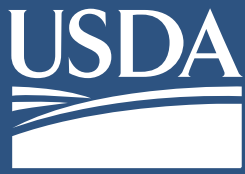
Civil Rights Program Authorities (cont'd)

- ✓ 7 Parts 15, 15a, **15b** and 15c
- ✓ **FNS 113-1 and its Appendices**
- ✓ **Executive Order 12250 (Disability)**
- ✓ **28 CFR 41 (DOJ's Coordination of Federal 504 Regulations)**
 - Executive Order 13166 – (LEP)
 - USDA Departmental Regulation 4330-002
 - And many more...



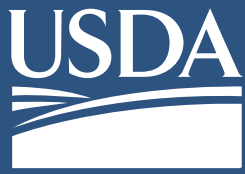
Disability Law

- Legal Framework: Section 504, ADA, implementing regulations and policy guidance
- Duty to Provide Reasonable Modifications: understand & accept that (sometimes) providing modifications is nebulous
- Relationship between Section 504 and the ADA (Titles II & III) in light of the Americans with Disabilities Act Amendments Act



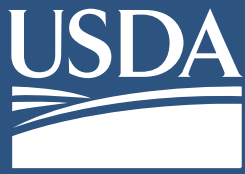
Coverage of All Operations

- Even one dollar of Federal money brings the entire scope of the operations within the jurisdiction of Section 504...
- Even where the requested modification is not related to the part of the operations that receives Federal money



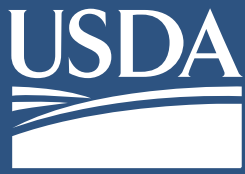
ADA Amendments Act of 2008

- ✓ CLARIFIED the definition of Disability
- ✓ DID NOT change the expectation to provide a Reasonable Modification
- ✓ DID make very clear that the emphasis must be on providing the reasonable modification, and the disabled person does not carry a high burden of 'proving' he or she has a disability



Disability Definition

- A person with a physical or mental impairment that substantially limits one or more major life activities
- A person who has a record of such an impairment
- A person who is regarded as having such an impairment



Clarified Definition of Disability

Revises “Substantially Limits”

- Need not prevent, or severely/significantly restrict a major life activity
- Individualized assessment
- Without regard to ameliorative effects of mitigating measures
- May include an impairment that is episodic or in remission if it would substantially limit a major life activity when active

Clarified Definition of Disability - continued

Major Life Activities

Seeing, hearing,
 Walking
 Speaking, learning, reading
 Eating
 Breathing

New Category of “Major Life Activities”

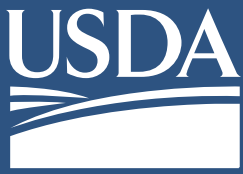
Major Bodily Functions

- Digestive
- Immune system
- Respiratory
- Circulatory
- Neurological/Brain



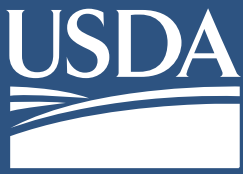
Types of Disability Discrimination

- Discrimination because of the disability
 - ✓ Denying benefits or opportunity to participate
 - ✓ Segregating individuals with disabilities
 - ✓ Aiding, perpetuating or contracting with others that discriminate
- Failure to provide a reasonable modification
- Ineffective Communication
- Inaccessible Facilities



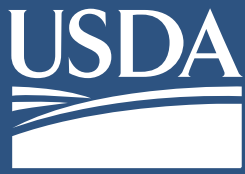
Updated Guidance: Modifications to Accommodate Disabilities in the School Meal Programs

- Date Signed: September 27, 2016
- Covers School Meal Programs (NSLP, SBP, SMP, & FFVP)
- Copy available on FNS website at:
<http://www.fns.usda.gov/policy-memorandum-modifications-accommodate-disabilities-school-meal-programs>
- *Note: Meal Modification Policy Memo affecting CACFP and SFSP (CACFP 14-2017, SFSP 10-2017) was released June 22, 2017*



Reasonable Modifications

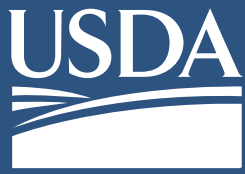
- A change or alteration in policies, practices, and procedures to accommodate a disability
- Duty to negotiate over modification. This means simply saying “no” is almost never appropriate.
- Primary objective - providing appropriate modifications and not ferreting out whether the child has a disability or any possible abuse of the process
- On a case-by-case basis



Reasonable Modifications

- The modification requested should be related to the disability or limitations caused by the disability.
- The modification requested does *not* have to be the modification provided.
- Providers must still accommodate even where the person requesting modification believes more should be done.

Exception: Modifications are not required that would fundamentally alter the nature of the program. Providers are advised to consult with FNS before relying on this exception.

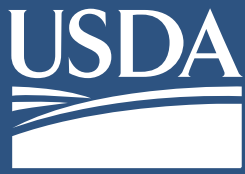


Reasonable Modifications: Key Considerations

- Consider costs/resources and age of the child.
- “Stereotypes” regarding certain conditions or individuals can never drive decisions. Decisions must be based on facts.
- Meal accommodations do not need to mirror the meal or meal item substituted.
- “Lifestyle” choices (e.g. vegetarian) are not considered disabilities and need not be accommodated unless related to an underlying disability.

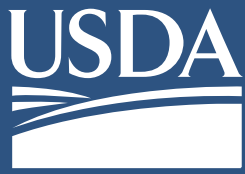
Food Allergies

- Many food allergies fall under the definition of disability clarified by the ADA Amendments Act (ADAAA).
- According to the CDC and the FASTER ACT of 2021, in the United States, the following nine foods or food groups account for 90% of serious allergic reactions: milk, eggs, fish, crustacean shellfish, wheat, soy, peanuts, tree nuts, and sesame.
- Applies to much more than just “life threatening” allergic reactions.
- “Digestive” and “Respiratory” functions are specifically listed in the ADAAA.



Food Allergies: Key Considerations

- Universal exclusions of specific foods or food groups is not an FNS policy, but could be appropriate depending on the circumstances, and is within the discretion of recipients
- Meal substitutions, which had previously been “permissible” may be required if needed by a qualified person with a disability

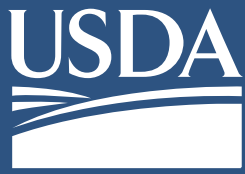


Program Accessibility

- Ensure food service areas are accessible.
- Provide other aids and services, if needed. Examples include:
 - ✓ Food service aides
 - ✓ Adaptive feeding equipment
 - ✓ Meal tracking assistance
 - ✓ Other effective methods

Most Integrated Setting

- Integration clause in Section 504 means that individuals with disabilities should be accommodated in the least restrictive and most integrated setting possible.
- In the food allergy context, this most often comes into play where children with food allergies are ostracized in some way during mealtime.
- Providers must always balance safety vs. stigma. Age and severity of allergy are the primary considerations.



Medical Statement Requirements

- Statement provides sufficient information about impairment (diagnosis not required and should not be requested), how it restricts diet, and how to accommodate condition.
- Seek clarification if inadequate or unclear.
- Clarification should not unnecessarily delay modification – it could be characterized as harassment/denial.
- Need not be from a physician if State law authorizes others to write prescriptions
- Cannot request medical records/charts
- Medical Statement may be requested but is not required for substitutions within meal pattern requirements.

Example: Medical Statement Supporting Modification to Accommodate a Food Allergy



Three essential components:

- 1) The food to be avoided (allergen)
- 2) Brief explanation of how exposure to the food affects the participant
- 3) Recommended substitute(s)*

Implementation & Compliance

- ✓ Develop procedures for parents/guardians to request reasonable modifications.
- ✓ Train school and food service staff and volunteers on reasonable modification procedures and legal requirements.
- ✓ Appoint a "504 Coordinator" or other person to provide technical assistance on reasonable modification matters to ensure compliance.
- ✓ *Assemble a team to implement guidelines and render decisions on modification requests.

**Recommended*

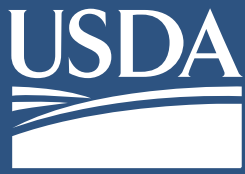
Procedural Safeguards

- Provide Notice (in appropriate languages and formats) of -
 - ✓ Process for requesting modification
 - ✓ Decision
 - ✓ Procedural rights
- Opportunity to examine the record and file a grievance
- An impartial hearing with parental participation and legal representation (if desired)
- A review procedure (avenue for appeal)

Questions?



Survey: https://forms.office.com/Pages/ResponsePage.aspx?id=5zZb7e4BvE6GfuA8-g1GI09N83F_6YZersFaMbtc5YZUN1A3Q0NUTEpVVEVaVUIJRkc2MTJLTkY0Ui4u



Contact Information

For more information, contact:

Stephen Miliano
Regional Civil Rights Officer
USDA FNS NERO
10 Causeway Street
Suite 501
Boston, MA 02222
(Office) 617-565-6424
Stephen.Miliano@usda.gov

Gail A. Hoffman
Regional Civil Rights Officer
USDA FNS SERO
Sam Nunn Federal Center
61 Forsyth ST SW
8T36
Atlanta, GA 30303
Gail.Hoffman@usda.gov