

Civil Rights

Child and Adult Care Food Program

Division of Food and Nutrition

May 2023



Goals of Civil Rights

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

Federal Financial Assistance

- Federal financial assistance is anything of value received from the Federal government and can include cash, commodities, training, excess, computers, and more
- Accepting Federal financial assistance requires compliance with Civil Rights rules in all aspects of operations – not just in the program being funded

Program Authorities

- USDA Regulations at 7 CFR 15, 15a, and 15c
- USDA Regulations at 7 CFR 16
- CACFP Regulations at 7 CFR 226.6
- Executive Order 12250 (Disability) and 13166 (LEP)
- FNS Instruction 113-1, including Appendix B

Sponsor's Responsibility

- **No disparity in meal service due to race, color, national origin, age, disability, sex**
 - Eating periods, serving lines, seating arrangements, and eating areas must reflect equality
- **Post "Building for the Future" flyer**
 - Post where visible and readable for all or distribute to parents/guardians
 - Notify parents/guardians about the CACFP, how to contact the sponsor and NDA, and how to file a civil rights complaint
 - Not required for Day Care Homes
- **Procedure for language assistance**
 - Persons with Limited English Proficiency (LEP) (ability to read, speak, write or understand English) may be entitled to language assistance in understanding program services and benefits
 - Determine type of language assistance needed based on highest percentage of national origin(s) population in the area

Sponsor's Responsibility

- **Post “And Justice for All” poster**
 - Post where visible and readable for all in administrative building and at each site
- **Handling and reporting Civil Rights complaints**
 - Follow procedures and use the form and log in binder at each site
- **Reasonable accommodations for persons with disabilities**
- **Include non-discrimination statement on the sponsor website and all program literature that mentions meals/snacks, including posted menus**
- **Report Racial/Ethnic Participation for each site on site application(s) in the Nutrition Programs System (NPS)**

What is a protected class?

- Any person or group of people who have characteristics for which discrimination is prohibited based on a law, regulation, or executive order
- Protected classes in CACFP are **race, color, national origin, age, sex** (including gender identity and sexual orientation) **and disability**

Knowledge Check

Someone complains that they were denied participation in the CACFP because they are Muslim.

- Is this a civil rights violation since religion is not a protected class?

Answer

- A complaint like this would not be handled as a civil rights matter because there would be no basis for citing a civil rights violation.
- It would, however, be addressed as a program matter because if true, an inappropriate eligibility criterion dealing with religion was applied which served as a barrier to participation.
- Any complaints that make allegations that are not related to a protected class are referred to the program to be handled as a customer service issue and/or to determine if program rules were violated.

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 Disability Definition

- **Major Life Activities**
 - Seeing, hearing
 - Walking
 - Speaking, learning, reading
 - Eating
 - Breathing
- **Major Bodily Functions**
 - Digestive
 - Immune System
 - Respiratory
 - Circulatory
 - Neurological/Brain, etc.

Types of Disability Discrimination

- Denying benefits or opportunity to participate
- Segregating individuals with disabilities
- Aiding, perpetuating or contracting with others that discriminate
- Failing to provide a reasonable modification

Assurances

- In order to receive Federal funding, agencies/providers must sign assurances that they will abide by Civil Rights requirements in program delivery.
- The NDA pre-award compliance review documents are used to determine the likelihood of Civil Rights compliance.

Assurances = Promises

- No discrimination based on race, color, national origin, age, sex, or disability
- Program will be operated in compliance with all nondiscrimination laws, regulations, instructions, policies and guidelines
- Compile data, maintain records, submit reports
- Allow reviews & access

Knowledge Check

Someone who runs a day care center would like to apply for the CACFP but does not like the idea of opening enrollment to everyone because some existing customers distrust people different from themselves.

- Is this allowed?

Answer

- No. As long as the day care center accepts Federal financial assistance for the CACFP or from any other source, it cannot discriminate in any aspect of its operations based on race, color, national origin, age, sex or disability.
- Other Federal agencies may have additional protected classes.

Types of Discrimination

- **Disparate Treatment** - Someone is treated differently or less favorably due to being part of a protected class; the intent is the matter at issue.
- **Disparate Impact** – Policies, practices or actions that have discriminatory results that disproportionately negatively affect a protected class.
- **Reprisal/Retaliation** – Punishing someone for engaging in legally protected activity, e.g., negative treatment, intimidation, harassment, etc. due to prior civil rights activity by an individual or his/her family, for cooperating with an investigation, etc.

Knowledge Check

A sponsor decides to conduct CACFP reviews for all day care centers only in a certain zip code.

- Are there legitimate business reasons for this?
- Could this be considered discrimination, and if so, what kind?

Answer

- There is probably a legitimate business reason, such as insuring accountability, for doing these audits.
- By singling out a zip code, however, there might be disparate impact discrimination if the day care homes in that zip code are run primarily by people of the same racial or ethnic group.
- To overcome charges of discrimination, the agency would have to demonstrate that there is a less discriminatory way of achieving the same objective(s) and that the government interest served by the business reasons outweighs any discrimination that might result.
- It is important to consider the possible impact of policies before they are implemented.

Faith and Community Based Organizations

- USDA Regulations at 7 CFR 16 require equal opportunity for Faith Based Organizations (FBO's) and Community Based Organizations (CBO's)
- Conduct outreach to FBOs and CBOs.

Faith and Community Based Organizations

- Discrimination is prohibited against an organization on the basis of religion, religious belief or character in the distribution of funds
- FBOs can use space in their facilities without removing religious art or symbols

Faith and Community Based Organizations

- Beneficiaries are also protected
- No organization that receives direct assistance from the USDA can discriminate against a beneficiary or prospective beneficiary on the basis of religion or religious belief
- FBOs retain their independence and carry out their mission as long as USDA funds or activities do not support worship, religious instruction or proselytization

Faith and Community Based Organizations

- EXCEPTION -

7 CFR 16.3 (c) provides that religious organizations that receive USDA assistance under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 *et seq.*, the Child Nutrition Act of 1966, 42 U.S.C. 1771 *et seq.*, or USDA international school feeding programs may consider religion in their admissions practices and impose religious attendance or curricular requirements at their schools.

Knowledge Check

A day care center run by a church and operating the CACFP only admits children who are of the faith served by the church and requires children to say a prayer before the meal.

- Are there any civil rights problems here, and if so, what?

Answer

- Since CACFP is authorized under the Richard B. Russell National School Lunch Act, based on the exception in 7 CFR 16.3 (c), there would not be a civil rights problem.
- Faith based organizations may consider religion in their admissions practices and impose religious attendance.

Knowledge Check

An atheist complains to you that she was not hired by a church-run day care center because of her lack of religious beliefs.

- What should you do?

Answer

- You do not have to do anything. Religious institutions are exempt from the Title VII provisions that prohibit discrimination based on religion.
- If the person wants to complain, refer her to the Equal Employment Opportunity Commission (EEOC).
- We do not investigate employment discrimination complaints unless the behavior directly impacts program delivery.

Training Requirements

- “Frontline staff” who interact with applicants and participants and supervisors of “frontline staff” must be trained annually
- This includes day care operators and their staff members

Required Training Topics

- 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
- Customer service

Knowledge Check

A sponsor develops a computer-based training module for civil rights and wants to distribute it to day care centers to train frontline staff.

- Is this acceptable?

Answer

- Yes. FNS Instruction 113-1 allows lots of flexibility in terms of how training is delivered as long as front-line staff and their supervisors are trained annually. It is important to track who is trained to make sure the requirement is met.
- Computer-based training is good in that there are ways to build in tracking systems to ensure that everyone completes the training. The drawbacks are a lack of interaction including a lack of ability to share situations and to get questions answered on the spot.
- How training is conducted can range from one-on-one briefings to computer-based training to classroom presentations and anything in between.
- It is important to have provisions for make-up sessions for anyone who misses the training.

Data Collection & Analysis

- Collected to help determine if there are disparities between potentially eligible and participating populations
- Allow for targeting of outreach efforts
- Aggregated for analysis
- Kept confidential

Data Collection & Analysis

Best Practices:

- Obtain data from parents or guardians
- Identifying race and ethnic groups should be explained
 - Provide information to ensure compliance with USDA nondiscrimination
 - Failure to report will not impact participant eligibility for meals

Data Collection & Analysis

- Visual observation and identification continues to **no longer** be an allowable practice for CACFP
- Data must be collected yearly
 - By January 1, 2023, program operators must have alternative means to capture the data, or they may be issued a finding of noncompliance on their next review

Data Collection & Analysis

Best Practices for sites that do not require enrollment:

- Requesting data verbally is allowable
- NDA strongly recommends only asking adults, this practice may be confusing to children

Data Collection & Analysis

- Participants and/or parent/guardian can self declare
- When provided, the participant must indicate if Hispanic or Latino or not – mixed must choose ONE
- When provided, the participant must indicate one or more races

Data Collection & Analysis

Aggregate data may be used when sites **do not** require enrollment forms and when self-reporting data is not available:

- Aggregate data must be specific to the service area of the meal service site
- Report aggregate data as a substitute for individual data in instances in which the program operator attempts to collect the data, but no participants provide the information
- Aggregate data such as school enrollment or Census American Community Survey may be used

Data Collection & Analysis

If a sponsor is unable to obtain racial and ethnic data:

- The response may be marked “unknown”
- NDA does not expect the number of respondents will equal the number of children at the meal service site
- Continue to collect information

Data Collection & Analysis

Data included in the Nutrition Programs System (NPS):

- Include to the extent possible all data collected
 - Geographic Area is collected from the data census website (site questions 49 and 51)
 - Participation Area is collected from enrollment forms or verbally asking (site questions 50 and 52)

Knowledge Check

The parents of a child refuse to complete the racial ethnic data section of the application.

- What should the childcare provider do?

Answer

- Inform the parent that failure to report will not impact participants' eligibility for meals
- Inform the parent that information provided ensures compliance with USDA nondiscrimination
- The response may be marked "unknown"

Knowledge Check

The area served by a childcare center has a large ethnic community where many of the people have limited English proficiency.

- What are some public notification techniques that could be used to reach out to this community?

Answer

- Establishing contacts with community groups and leaders could be a way to help build trust. These people could also help spread the word about CACFP to members of the community and might even translate information and help with interpreting.
- Look for ethnic media outlets, especially newspapers and radio, especially for smaller groups, the newspapers might be out of state or might be national so do not limit yourselves.
- Use computer search engines to find sources and contacts.
- Have materials available in the language spoken by the group, be helpful and accommodating. Learn something about the culture and work to make the day care center friendly to the group.

Knowledge Check

A day care center wants to move to a bigger space in another part of town.

- Are there any civil rights or public notification issues possibly connected to this?

Answer

- There may be civil rights issues if there are groups negatively impacted by the move. Therefore, it is important to solicit input from the community.
- Things such as public transportation, parking and other accessibility issues need to be considered.
- The new space needs to conform to the Americans with Disabilities Act (ADA) guidelines. Ensure modifications are agreed to and guaranteed for completion by a certain date **BEFORE** you sign a lease.

Knowledge Check

The "*And Justice for All*" poster is large and a sponsor wants a smaller version.

- Can sponsors design and print their own posters?

Answer

- No. USDA does not allow States to design and print their own posters. Contact NDA below if there are difficulties with posting the *And Justice for All Poster*.
- The current posters must be posted at all administrative offices and sites where they are readable and visible to all.
- To order additional posters, contact the Nevada Department of Agriculture at 775-353-3758 or email fnd@agri.nv.gov. How to order posters should be included in civil rights training for local centers.

Non-Discrimination Statement

- The long version of the Nondiscrimination Statement (**next slide**) has changed to include gender identity and sexual orientation discrimination
- New *And Justice for All* posters now reference gender identity and sexual orientation discrimination
 - Posters should be posted where participants are traditionally served meals or in the main entrance
 - Posters can also be included on carts that go to multiple classrooms or areas where food is served

Non-Discrimination Statement (Long)

In accordance with federal civil rights 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 (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), 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.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted 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; or

fax:

(833) 256-1665 or (202) 690-7442; or

email:

program.intake@usda.gov

This institution is an equal opportunity provider.

05/05/2022

Non-Discrimination Statement (Short)

“This institution is an equal opportunity provider”

- May be used in small flyers or brochures where the longer statement does not fit
- Must be in the same font size that is used in the rest of the of publication
- Should not be used where information on rights is provided

Non-Discrimination Statement

WEB SITES:

- Include the long statement or a link to it on web sites that discuss USDA-Food and Nutrition Service (FNS) funded programs.
- Include on sponsor home page at a minimum.
- Include the long or short statement on materials intended to be printed from the web site.

Knowledge Check

A CACFP site prints an informational brochure in another language. Since the nondiscrimination statement is very technical and the population is not well educated, they don't think they need to include it. It would also take up too much space.

- Is this correct?

Answer

- No. The nondiscrimination statement must be on all materials and sources used to inform the public about FNS-funded programs such as the CACFP.
- The nondiscrimination statement would need to be translated into the language used on the brochure.
- Keep in mind that the short statement may be used only on small pamphlets and bulletins, and must be in the same font size that is used in the rest of the of publication
- The short statement is not allowed to be used on any materials that provide a comprehensive overview of the program or that are intended to advise people about their rights and responsibilities related to the program.

Complaint Procedures

- 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.

Complaint Procedures

- Be aware of the basis for which complaints may be filed: race, color, national origin, age, sex and disability
- Never discourage groups or individuals from filing complaints or from voicing allegations of discrimination
- Keep Complaint Procedures in a binder at each site
- FNS Instruction 113-1 outlines complaint investigation procedures

Complaint Procedures

- **When processing a program discrimination complaint, remember the following update to sex discrimination:**
 - Ensure discrimination complaints alleging sexual orientation and gender identity discrimination are processed as complaints of prohibited sex discrimination
- **Reminder: keep discrimination complaint log separate from program complaint log**
 - Maintain confidentiality

Reasonable Modifications

- A public entity shall make reasonable modifications in policies, practices, or procedure when the modifications are necessary to avoid discrimination on the basis of disability,
- Unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

Reasonable Accommodations

- Ensure Access For People with Disabilities
- Examples: Parking lot entrances & exits, halls, elevators, rest rooms, sign language interpreters, Braille signage, service animals
- Alternative arrangements for service



Reasonable Accommodations

Food Accommodations:

- Accommodations will need to be tailored to meet individual situations. Refer to Nutrition 101 training for helpful information.
- Basic Requirements:
 - Medical Plan of Care for Special Diets- Statement to Request Special Meals and/or Accommodations
 - Form located in NPS | Applications | Download Forms | Meal Patterns
 - Type of disability or medical condition
 - Type of accommodation needed
 - Do not second guess doctor
 - May need to work with a nutritionist

Knowledge Check

A parent wants to enroll a disabled child in a day care center. The day care center asks if it can refuse the child admission because it would be too hard to deal with this.

- How do you respond?

Answer

- As a rule, except for religious institutions, childcare providers may not discriminate against disabled children in the enrollment process.

Language Assistance

- People with Limited English Proficiency (LEP) need to be served in other languages
- Provide reasonable, timely, appropriate and competent language services at no cost to individuals with LEP
- Outreach in other languages is important
- Generally, service must be provided, however there is flexibility in how it is provided

Language Assistance

How service is provided depends on:

- Number & proportion of LEP persons served or encountered in eligible population
- Frequency of LEP persons' contact with program
- Nature & importance of program, activity, or service, and
- Resources available and costs
- **SHORTAGE OF RESOURCES DOES NOT ELIMINATE REQUIREMENT EXCEPT IN CASES OF EXTREME HARDSHIP.**

Language Assistance

- Volunteers may be used as interpreters, but make sure they understand interpreter ethics – particularly confidentiality!
- Children should not be used as interpreters
- See www.lep.gov for resources & information

Knowledge Check

A reputable charitable organization in your community wants to provide holiday gifts and asks for a list of all the Hispanic children being served by your organization.

- How should you respond?

Answer

- Under no circumstances should the charitable organization be provided with names, no matter how reputable. It would violate privacy requirements relating to confidentiality of racial/ethnic data.
- By singling out Hispanic children to receive gifts, this organization is in violation of Title VI by discriminating based on national origin since this would impact negatively on other children. By identifying the Hispanic children, the provider would be facilitating discrimination.

Conflict Resolution

- Have a written and posted policy for dealing with unacceptable behavior and conflicts
- Explain the situation and try to remain calm
- Get help if needed, especially if there are threats or if violence is possible
- Use alternative dispute resolution (ADR) methods such as arbitration or mediation
- Be empathetic. Understand that people may not know the rules or understand how programs work. They may feel uncomfortable coming to ask for help
- Explain the policy and let them know you are unable to violate the rules

Questions?

Contact:

Nevada Department of Agriculture

702-668-4585

775-353-3758

fnd@agri.nv.gov



Certification

I, _____, certify that I have completed the annual Civil Rights Requirements training contained in this PowerPoint presentation.

I further certify to ensure that civil rights is properly implemented at all sites that are a part of the CACFP program.

Name	
Signature	
Title	
Organization	
Date	

Designated Official/Authorized Representative and CACFP Contact *ONLY*:

- Upload to NPS | Checklist | Sponsor | Miscellaneous
- Add comment: Trainee's First Initial, Last Name & FY (E.g.,: VGuy-CR Cert FY24)