

“Civil Rights: Compliance and Enforcement’ presentation for both Child Care Programs and School Programs

The purpose of this presentation is to establish and convey policy, and to provide guidance to USDA Food and Nutrition Service recipients and customers concerning Civil Rights. In so doing, we hope to ensure compliance with and enforcement of the prohibition against discrimination in all nutrition programs and activities.

Authority

- Title VI, Civil Rights Act of 1964 – Race, Color, National Origin.
- Americans with Disabilities.
- Education Act of 1972 – Sex Discrimination.
- Rehabilitation Act of 1973, Section 504 – Disability.
- Civil Rights Restoration Act of 1984 – Clarified scope of laws to all recipients of federal funds
- Age – 1975.
- Departmental Regulation (DR) 4300-003. **NEW**

2

The authority to enforce Civil Rights compliance is established through various Acts and Title programs.

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, and national origin in programs and activities receiving Federal financial assistance.

The Americans with Disabilities Act prohibits discrimination on the basis of disability in all services except public transportation services.

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex under any education program or activity receiving Federal financial assistance.

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability.

Civil Rights Restoration Act of 1987 – Clarified the scope of the CR Act of 1964 by specifying ALL of the recipients of federal funds must comply with Civil Rights laws in all areas, not just in the particular program or activity that received the federal funding.

The Age Discrimination Act of 1975 prohibits discrimination based on age in programs or activities receiving Federal financial assistance.

You will see the newest revision through the Office of the Asst. Sec. for Civil Rights' Policy staff – Departmental Regulation (DR) 4300-003, Equal Opportunity Public Notification Policy.

United States Department of Agriculture (USDA) and Foods Nutrition Services (FNS) ***prohibits discrimination*** based on:

- Race
- Color
- National Origin
- Age
- Sex
- Disability

3

All Food Nutrition Services nutritional assistance programs are prohibited from discriminating based on race, color, national origin, age, sex, and disability. The instruction is applicable to all programs and activities of a recipient of Federal financial assistance, whether those programs and activities are funded in whole or not.

Sometimes programs or certain parts of programs are established to assist a certain group such as children, the elderly, pregnant and lactating mothers, etc. Should Congressional legislation specify or set restrictions on program eligibility, those provisions take precedence over certain established guidelines.

“Disabilities” Clarification – Schools

- ADA Amendment Act of 2008
- Most physical and mental impairments constitute “disability”
- “State Licensed Healthcare Professional”
 - Authorized to write scripts
- Ensure parents and children fully aware of procedures

4

The USDA Memo SP 59-2016 issued Sept. 27, 2016, supersedes the earlier Instruction 783-2, Rev.2, and applies **only** to schools. Changes were made in 2008 to the Americans with Disabilities Act (ADA) Amendments Act which was intended to restore the broad scope of the term “disability”. After the passage, most physical and mental impairments constitute a disability. So the focus was changed from IF the student was disabled, to being proactive on working with parents to ensure an equal opportunity to participate in the School Meals Programs.

The memorandum also clarifies that a “State licensed healthcare professional” is any person which is authorized to write medical prescriptions under State law. Within the memo, are safeguards to ensure parents and children have all information on how to request meal modifications and the process to resolve any disputes. The memo emphasizes that food service staff must be made aware of the procedures of handling requests for meal modifications.

“Person with a disability...”

- “Any person who has a physical or mental impairment which substantially limits one or more ‘major life activities,’ or has a record of such impairment, or is regarded as having such impairment.”
- Examples
- Need not be life threatening
- Determined on case-by-case basis

5

The question of whether a child has a disability for the purposes of the memorandum has been simplified by the ADA Amendments Act, and shouldn't require extensive analysis. Schools shouldn't be a part of the determination as to whether it is truly a disability. All Federal documents involved in the definition, those being Section 504 of the Rehabilitation Act, ADA, and USDA regulations define a person with disability as “any person who has a physical or mental impairment which substantially limits one or more “major life activities”, OR has a record of such impairment, OR is regarded as having such impairment.”

Some examples of major life activities are broadly defined and include such as caring for oneself, performing manual tasks, see, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, etc. Also included are the operation of major bodily functions such as functions of the immune system, normal cell growth, digestive, bowel, bladder, normal cell growth, respiratory, circulatory, endocrine, and reproductive functions.

The physical or mental impairment need **not** be life threatening to constitute a disability. It is enough that it limits a major life activity. Even if medicine or another means reduce the impact of the impairment, it may still be covered as a disability. Whether the impairment constitutes a disability must be determined on a case-by-case basis. The determination must be made with regard to whether medicine, etc., reduce the impact of the impairment.

Medical Statements

- Required when asked to make modifications
- Outside Program patterns, meals not reimbursable without Statement
- If accomplishable within Program patterns, may choose to accommodate without Statement
- If unclear, may request/require appropriate clarifications

6

The decision to provide modifications to the meals for children with disabilities is to be made on a case-by-case basis. BUT, that decision can ONLY be considered when supported by a written statement from a licensed healthcare professional. Therefore, meals with modifications are not reimbursable without the written statement. If the changes requested do not follow the Program meal patterns, the changes must be accompanied with a Medical Statement. If the changes requested can be made without altering the Program meal patterns, the SFA may choose to not require the Medical statement. To be sure of compliance with USDA guidance, request the statement to be safe, especially if the request is the least bit confusing.

Assessing Requests for Substitutions/Modifications

- Reasonable modification to accommodate disability
- Requested brand name not required
- Rarely: substitutions that alter nature of the program
- Emphasis on working with parents/guardian

7

When making substitutions and modifications to meal patterns, there are some items to remember. SFAs are not required to provide the specific substitution product requested, i.e., brand name. SFAs must offer a reasonable modification that effectively accommodates the child's disability and provides equal opportunity to participate in or benefit from the program. Should SFAs be asked to make modifications that fundamentally alter the nature of the program, contact the State Agency for assistance. Remember the emphasis should be on working with parents and guardians to develop an approach that will be effective for the child.

Further Information

- Exclusion in any way prohibited
- Reimbursement for modified meals remain at appropriate rate
- Any other needs/services at no cost to the parent/guardian
- Facilities must be made accessible
- Must provide feeding equipment and aides if needed
- Acceptable use of Child Nutrition Funds

8

Other items to keep in mind when accommodating modifications requested include the following:

- Exclusion of any child from the Program environment is not considered an appropriate or reasonable modification. EX.: Can't sit in the hallway during the service of "breakfast in the classroom". Can't use the "Peanut Allergy table" for punishment for misconduct.
- Any modifications made because of disabilities will continue to be reimbursed at the rate appropriate to the student– Fr, Rd, Pd.
- No extra charges are to be assessed of parents because of extra efforts for the needs for their child because of the disability
- All facilities must be made accessible for the child and at the expense of the SFA
- Any feeding equipment or aides to assist the child with eating must be provided and are acceptable uses of Child Nutrition funds.

Definitions

- Discrimination – Different treatment that makes distinction of one person/group from others
- Applicant – A person who applies for participation in an FNS program.
- Assurance – A contractual agreement to administer services and benefits.
- Civil Rights – Nonpolitical rights of a citizen under 13th and 14th Amendments.
- Complainant – Person or group alleging discrimination.

A few definitions of terminology used in Civil Rights training and guidance--
An **applicant** is a person who applies in writing, electronically, verbally, or through a designated representative, for participation in a Foods and Nutrition Services federally assisted program.

An **Assurance** is a contractual agreement in which a State agency, local agency or other recipient legally agrees to administer Food and Nutrition Services program benefits in accordance with all laws, regulations, instructions, policies and guidance related to nondiscrimination in delivery of their program.

Civil Rights is defined as the nonpolitical rights of a citizen, or the personal liberty guaranteed to U.S. citizens by the 13th and 14th Amendments of the Constitution.

A **complainant** is a person or group of persons who allege discrimination in the delivery of program benefits or services by a State agency, local agency or other recipient.

Definitions

- **Corrective Action Plan** – Plan taken to resolve noncompliance.
- **Limited English Proficiency (LEP) Persons** – Persons who do not speak English as their primary language.
- **Office of Civil Rights (OCR)** – Units with authority to assure equal opportunity and nondiscrimination of all persons.


10

A **corrective action plan** is a plan describing the actions to be taken to resolve ANY noncompliance with civil rights regulations, instructions, policies, and guidelines.

Limited English Proficiency person(s) are individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.

Office of Civil Rights is the organizational unit reporting to the Office of the Secretary of Agriculture, who actually administers our programs, to assure equal opportunity and nondiscrimination for all persons in all aspects of USDA programs.

In the actual Civil Rights Guidance document from USDA, there are many more definitions that could be covered. But for our purposes today, the ones we have just highlighted will prove to be the most necessary for understanding and ensuring compliance.



Limited English Proficiency (LEP)

- Proportion of persons served/encountered.
 - Greater number of LEP persons.
 - Prior experience.
- Frequency of LEP to the program.
- Nature or importance of program.
- Resources available to recipient and costs.

11

Within the Title 6 of the Civil Rights Act of 1964 are established non-discriminations based on “national origin”.

State and Local agencies that fail to provide services to Limited English Proficiency (LEP) potential eligible persons OR deny them access to programs and activities, may be discriminating on the basis of national origin. Therefore we must take steps to assure “meaningful” access to the information and services we provide.

What actually constitutes “reasonable steps” to ensure access is contingent on several factors. Those factors to be considered include

- the number or proportion of LEP persons eligible to be served or likely to be encountered by the program. So, the greater the number, the more likely language services are needed.
- Examination of prior experience with LEP persons will help determine how broad the scope of language services needs to be. These groups may have been under-served in the past because of existing language barriers.
- Agencies should assess the frequency of contact with a LEP individual seeking assistance as well as frequency with particular languages. Keep in mind to take care to consider whether having the appropriate outreach in place for certain LEP persons could actually INCREASE the frequency of contact with those different groups.
- The more important the activity, information, service or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. Example: Ambulance.
- Finally, the resources you have available to you to reach these LEP persons may allow “reasonable steps” to not be cost efficient when the costs exceed the benefits. Be sure to explore the most cost effective ways of delivering competent and accurate language services.

Regulation – July 2004

- Eliminate barriers to participation of Faith-Based Organizations (FBO) and Community-Based Organizations (CBO).
- Ensure level playing field.

12

The Department of Agriculture promulgated a regulation on July 9, 2004, to ensure the elimination of unwarranted barriers to the participation of faith-based organizations in USDA programs to ensure that no organization will be discriminated against in a USDA program on the basis of religion. It was to also ensure that USDA-funded programs are available to all regardless of religion. This regulation ensures a level playing field for the participation of faith-based organizations and other community organizations in the USDA programs. It allows a participating religious organization its independence provided that USDA funds do not support any religious activities such as worship, instruction or proselytizing. It also clarifies that these organizations can use space in their facilities to provide USDA-funded services without removing religious art, icons, scriptures, or other religious symbols.

Elements of Public Notification

- Availability of program.
- Complaint information.
- Nondiscrimination statement.

13

All FNS assistance programs must include a public notification system for the purpose of informing applicants/participants of the program's availability, rights and responsibilities, policy of nondiscrimination and the procedure of filing a complaint.

The Public Notification must include the following three basic elements:

--Specific action to inform applicants, participants, and potentially eligible persons of the available program as well as their program rights and responsibilities, and the steps necessary for participation. You all do this through the completion of your application/agreement/policy statement which allows participation in your program.

--Applicants and participants must also be advised of their right to file a complaint, how to file and the procedures involved. You accomplish this through the public release.

--All information materials and sources used by FNS, State agencies, and local participants, to inform the public about FNS programs must contain a nondiscrimination statement. We will further detail this area as we go.

Requirements of Posting

- Posted in full.
- On all materials.
- Public information/education.
- Public distribution.
- Cannot be modified.

14

State or local agencies must post the nondiscrimination statement AND include it, in full, on all materials regarding any FNS programs. If the material is produced for public information, public education, or public distribution, the statement must be there and cannot be modified. So let's look at the statement.

NEW Authorized 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](http://www.ascrusda.gov/complaint_filing_cust.html), (AD-3027) found online at: http://www.ascrusda.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.

15

**Changes were made in the authorized statement last school year. AGAIN
<Read the slide.>**

Some of the revisions are just rewording; however, some of the previous wording has been removed with the first and second paragraph having a lot of new information.

Modifications are allowed ONLY when agencies are issuing joint materials and then those modifications must be approved by USDA FNS. For all Child Nutrition programs, this is the statement to be used.

If Material Too Small?

Must appear:

**“This institution is an equal
opportunity provider.”**

16

If the material is too small to permit printing the entire statement to be included, the material will, at a minimum, include the statement “This institution is an equal opportunity provider.” It should be printed no smaller than the text on the material being printed. State or local agencies are NOT allowed to alter the statement in any form. It must be printed verbatim. It CAN NOT read “_____ Public Schools is an equal opportunity provider.”

It is not required to be printed on such items as cups, buttons, magnets, and pens that identify the program, as the size would be impractical. With public service announcements being short in duration, the statement, “This institution is an equal opportunity provider,” is sufficient.

Methods of Public Notification

- Poster: “And Justice for All” except in Family Day Care Home (FDCH – **Child Care**) providers.
- Inform of programs and/or changes.
- Provide information in alternate formats for disabled.

17

Agencies serving the public must take certain actions to inform the general public about FNS programs and applicable Civil Rights requirements. The nondiscrimination poster “And Justice For All” must be prominently displayed. An exception to this is in Family Day Care homes. Sponsors MUST display the poster; however, HOMES are exempt from this requirement.

Should the state agency produce its own posters, which we here in Oklahoma often do, the reproduction must be approximately the same size as the USDA produced one, that being 11” by 17”.

New “And Justice for All” posters were distributed/mailed to all participants. Potentially eligible persons, applicants, and participants must be informed of programs or changes in programs. This includes information pertaining to eligibility, benefits, and services, the location of local facilities or service delivery points, and hours of service.

Information must be provided in alternative formats for persons with disabilities.

Methods of Public Notification

- Provide nondiscrimination statement on all information to public.
- Convey equal opportunity message on all graphics.

18

The required nondiscrimination statement must appear on all appropriate FNS and agency publications that are **PROVIDED TO THE PUBLIC**. Also all photographs and other graphics that are used to provide program or program-related information must convey the message of equal opportunity to all groups.

The notification is NOT required if the material is not going to a public entity. Example: NOT putting it on the statement to parents of their child's meal charges/account balance.

Civil Rights Training

- Required for compliance.
- State Agency must train agency staff.
- State Agency must train local agencies.
- Local agencies train frontline staff.

19

Just as you are participating in this training, certain trainings are required in order to comply with Civil Rights guidelines.

Training is required so that people involved in all levels of administration of all USDA programs understand civil rights related to laws, regulations, procedures and directives. Persons responsible for reviewing Civil Rights compliance MUST receive training to assist them in performing their review responsibilities.

Therefore, State agencies are responsible for training their own staff as well as training local agencies like you. In turn, you are required to train the staff in your local setting who interact with YOUR program participants.

Civil Rights requirements are also published and distributed each year to our program participants as well—through the Child Nutrition Manual, CACFP and FDCH (Child Care) Training Manuals.

Training Must Include

- Collection and reporting of data.
- Systems of notification.
- Complaint procedures.
- Review techniques.
- Resolution of noncompliance.

20

Specific subject matter in the training must include procedures for collecting and reporting the data obtained; effective public notification systems, procedures for handling complaints, compliance review techniques, and resolving situations when found in non-compliance. Usually within the training are monitoring the accommodation of persons with disabilities and for language difficulties. Conflict resolution and customer service are also covered.

Data Collection and Use of Data

- Obtain from all applicants.
- Always use dignity and respect.
- Obtain data by ethnicity and race.
- Document and maintain for three years.

21

State agencies and local agencies are required to obtain data by race and ethnic category on all potentially eligible populations, applicants, and participants in the program service area.

Guidelines put forth from the Office of Management and Budget states: "Respect for individual dignity should guide the processes and methods for collecting data on race and ethnicity."

Both ethnicity and race must be obtained and all Civil Rights information and documentation as with other documents must remain on file for three year.

2016-2017 Application for Free and Reduced-Price School Meals Complete one application per household. Please use a pen (not a pencil).
Apply online at [www.nyschools.org/mealapp](#)

STEP 1 List ALL household members who are infants, children, and students, up to and including Grade 12 (if more space is required for additional names, attach another sheet of paper)

Definition of Household Member—someone who is living with you and whose income and expenses, even if not related.	Child's First Name	MI	Child's Last Name	School Name	Grade	Birth Date	Student?		Foster Child	Homeless, Migrant, Runaway?
							Yes	No		
Children in foster care and children who meet the definition of homeless, migrant, or runaway are eligible for free meals. Read How to Apply for Free and Reduced-Price School Meals.							<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
							<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
							<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
							<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
							<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

STEP 2 Do any household members (including you) currently participate in one or more of the following assistance programs: SNAP, TANF, or FDIPI?
If No, go to STEP 3. If Yes, write a case number here, then go to STEP 4. (Do not complete STEP 3.) Case Number: _____

STEP 3 Report income for ALL household members (Skip this step if you answered YES to STEP 2)

A. Child Income
Sometimes children in the household earn or receive income. Please include the TOTAL income received by all children in the household listed in STEP 1 here.

B. All Adult Household Members (Including Yourself)
List all household members not listed in STEP 1 (including yourself), even if they do not receive income. For each household member listed, if he/she does receive income, report gross income (before taxes) for each source in whole dollars (no cents) only. If they do not receive income from any source, write 0. If you write 0 or leave any field blank, you are certifying (promising) that there is no income to report.

Name of Adult Household Member (First and Last)	Earnings from Work	How Often			Public Assistance/Child Support Allowance	How Often			Pension/Retirement/Other Income	How Often		
		Weekly	Bi-weekly	Monthly		Weekly	Bi-weekly	Monthly		Weekly	Bi-weekly	Monthly
\$	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	\$	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	\$	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
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OPTIONAL Children's Racial and Ethnic Identities
We are required to ask for information about your children's race and ethnicity. This information is important and helps to make sure we are fully serving our community. Responding to this section is optional and does not affect your children's eligibility for free or reduced-price meals.

Ethnicity (Check One): Hispanic or Latino Not Hispanic or Latino
Race (Check One or More): American Indian or Alaskan Native Asian Black or African American Native Hawaiian or Other Pacific Islander White

This data may already be part of the enrollment information provided and on file.

For schools, the Application for Free and Reduced-price Meals is one of the means used by which the data can be collected. Part 5 of the **NEW** application is the area that gathers the Ethnicity and Race data.

**CHILD AND ADULT CARE FOOD PROGRAM (CACFP)
FAMILY-SIZE AND INCOME APPLICATION**

PART 1. ALL HOUSEHOLD MEMBERS

a. Name(s) of Enrolled Child(ren)

b. Names of ALL Household Members (First, Middle Initial, Last)	Age of Enrolled Child(ren)	Birth Date of Enrolled Child(ren)	Check If a Foster Child (The Legal Responsibility of a Welfare Agency or Court) ^a	Check if NO Income
			<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>

^aIf all children indicated below are foster children, skip to Part 5 to sign this form.

Part 6: Participant's Ethnic and Racial Identities (Optional)

<i>Mark one ethnic identity:</i> <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino	<i>Mark one or more racial identities:</i> <input type="checkbox"/> Asian <input type="checkbox"/> White	<input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Native Hawaiian or other Pacific Islander	<input type="checkbox"/> Black or African American
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23

This data may already be part of the enrollment information provided and on file.

For **CACFP** (Child Care) participants, the means to gather the ethnicity and race data is the Family Size and Income Application. Part 6 is the section that gathers the Ethnicity and Race data.

Data Collection – Cont'd

- Participant not required to furnish.
- Self identification preferred.
- May not “second guess.”

24

Participants are not required to furnish race and ethnicity information unless it is necessary to determine the applicant's eligibility to receive a benefit or the amount the participant may be entitled to receive. OMB goes on to say “ideally, respondent's self-identification should be facilitated to the greatest extent possible, recognizing that in some data collection systems, observer identification is more practical.” FNS believes also that self-ID or self-reporting is the best method. Therefore, applicants should be encouraged to provide the information by YOU explaining the use of the data. In other words, that it is requested solely for the purpose of determining that you, the institution, is in compliance with Federal civil rights laws. They should also be assured that their response will not affect consideration of their application for the program and the information will be protected by the Privacy Act.

The person collecting the data may not second guess the applicant or in any other way change or challenge a person's self-declaration as to his or her race and ethnicity background unless the declaration is patently false.

Should applicants choose NOT to complete the section on Ethnicity and Race, **schools and program providers** are allowed to make the determination by observation. Once the applications have been reviewed and benefits determined, the signature of the approving officer will confirm the race and ethnicity information.

Data: Ethnicity and Race

- Two-question format.
- Ethnicity appears first on data collection.
- Race: “Mark one or more” must be response option.

25

Race and Ethnicity categories must be in a 2-question format. This is simply to provide flexibility and ensure data quality. Ethnicity should appear first on the data forms where the respondent must choose only one of two options. Respondents should be offered the option of selecting one or more racial designations. Recommended instructions should accompany the multiple response for race and should actually state: “mark one or more” or even “select one or more”.

Data: Ethnicity

- “Hispanic or Latino”

AND

- “Not Hispanic or Latino”

26

The **ONLY** designations for collection on Ethnicity are “Hispanic or Latino” AND “Not Hispanic or Latino”. Hispanic or Latino is defined as a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term “Spanish origin” can be used in addition to “Hispanic or Latino”.

Data: Race

- American Indian or Alaskan Native.
- Asian.
- Black or African American.
- Native Hawaiian or other Pacific Islander.
- White.

27

For race determination, the ONLY designations include **<Read the Slide>**.

--**American Indian or Alaskan Native** is defined as: A person having origins in any of the original people of North and South America, including Central America, and who maintains tribal affiliation or community attachment.

--**Asian** is defined as: A person having origins in any of the original people of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, china, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

--**Black or African American** is defined as: A person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" can be used in addition to "Black or African American".

--**Native Hawaiian or Other Pacific Islander** is defined as: A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

--**White** is defined as: A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Complaint Procedures

- Right to file within 180 days.
- Acceptance of complaint.
- Forms.
- Verbal complaints.

28

Certain procedures must be followed when complaints are alleged.

--Any person or representative alleging discrimination has the right to file a complaint within 180 days of the alleged discriminatory action.

--The complainant and the entity that the complaint is filed against will be encouraged to resolve the issue at the lowest possible level and as quickly as possible.

--All complaints, written or verbal must be forwarded to the appropriate Office of CR director. Anonymous complaints will be handled to the extent feasible, based on the available information.

--Complaint forms may be developed, but the use of such must not be a prerequisite for acceptance of a complaint.

--Verbal complaints require some special steps.

Civil Rights Complaint Forms

- Schools – Pages C-24 - C-26, Child Nutrition Manual.
- CACFP Participants – Page 97-100, Training Manual.

29

As shown on the slide, if you are a **school**, your Complaint forms appear on pages C-24 – C-26 of the Compliance Manual.

--**CACFP** Participants, on Pages 97-100 of the current year's Training Manual.

Required Data – Verbal Complaints

- Contact information.
- Name and location of agency.
- Nature of incident.
- Basis of the discrimination.
- Contact information of others with knowledge of incident.
- Date(s) of alleged actions.

30

If the allegations are verbal or in person, and the complainant refuses or does not wish to place the allegations in writing, the person taking the allegations must write up the elements of the complaint for that complainant. Every effort should be made to obtain the following data:

- All contact information of the complainant.
- Specific location and name of the agency or entity delivering the service or benefits.
- Nature of the incident or action that led the complainant to feel discrimination was a factor as well as an example of the method or administration that is having an effect on the public and/or eligible persons and participants.
- The basis on which the complainant believes discrimination exists, such as age, race, etc.
- Names, titles, and all contact information on persons who may have knowledge of the alleged discriminatory action.
- Dates when the alleged discriminatory actions occurred or, if continuing, dates of the duration of the action.

Complaints: Processing Guidelines

- Provide participants option to file complaint.
- Accept and acknowledge complaints filed.
- Inform complainant of action planned.
- Request any additional information for clarification.
- Refer age discrimination to USDA Regional Office.

31

Each level of USDA FNS offices have certain guidelines to follow when processing complaints. This slide is a summary of general responsibilities of all agencies.

--All offices are to provide participants the opportunity to file complaints should they wish to do so.

--Complaints will be accepted and acknowledged when filed. Requests may be made of appropriate offices to gather further facts to either support or refute the allegations.

--The complainant will then be referred to the appropriate agency or division.

--Age discrimination allegations are referred to the Federal Mediation and Conciliation Service which is at the Regional level.

State Agency: Complaints: Processing/Resolving

- Maintain and operate a complaint/grievance processing system.
- Completed within 90 days of receipt.
- Specialist determines: referral or investigation.
 - Referral: Case is closed.
 - Investigation: Further action required.

32

Our duties as a State Agency for processing complaints of discrimination are to maintain and operate a complaint/grievance processing system approved by USDA's office of Civil Rights. We must then make sure you as our clients, are instructed on that processing system so as to be able to pass that information on to your participants when the need arises. As all complaints alleging discrimination are to be processed within 90 days of receipt, the State agency sends complaints to the USDA Regional Office of Civil Rights within 5 days, where it is immediately logged into a tracking system and forwarded to a Civil Rights Specialist to determine the appropriate course of action. The specialist then determines the case to be either a Referral or sent for Investigation. Referral simply means no action is required and the case is considered closed. It is then sent back to the State agency to prepare a response as such. If an investigation is deemed necessary, some steps of further action are required.

State Agency: Complaints: Processing/Resolving

- Investigation requires:
 - Request more information and review.
 - Conduct on-site investigation.
- Prepare written report of investigation.
 - Findings.
 - Summary of interviews.
 - Summary of case file examinations.
- Explanation if no investigation conducted.

33

When an investigation is deemed necessary, the Civil Rights Specialist uses one of two methods for obtaining information on a complainant—either contact the complainant for additional information and then conduct a desk review of the case files OR conduct an on-site investigation. The on-site investigation must consist of an interview with the complainant either on the phone or face-to-face, at which point the situation could be resolved and will conclude with a signed statement stating such from the complainant. Should further investigation be necessary based on the available information, additional steps include interviews with all agency officials, witnesses and other participants, as well as a complete review of the case files and other similar case files.

The State agency will then prepare a written report of the investigation that includes the findings of the investigation and a summary of all the interviews with the complainant and participants, and of all the case file examinations.

If an investigation is not conducted, the state agency shall provide an explanation in its report to the USDA Regional office. A decision letter will then be sent to the complainant.

State Agency: Complaints: Processing/Resolving

- **Written report of investigation:**
 - Findings in relation to specific allegations.
 - Summary of all interviews.
 - Summary of case file examinations.
- **Decision letter to the complainant:**
 - All information and decisions.
 - Appeal rights to the Secretary of Agriculture.

34

Finally the State agency will prepare a written report of the investigation and include the findings of the investigation with relation to the specific allegations of the complaint. It will include a summary of all interviews and case file examinations. Use of a standard format is suggested to ensure all pertinent information has been included.

A decision letter shall then be sent to the complainant that contains all information including: Name of complainant, date complaint was received, a statement of the jurisdictional authority, and a statement of each allegation and applicable regulation. If an investigation took place, the method of investigation must be included and the conclusions. The letter must include their appeal rights as well.

Review for Compliance



35

At the time of any routine **review or audit**, civil rights records are always within that review. Also reviewed at that time will be any complaint activity **and training session documentation**. As you can see from the slide, USDA regional office reviews the state agency and the state agency reviews you.

Let's look at the items to be determined in the review when we come to see you.

Contents of Review

- Equal opportunity to participate.
- Case records not coded by race or ethnic origin.
- Proper display of USDA poster.
- Statement on all materials.

36

--Reviewers will determine whether potentially eligible persons and households have an equal opportunity to participate in the program.
--We will determine that benefits are not coded by race or ethnic origin.
--We will determine if the USDA nondiscrimination poster is displayed in a conspicuous location.
--We will look for the correct nondiscrimination statement on all print materials distributed to the public

Content of Review – Continued

- Information made available to eligibles
- Need for/services provided Limited English Proficient (LEP)
- Collected data on file 3 years
- Handling of special dietary needs participants
- Procedures for handling complaints
- Civil Rights training being provided

37

- Is all program material and information being made available to all potentially eligible persons, program applicants, and participants.
- We will check and ask if applicant and participant racial and ethnic data are being collected and maintained on file for 3 years.
- Are complaints being handled in accordance with procedures outlined within the FNS Guidance and Instructions?
- We will ask to view documentation of Civil Rights training conducted for your staff, topics that were presented and those that were trained.

Special Review Circumstances

- Specific group not benefiting.
- Reports of alleged noncompliance.
- Patterns of complaints of discrimination.

38

A Special Compliance Review could be conducted by either FNS Regional office or USDA Headquarters Civil Rights Division when significant civil rights concerns are identified as having a direct effect on the delivery of the services and benefits.

Examples of Special Review Circumstances could include:

IF participation data indicates that a particular group in a specific area is not benefiting from the program,

OR Reports of alleged noncompliance is made by the media or a grassroots organization or advocacy group, or even another agency that necessitates resolution,

OR Patterns of complaints of discrimination have been documented.

Noncompliance Findings

Result from routine review findings when Civil Rights requirements not being adhered to whether by Regional Office, State Agency or program participant.

39

A finding of noncompliance may be the result of a routine management evaluation review, a special review or an investigation. Noncompliance is a factual finding that any Civil Rights requirement, as provided by law, regulation, policy, instruction, or guidelines, is not being adhered to by either a State agency, local agency or other program participant.

Examples of being found in Non-Compliance:

Denying benefits: race, color, national origin, age, sex or disability.

Providing benefits unequally to groups on basis of these.

Selecting members of planning and advisory bodies on these bases.

Selecting sites for programs/facilities in a way that denies access based on these.

Achieving Compliance – State Agency

- Written notice of areas of noncompliance and action required.
- Negotiate to achieve compliance.
- Submit findings to USDA Regional office within 60 days.

40

Once noncompliance is determined, steps must be taken immediately to obtain voluntary compliance if possible.

The effective date of the finding of noncompliance is the date of the written notice of noncompliance.

Steps for the State agency to take:

--Provide immediate written notice to the local agency or participant indicating the areas of noncompliance and the action required to correct the situation.

--Negotiate with the local agency or participant to achieve the compliance.

--Submit to the Regional office the Report of Findings of Noncompliance in letter format on all cases where corrective action has not been completed.

This must be done within 60 days.

Achieving Compliance – Regional Office

- Determine should further efforts be pursued.
- Has State Agency exhausted all voluntary compliance efforts?
- Report findings to USDA Headquarters with appropriate documentation.

41

The Regional Office will then determine whether the State agency should pursue further efforts to achieve voluntary compliance. If so, the case is referred back to the State agency with suggestions for further actions that might help achieve compliance.

If the Regional office determines that the State agency has exhausted all efforts at voluntary compliance, a letter is then prepared to the State agency, and local agency or participant. Information in that letter will include which citations are being violated, the 60-day notice to resolve the matter as well as a warning that the matter may be subject to legal actions. If the Regional office determines that voluntary corrective action cannot be achieved within the 60 days allowed, they must submit the Report of Findings of Noncompliance to the USDA Headquarters Civil Rights Division with appropriate documentation.

Achieving Compliance – FNS Headquarters

- Determination if further efforts should be pursued.
- If so, prepare response to Regional Office, State Agency and local recipients.
- Include 30-day time limit to resolve in the notification.
- Warning that matter may be subject to legal actions.

42

The Civil Rights Division of the FNS Headquarters in Washington must determine if further efforts are to be pursued. If so determined, they will then prepare a response and refer the case back to the Regional office as well as to the State agency and local recipients with suggestions for further actions to achieve voluntary compliance.

This response will include notification of a 30-day time limit to resolve the matter and agree to corrective action or submit a request for reconsideration. The response will also include a warning that the matter may be subject to legal actions.

Thirty Day Limit Unattainable?

- USDA Headquarters review efforts to secure voluntary compliance.
- Issue orders to post notice of hearing.
- Arrange for designation of law judge.

43

If the letter from USDA Headquarters fails to achieve compliance within the 30 days allowed, the complete case and other required documentation is forwarded to the Office of Civil Rights (for the whole of USDA) for formal enforcement action. These are then forwarded to the Office of the General Counsel and the Department of Justice.

At that point the Office of Civil Rights then reviews the record for completeness and adequacy of efforts at securing voluntary compliance. Upon review, the order is then issued to post a notice of hearing and arrange for the designation of an administrative law judge to preside over such hearing.

Termination/Suspension of Assistance

- After all administrative responsibilities have been met by FNS and USDA.
- Required letter for termination of benefits sent to appropriate administrator.
- Required notification when re-applying for benefits.

44

Termination or suspension of assistance by USDA must not become effective until FNS and USDA administrative responsibilities have been met. Once final termination is approved by Secretary of Agriculture, the FNS Headquarters Civil Rights Division must prepare a letter to the appropriate FNS Deputy Administrator for the termination of the financial assistance. The letter must advise the Deputy Administrator to advise Headquarters Civil Rights Division should the violating entity reapply for assistance. Upon agreement of the reapplication, FNS Headquarters must conduct a pre-approval onsite review.

Appendix B: Child Nutrition Programs

- National School Lunch Program (NSLP)
- School Breakfast Program (SBP)
- Special Milk Program (SMP)
- Summer Food Service Program (SFSP)
- Child and Adult Care Food Program (CACFP)

45

Appendix B of the Civil Rights Guidance includes information specifically for all Child Nutrition Programs.

These Civil Rights guidelines and policies apply to NSLP, SBP, SMP, SFSP, and all Child and Adult Care Food Programs.

As we have covered most of these areas already, we will quickly touch on a few additional things, as well as some reminders.

Civil Rights Agreements – New Programs

- Schools: Pre-award Review/Technical Assistance Visit.
- CACFP Programs: Approval Visit.

46

Anytime a new entity, whether it be a school or a CACFP program such as a day care facility comes on to a USDA food program, a first-time visit must be made by the State agency. **For a school**, this is termed a Pre-award Review/Technical Assistance Visit. **For CACFP programs** it is called the Approval Visit.

Through the questions used on these review forms, the Civil Rights information is obtained and/or conveyed from and to the personnel. Appropriate signatures are obtained at the summation of the visits.

Civil Rights Activities – **School** Requirements

- Compile Civil Rights data.
- Complete required report by Oct. 31.
- Maintain records for 3 years.
- Permit authorized CNP/USDA personnel **ONLY** to review records.

47

Schools are bound by their agreement to perform the following tasks: Compile the required Civil Rights data on the Civil Rights Compliance Checklist found on page C-21 of the Compliance Manual. The Local Education Agency (LEA) also agrees to permit effective enforcement of nondiscrimination laws and to also permit all authorized Child Nutrition Program and/or USDA personnel to review those records. Each year this is once again required as part of the online “Renewal of the Agreement” found on eClaims.

CIVIL RIGHTS COMPLIANCE CHECKLIST
SCHOOL YEAR _____

United States Department of Agriculture (USDA) regulations outline each site's responsibility with regard to civil rights compliance in the Child Nutrition Programs (CNP). The following checklist furnishes a quick overview of requirements.

	YES	NO	N/A*
1. Does the letter to households include:			
a. The required nondiscrimination statement?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Where a complaint may be filed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Is a USDA/Food and Nutrition Service (FNS)-approved poster displayed in a prominent place and visible to recipients?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the correct nondiscrimination statement included on appropriate program materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Has the school food authority (SFA) sent out a public release to community/grassroots organizations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Are foreign language translations available when a significant number of persons speaking only a foreign language are in the population?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Are procedures established to receive complaints alleging discrimination?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Have there been any written or verbal complaints alleging discrimination?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. If <i>YES</i> , have these complaints been reported to the State Department of Education (the <i>State Agency</i>)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Do admission procedures used restrict enrollment by minority persons?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Are incorrectly denied Applications for Free and Reduced-Price Meals disproportionately composed of minority applications?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Are disabled students provided program benefits as prescribed by regulations (including special dietary needs), as appropriate?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

48

This is the checklist for **schools** to complete for **each site** by October 31 of each year. The form must then be kept on file for 3 years. It is found on **page C-23 of the Child Nutrition Manual**.

Civil Rights Activities – **School** Requirements, Cont'd.

- Allow State Agency to monitor the agreement for compliance.
- Allow State Agency to review and evaluate data during required monitoring process every three years.
- If violated, FNS has right to seek judicial enforcement of assurance.

50

During the routine reviews of a **school district**, the State agency is to be permitted to monitor the school program for compliance with the agreement as well as evaluate the data obtained. This routine review of schools is conducted every three years. The Civil Rights Compliance Checklist from **each of the years within the review period** will be viewed at that time.

If violations are found, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of the agreement.

Again, the review is done every 3 years and as most of you know, Civil Rights is just a small portion of what the reviewers will ask to see and monitor.

Civil Rights Activities – CACFP (**Child Care**) Participants

- Compile Civil Rights data.
- Maintain data at the institution for 3 years.
- Restrict access to only authorized personnel.

51

CACFP program participants are bound by their agreement and must maintain the compiled Civil Rights data for 3 years. The participants also agree to permit effective enforcement of nondiscrimination laws and to also permit all authorized Child Nutrition Program and/or USDA personnel to review those records.

Civil Rights Reviews – CACFP (**Child Care**) Participants

- State Agency conducts Civil Rights reviews.
- As part of regular program review.
- No less than every three years.

52

During the routine reviews of each CACFP participant, the State Agency is to be permitted to monitor the program for compliance with the agreement as well as evaluate the data obtained. This routine review is conducted approximately every three years.

If violations are found, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of the agreement.

This is done at least every 3 years and Civil Rights is just a small portion of what the reviewers will ask to see and monitor.

QUESTIONS??

Patricia Beutler, Director Of Training
Child Nutrition Programs
Oklahoma State Department of Education
405-522-5039

Patricia.Beutler@sde.ok.gov

53

Questions??

Contact information is there on the slide. PLEASE feel free to call with any questions you may have.



Print this slide to show documentation of your Civil Rights Training!