



**United States
Department of
Agriculture**

Food and
Nutrition
Service
3101 Park
Center Drive
Alexandria, VA
22302-1500

DATE: February 3, 2012

MEMO CODE: SP 11-2012, CACFP 05-2012, SFSP 07-2012

SUBJECT: Guidance on the Food Donation Program in Child Nutrition Programs

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

On November 18, 2011, the Consolidated and Further Continuing Appropriations Act, 2012 (P.L. 112-55) amended the Richard B. Russell National School Lunch Act (NSLA) by adding paragraph (l), the Food Donation Program at the end of Section 9. The amendment provides clear statutory authority for current Food and Nutrition Service (FNS) food recovery and donation policy in use by schools and institutions participating in the Child Nutrition Programs, the National School Lunch and School Breakfast Programs, Child and Adult Care Food Program (CACFP), and Summer Food Service Program (SFSP).

Food donation has been a longstanding policy in all Child Nutrition Programs and the current amendment to the NSLA clarifies the policy through statute. Although, FNS does not believe this amendment will require change in current food recovery practices, this memorandum provides updated and consolidated guidance on this issue; therefore, the following existing memoranda relating to this issue are rescinded: SP 29-2009, SFSP 04-2009, CACFP 07-2009, Excess Summer Meals, June 26, 2009.

The statute clarifies that any program food not consumed may be donated to eligible local food banks or charitable organizations. The amendment defines the terms "eligible local food banks or charitable organizations" to mean any food bank or charitable organization which is exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)). It also extends protections against civil and criminal liability for persons or organizations when making food donations to the extent provided under the Bill Emerson Good Samaritan Food Donation Act, found in section 22 of the Child Nutrition Act.

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Food Donation Policy

FNS is committed to preventing hunger and to responsible stewardship of Federal dollars. Child Nutrition Program policy aims first to limit food waste and unnecessary costs. If a school, CACFP institution, or SFSP sponsor has leftover food on a frequent basis, menu planning and production practices should be adjusted to reduce leftovers.

Nevertheless, because of unforeseen circumstances, occasionally there will be leftover food. All alternatives permitted by Program regulations and State and local health and sanitation codes should be exhausted before discarding food. Options may include using leftovers in subsequent meal services, offering “sharing tables,” or transferring food to other sites. (*See attached: Donation of Leftover Foods From School Cafeterias, June 11, 1996*). Where it is not feasible to reuse leftovers, excess food may be donated to a non-profit organization, such as a community food bank, homeless shelter, or other nonprofit charitable organizations.

As a result of the Department’s Food Recovery and Gleaning Initiative of 1997, a “Best Practice” manual was created which highlighted measures to provide unused food to needy organizations. In addition, the “Citizen’s Guide to Food Recovery” was developed as a resource guide on food recovery programs for businesses, community-based organizations, private citizens, and public officials and describes some of the food recovery activities taking place at that time and suggestions for new efforts. These publications can be found at: <http://www.fns.usda.gov/fdd/gleaning/besthome.htm> and <http://www.usda.gov/news/pubs/gleaning/five.htm>. FNS will review these resources and determine if they require updating or if additional materials are required to assist schools and local educational agencies in the donation of food.

FNS will continue to support food donation as outlined above. State agencies should direct any questions to their FNS Regional Office.

Original Signed

Cynthia Long
Director
Child Nutrition Division

Attachment

JUN 11 1996

SUBJECT: Donation of Leftover Food from School Cafeterias

TO: Regional Directors
Special Nutrition Programs
All Regions

We frequently receive inquiries from schools and the general public concerning the donation of extra foods prepared for the National School Lunch and School Breakfast Programs. It appears that many school food service managers believe that the program regulations prohibit them from donating leftovers to organizations which feed the needy.

As you know, schools may claim reimbursement for only one lunch served per child per day, and schools are expected to plan and prepare sufficient amounts of food to achieve this goal. When the food actually prepared exceeds the amount needed for the reimbursable meal service, schools may dispose of the extra food as they wish as long as they comply with applicable State and local health standards. Thus, schools may donate leftover foods to appropriate nonprofit institutions such as soup kitchens or homeless shelters provided this practice is not prohibited by State or local laws or regulations. The Department of Agriculture strongly encourages them to consider this option whenever it is feasible. This policy is in keeping with Secretary Glickman's active promotion of local gleaning and donation programs to feed the poor and homeless.

Please remind your States of this longstanding policy and request that they ensure that their local schools are aware of this option.


ALBERTA C. FROST
Director
Child Nutrition Division



United States
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Nutrition
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3101 Park
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Alexandria, VA
22302-1500

DATE: March 27, 2013

MEMO CODE: SP 31-2013

SUBJECT: Salad Bars in the National School Lunch Program

TO: Regional Directors
Child Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

This memorandum supersedes the January 21, 2011, policy memo SP 02-2011, "Salad Bars in the National School Lunch Program". This revision includes updates based on the revised nutrition standards for school meals and includes questions and answers. This memorandum continues to provide State agencies with information on how salad bars can effectively be used in the service of reimbursable meals and includes information on portion size, point of service, nutrient analysis, and food safety for school meals.

Background

USDA encourages the use of salad bars in the school meal programs. The 2010 Dietary Guidelines for Americans and the Institute of Medicine's (IOM) report, "The School Meals Building Blocks for Healthy Children" encourages the consumption of vegetables and fruits. The IOM report cites a 2007 study that determined that "salad bar programs in public schools indicate positive effects on fruit and vegetable consumption".

Additional data from the School Nutrition Dietary Assessment Study (SNDA) –II, SNDA-III and SNDA-IV describes the benefits of utilizing salad bars in the National School Lunch Program; schools with salad bars offer a wider variety of vegetables and fruits than other schools. Salad bars have the potential to improve nutrition and encourage the consumption of fruits, vegetables and legumes. In addition to the nutritional benefits, salad bars may lower plate waste in school feeding programs. While we recognize the many benefits of salad bars, we are cognizant that salad bars are not always a viable option in some school food service operations. We encourage school food authorities (SFAs) to incorporate salad bars into their school food service operations when possible, and to explore other creative options when salad bars are not an option.

There are many ways that salad bars can be incorporated into the reimbursable meal. Salad bars can feature a special fruit and vegetable theme, a baked potato bar, or a side salad. Salad bars can be set-up in a variety of ways, including pre-portioned and pre-packaged foods to emulate the grab-and-go concept to accommodate a high volume of students in a short period of time.

Portion Size

We have received numerous questions asking to clarify how the menu planner determines the planned portion size. The planned portion size should be an amount that is reasonable for that menu item. For instance, a cup of lettuce would be reasonable, but a cup of radish would be more than a child would normally consume.

When planning a salad bar as *part* of a reimbursable meal, the minimum portion sizes must be consistent with the meal pattern for the age-grade group. For example, when choosing fruits or vegetables from the salad bar to meet the fruit or vegetable component, a menu planner might determine that $\frac{1}{2}$ cup of two or more different fruit or vegetables from the salad bar is the minimum for grades K-5, and grades 6-8, and $\frac{3}{4}$ cup of two or more different fruit or vegetables is the minimum for grades 9-12.

Salad bars can also be used to serve one or multiple food components. It is important to remember that at least $\frac{1}{8}$ cup of fruit or vegetable must be served to count towards the fruit or vegetable component, including those served on the salad bar.

One of the challenges of a salad bar is to ensure that students actually take the minimum required portion size. Pre-portioning food items is one way that can assist staff in quickly identifying portion sizes. If not pre-portioning, then the cashier must determine if the food/menu item can count toward a reimbursable meal. Schools should consider placing signage as a visual aid to help students determine what a minimum portion is for self-service items, particularly in the case of leafy greens.

Point of Service

Salad bars can serve as the complete reimbursable lunch (except for milk) or as a food or menu item that is part of a reimbursable lunch, depending on the food items available and how it is structured. It is critical to consider the location of the salad bar in relation to the Point of Service (POS). To ensure that each student's selections from the salad bar meet the required portions for a reimbursable meal, the POS should be stationed after the salad bar. If a school is not able to position the salad bar in a location prior to the POS, State agencies may authorize alternatives to the POS lunch counts, such as stationing staff at the end of the salad bar, to ensure each student leaves with a reimbursable meal. It is important to note that un-monitored salad bars after the POS are considered extra food that cannot contribute toward the reimbursable meal. It is also important to remember that schools must identify, near or at the beginning of the serving line(s), the food components that constitute the reimbursable school meal(s). Schools have the discretion to determine the best way to present this information, including how to clarify which foods must be selected from the salad bar in order to select a reimbursable meal.

State agencies are encouraged to issue guidance which clearly identifies acceptable POS alternatives and instructions for proper implementation. SFAs may select one of the State agencies approved alternatives without prior approval. In addition, on a

case-by-case basis, State agencies may authorize SFAs to use other alternatives to the POS lunch count. Any such request to use an alternative lunch counting method must be submitted in writing to the State agencies for approval.

Nutrient Analysis

SFAs are not required to conduct a nutrient analysis, however, many SFAs do monitor the nutrients provided in their menus and it can be a helpful tool to determine the nutrient composition of all the foods offered in the salad bar by considering the foods together as a “recipe”. A standardized recipe is a recipe that has been carefully adapted and tested to ensure that it will produce a consistent product every time it is used. Standardized recipes can be helpful when developing recipes for food bars because they promote consistent food quality, predictable yield, control food costs and help with inventory control. Creating a standardized recipe will also simplify the nutrient analysis process. The standardized recipe should be constructed based on a typical day.

To develop a standardized recipe for a salad bar, the menu planner would first determine the planned serving size. Second, the number of servings the recipe produces must be established. Finally, the menu planner must determine the amount of each food ingredient in the recipe by:

- Measuring the amount of each ingredient placed on the food bar on a typical day.
- Measuring the amount of each ingredient left over on the food bar at the end of the meal service; and
- Subtracting the amount left over from the amount placed on the food bar for each ingredient to determine the amount of each ingredient to enter for the recipe.

Food Safety

Schools must implement food safety standards and best practices on all foods served in the meal programs, to minimize the risk of food-borne illness among students. It is important to control contamination from all sources and maintain appropriate food temperatures to ensure food safety. The National Food Service Management Institute’s *Best Practices: Handling Fresh Produce in Schools* fact sheet provides specific food safety recommendations for produce.

The NSF International (formerly the National Sanitation Foundation), (NSF) is an independent, not-for-profit, non-governmental organization that develops standards for foodservice equipment to promote sanitation and protect public health. NSF standards

are recommended, but not required by the Food and Nutrition Service. The NSF standards **do not** preclude salad bars in elementary schools. Instead, the NSF standards provide two possible options when salad bars are provided to elementary school children (grades K-5):

1. All food should be pre-wrapped when used at a self service bar.
2. Students may be served from an open salad bar, with a solid food shield barrier between the students and the food. This option requires a server to portion the choices made by the student and pass the portioned items over the food shield to the student.

Resources

Please refer to the following technical assistance resources referring to salad bars for more information:

- **Nutrient Analysis Protocols: How to Analyze Menus for USDA's School Meals Programs.** <http://www.fns.usda.gov/tn/Resources/nutrientanalysis.html>
- **Reviewer's Guide to SMI Nutrition Reviews and Technical Assistance.** Provides policies, procedures, and guidance for State agency personnel who conduct the nutrition standard reviews.
- **School Lunch Salad Bars – Executive Summary.** <http://www.fns.usda.gov/ora/menu/Published/CNP/FILES/saladbar.pdf>
- **Fruits and Vegetables Galore.** Includes diagrams of salad bar setups and recipes for salads-to-go and salad shakers in the *Tricks of the Trade: Preparing Fruits and Vegetables* booklet. http://teamn nutrition.usda.gov/Resources/fv_galore.html
- **Several Strategies May Lower Plate Waste in School Feeding Programs Report.** <http://www.ers.usda.gov/publications/FoodReview/Sep2002/frvol25i2g.pdf>
- **Best Practices: Handling Fresh Produce in Schools -** The National Food Service Management Institute's fact sheet provides specific food safety recommendations for produce. http://www.fns.usda.gov/fns/safety/pdf/best_practices.pdf

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- **Fruit and Vegetable Safety-** Food safety resources that provide food safety information specifically for produce.
http://healthymeals.nal.usda.gov/nal_display/index.php?info_center=14&tax_level=2&tax_subject=231&topic_id=1195
- **Let's Move Salad Bars To Schools** - A public health effort to support salad bars in schools. <http://saladbars2schools.org/>

State agencies are reminded to distribute this memo to program operators immediately. SFAs should contact their State agencies for additional information. State agencies may direct any questions concerning this guidance to the appropriate Food and Nutrition Service Regional Office.

Original Signed

Melissa A. Rothstein
Acting Director
Child Nutrition Division

Attachment

Q&As: Salad Bars in the National School Lunch Program

1. What resources are available to assist school foodservice directors in implementing salad bars in elementary schools?

USDA encourages the use of fresh fruits and vegetables in school meals. Self service salad bars are one approach that can be successfully included in the meal service when monitored closely to ensure safety. It is critical to review food safety resources and provide training for food service staff and students. Resources that might be particularly useful include:

- *Best Practices: Handling Fresh Produce in Schools*, a USDA and National Food Service Management Institute fact sheet that provides specific food safety recommendations for produce. Available at http://www.fns.usda.gov/fns/safety/pdf/best_practices.pdf
- *Program Information Manual, Retail Food Protection: Recommendations for the Temperature Control of Cut Leafy Greens during Storage and Display in Retail Food Establishments*. Available at: <http://www.fda.gov/Food/FoodSafety/RetailFoodProtection/ucm218750.htm>
- *Program Information Manual: Retail Food Protection Storage and Handling of Tomatoes*. Available at: <http://www.fda.gov/Food/FoodSafety/RetailFoodProtection/IndustryandRegulatoryAssistanceandTrainingResources/ucm113843.htm>
- *Retail Food Safety Program Information Manual: Safe Handling Practices for Melons*. Available at: <http://www.fda.gov/Food/FoodSafety/RetailFoodProtection/ucm217290.htm>
- *Fruits and Vegetables Galore: Helping Kids Eat More*, a USDA publication that contains information on how to train students on salad bar etiquette. Available at: http://teamnutrition.usda.gov/Resources/fv_galore.html

2. Are self-service salad bars allowed in elementary schools?

Yes, self-service salad bars may be used in elementary schools. It is critical to ensure that all schools with salad bars follow their food safety program to ensure safe foods for students. Factors such as layout and space available in the serving area, equipment available to protect the food on the salad bar from contamination, staffing available to monitor the salad bar during meal service, and training for staff and students must be considered in determining how to safely incorporate a salad bar into a school meals program.

The use of food guards or shields is one way to protect food on a salad bar from contamination. NSF International Standard/American National Standard (NSF/ANSI) 2 for Food Equipment provides a standard that establishes the minimum food protection and sanitation requirements for the materials, design, fabrication, construction, and performance of food shields for use in elementary schools.

Because food service codes and regulations vary among local jurisdictions and states, it is important to check with your local or state health department to determine if there are specific guidelines that must be followed in your jurisdiction for the installation and use of salad bars.

3. Are the NSF/ANSI Standards required?

Meeting the NSF/ANSI standards is not a federal requirement. It is important to check with your local health inspector to determine what serving methods are acceptable in order to be in compliance with local or state requirements.

4. Must salad bars be monitored for food safety?

Self service of ready-to-eat foods such as occurs with salad bars can pose a food safety risk that can be reduced by supplying clean utensils and dispensers and by employee monitoring of the salad bar during the meal service to ensure that the utensils and dispensers are properly used. Trained food service staff members should monitor the salad bar, keep all surface areas clean, (e.g., quickly clean up spills), and ensure that students follow good food safety practices (e.g., using tongs and staying above the sneeze guard). Keeping the salad bar clean and safe is essential for students' safety.

It is important to check with your local or state health department to determine the specific guidelines that must be followed in your jurisdiction when monitoring a salad bar. Some jurisdictions adopt the 2009 FDA Food Code and use it as the basis of their state and local food safety regulations. The 2009 FDA Food Code has provisions that address consumer self-service operations such as salad bars. Paragraph 3-306.13 (C) specifically addresses what foods can be offered for consumer self-service, effective dispensing methods, and monitoring by food employees trained in safe operating procedures.

5. What if we can't afford additional labor costs to have food service staff monitor the salad bar?

Keeping a salad bar safe and appealing requires monitoring. If a school is not able to provide food service staff or well-trained volunteers to monitor the salad bar during the meal service, pre-wrapped salad bar components may be an option to improve food safety.

6. What steps can be taken to help students follow good food safety practices when using a salad bar?

It is important to teach students about salad bar etiquette. This includes teaching children proper handwashing techniques and how to control transmission of harmful organisms by using tongs and staying above the sneeze guard. In addition to handwashing, students should be supervised to make sure they use good food handling practices while serving themselves at a salad bar. Reminder signs could be posted on the salad bar to reinforce good food handling practices.

7. Will pre-wrapped salad bar components increase waste?

If schools serve pre-wrapped salad bar components that students like and are packaged in appropriate portions, food waste will be minimized. To reduce packaging waste, reusable or recyclable containers may be used.

8. Will pre-wrapped (Grab 'n Go) options ignore the importance of student choice?

Pre-wrapped (Grab 'n Go) options can be offered in a variety of ways (both portion sizes and product combinations) to provide students choices, i.e. selecting from a variety of pre-wrapped salad bar items.

9. Are meals containing food from the salad bar reimbursable?

Yes, if foods from the salad bar are served in the minimum amounts required and contribute to an eligible reimbursable meal, that meal will be reimbursed.

10. Are schools that offer salad bars required to use specific size serving utensils to meet quantity requirements?

Schools are not required to use specific serving size utensils but may do so to encourage children to take appropriate food amounts. However, regardless of the serving utensils used, food service staff must ensure that the portions on the student's tray meet the meal pattern requirements. This may be done by training the cashiers to visually identify the correct *portions*, or by *pre-portioning the food items*.

11. May a school offer a daily salad bar line that offers multiple vegetable subgroups every day as a way to meet the weekly vegetable subgroup requirement?

Yes, this is acceptable if the salad bar is available to all children each day and offers all of *the required weekly subgroups over the course of the week*.

12. Do the vegetable subgroups offered on a daily salad bar need to be itemized on the production records?

Yes. Section 210.10(a)(3) of the regulations requires that production records and menu records for the meals show how the foods offered to help meet the meal component and quantity requirements. These records must be examined by the State agency during the administrative review to ensure the meals offered are reimbursable.

13. May a school offer an un-monitored salad bar and count the vegetables toward meeting the subgroup requirements, if the student leaves the Point of Service (POS) with a reimbursable meal?

An un-monitored salad bar after the POS is considered extra food that is not part of the reimbursable meal, but counts toward the dietary specifications. The students must select all the components for a reimbursable meal, including vegetable subgroups, from the meal line before the POS. However, salad bars after the POS are acceptable in appropriate circumstances approved by the State agency. In this scenario, for the vegetable subgroups to count, the school has to establish some monitoring mechanism to ensure that students are getting the required components and amounts for a reimbursable meal.

14. What are the approved alternatives to placing salad bars after the point of service/sale?

State agencies are encouraged to issue guidance that clearly identifies acceptable placement of salad bars relative to the point of sale.

15. How does offer versus serve (OVS) work with salad bars?

Schools that offer salad bars must follow the OVS requirement. To ensure that students actually take the minimum required portion sizes from a salad bar, foods may be pre-portioned to allow staff to quickly identify if the student has a reimbursable meal under OVS. If not pre-portioning, then the cashier must be trained to judge accurately the quantities of self-serve items on student trays to determine if the food item can count toward a reimbursable meal.



**United States
Department of
Agriculture**

Food and
Nutrition
Service

3101 Park
Center Drive
Alexandria, VA
22302-1500

DATE: April 26, 2013

MEMO CODE: SP 36-2013, CACFP 10-2013, SFSP 12-2013

SUBJECT: Guidance Related to the ADA Amendments Act

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

The purpose of this memorandum is to provide schools, institutions, facilities, sites, and sponsors participating in the Child Nutrition Programs (CNP) with additional clarifications on making dietary accommodations for children with disabilities as required under Section 9(a) of the Richard B. Russell National School Lunch Act, 42 USC 1758(a), CNP regulations and in accordance with the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), P.L. 110-325. The ADAAA, as explained in further detail in the next paragraph below, amended the Federal definition of disability, broadening it to cover additional individuals. Because of this broader definition, it is reasonable that CNP operators may see more children identified by their licensed physician as having a food-related disability than were identified previously. Program operators should note, however, that the process for identifying children with disabilities requiring an accommodation has not changed. The CNPs continue to require that participants seeking an accommodation for a disability that is food-related must provide a statement from a licensed physician (as defined by the State) identifying the food-related disability and indicating the required meal accommodation.

The ADAAA broadened the list of “Major Life Activities” for purposes of identifying individuals with disabilities and added a new category called “Major Bodily Functions”, 42 USC 12102(2)(B). This law continues to include as “Major Life Activities”: “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working.” As amended by the ADAAA, Major Life Activities now also includes “Major Bodily Functions” such as: “functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, and reproductive functions.” It is important to point out that individuals who take mitigating measures to improve or control any of the conditions recognized as a disability, are still considered to have a disability and require an accommodation.

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The Food and Nutrition Service is working to update the guidance, *Accommodating Children with Special Dietary Needs in the School Nutrition Programs, Guidance for School Food Service Staff* (http://www.fns.usda.gov/cnd/guidance/special_dietary_needs.pdf), to reflect the broadened definition of disabilities. Institutions participating in the CACFP and SFSP should also refer to this resource until more specific guidance is made available. State agencies are reminded to distribute this information to Program operators immediately. Program operators should direct any questions regarding this memorandum to the appropriate State agency. State agency contact information is available at <http://www.fns.usda.gov/cnd/Contacts/StateDirectory.htm>. State agencies should direct questions to the appropriate FNS Regional Office.

Original Signed

Melissa Rothstein

Acting Director

Child Nutrition Division



United States
Department of
Agriculture

Food and
Nutrition
Service

3101 Park
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22302-1500

DATE: April 26, 2013

MEMO CODE: SP 37- 2013

SUBJECT: Enhancing the School Food Safety Program
Frequently Asked Questions (FAQ)

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

This memorandum and its attachment supersede SP-37-2011, *Child Nutrition 2010: Enhancing the School Food Safety Program*. Attached are Questions and Answers (QAs) regarding the school food safety requirements for schools participating in Food and Nutrition Service (FNS) Child Nutrition Programs. The QAs provide additional clarification regarding the enhancements to the school food safety program.

The Healthy, Hunger-Free Kids Act of 2010 (the Act), Public Law 111-296, strengthens the existing food safety requirements in the National School Lunch Program (NSLP), School Breakfast Program (SBP) and all other Food and Nutrition Service (FNS) programs operated in a school. The purpose of this memorandum is to provide guidance on the implementation of the statutory requirement.

Section 302 of the Act amends section 9(h)(5) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(h)(5)) by requiring that the school food safety program based on Hazard Analysis and Critical Control Point (HACCP) principles be applied to any facility or part of a facility in which food is stored, prepared or served for the purposes of the NSLP, SBP or other FNS program. The school food safety program, required since 2004, addresses food safety in all aspects of school meal preparation, ranging from procurement through service. FNS anticipates that only minor modifications to existing food safety programs will be needed in order to meet this requirement.

Food safety programs must be reviewed to ensure that standard operating procedures for safe food handling are updated to include any facility or part of a facility where food is stored, prepared, or served, such as on school buses, in hallways, school courtyards, kiosks, classrooms, or other locations outside the cafeteria. This requirement applies to school breakfast or lunch meals, and Special Milk, the Fresh Fruit and Vegetable Program and afterschool snack or supper programs.

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Proper implementation of this requirement should not be burdensome because current procedures for food served in the cafeteria can be applied. FNS will continue to review and develop as needed practical food safety guidance to help State and local operators achieve the goals of this legislation.

State agencies are reminded to distribute this memo and attachment to their program operators immediately. School Food Authorities should contact their State agencies for additional information. State agencies may direct any questions concerning this guidance to the appropriate Food and Nutrition Service Regional Office.

Original Signed

Melissa Rothstein
Acting Director
Child Nutrition Division

Attachment

Enhancing the School Food Safety Program

Frequently Asked Questions (FAQ)

In 2005 FNS published, *Guidance for School Food Authorities: Developing a School Food Safety Program Based on the Process Approach to HACCP Principles*. This guidance identifies the minimum elements that must be included in a school food safety program based on HACCP principles and provides sample Standard Operating Procedures (SOPs) and documentation forms. The principles in the guidance still are in effect and apply to the new requirements that extend the school food safety program to the storage, preparation, or service of foods in locations outside of the school cafeteria. You can download the guidance document at: <http://www.fns.usda.gov/fns/safety/pdf/HACCPGuidance.pdf>

The source of information for the questions below is the 2009 FDA Food Code. Always follow your State and local food safety regulations because they may differ from the 2009 FDA Food Code.

1. Which FNS Child Nutrition Programs are included in the expanded HHFKA food safety requirement?

The following FNS Child Nutrition Programs are included in the expanded HHFKA food safety requirement:

- National School Lunch Program (including Seamless Summer Option)
- School Breakfast Program
- Fresh Fruit and Vegetable Program
- NSLP Afterschool Snack Program
- Special Milk Program operated by schools
- Summer Food Service Program operated by schools
- Child and Adult Care Food Program operated by schools

The new requirement does not apply to food sold or served in schools that is not part of an FNS Child Nutrition Program, such as food served at sporting events.

2. Which locations are affected by the new requirement?

The new requirement applies to all locations outside of the cafeteria where program meals or snacks are prepared or served as part of the FNS Child Nutrition programs noted in question #1. These locations may include but are not limited to classrooms, school buses, school courtyards, kiosks, vending machines used to dispense reimbursable meals, or field trip sites.

Also included in this new requirement are warehouses that store foods for FNS Child Nutrition Programs and are under the control of the SFA. The National Food Service Management Institute (NFSMI) developed sample SOPs that relate to warehouse activities:

- Receiving Deliveries:
<http://sop.nfsmi.org/HACCPBasedSOPs/ReceivingDeliveries.pdf>

- Preventing Cross-Contamination during Storage and Preparation:
<http://sop.nfsmi.org/HACCPBasedSOPs/PreventingCrossContaminationDuringStorageandPrep.pdf>
- Transporting Food to Remote Sites:
<http://sop.nfsmi.org/HACCPBasedSOPs/TransportingFoodtoRemoteSites.pdf>
- Holding Hot and Cold Potentially Hazardous Foods:
<http://sop.nfsmi.org/HACCPBasedSOPs/HoldingHotandColdPHF.pdf>
- Cleaning and Sanitizing Food Contact Surfaces:
<http://sop.nfsmi.org/HACCPBasedSOPs/CleaningandSanitizingFoodContactSurfaces.pdf>

3. Does the existing school food safety plan need to be modified?

To determine whether the existing school food safety plan is adequate you should ask whether it addresses the following questions:

- Does it include all of the programs listed above that are operated in your school?
- Does it include the locations where FNS Child Nutrition Program food is stored, prepared, or served outside of the cafeteria?

If you have not included all of the FNS Child Nutrition Programs that your school operates, or the locations where food is stored, prepared, or served as part of those programs, you will need to modify your plan to address food safety concerns in those areas.

4. What food safety practices are recommended when food is served outside of the cafeteria?

If you serve similar food items, both in the cafeteria and at other school locations, you may be able to extend your plan to these additional service sites with minimal modification of your plan. Many of the recommended food safety practices for service in the cafeteria also apply to food served in classrooms or other places. The following food safety practices are recommended:

- Maintain time and temperature control. Remember that potentially hazardous foods must be kept out of the temperature danger zone. Cold foods must be held at an internal temperature of 41°F or below. Hot foods must be held at an internal temperature of 135°F or above.
- Prevent cross contamination. For example, use serving utensils, or single-use disposable gloves when serving students; or portion and wrap items before service.
- Clean and sanitize food contact surfaces, including desks and tables in classrooms. Refer to NFSMI's sample SOPs for more information on cleaning and sanitizing food contact surfaces:
<http://sop.nfsmi.org/HACCPBasedSOPs/CleaningandSanitizingFoodContactSurfaces.pdf>
- Encourage school volunteers, and students to wash their hands before and after service. For recommended hand washing procedures, refer to question 8.

- Monitor food storage conditions, such as temperature, cleanliness, etc., if food is stored in locations outside of the kitchen or cafeteria.
- Avoid potential pest problems by removing all leftover food and food waste from classrooms, or other locations, immediately after service.

5. How can food safety be managed when food is served by school staff other than foodservice employees, such as teachers, classroom aides, or volunteers?

The following items are examples of strategies that you can use to manage food safety when food is served by other school staff or volunteers:

- Select single-serve items that have been portioned and wrapped and can be served easily in a classroom, or another location.
- Use equipment that will maintain safe temperatures when transporting potentially hazardous hot or cold foods. For example, use coolers with ice packs to keep cold foods at 41°F or below.
- Check the ambient temperature of holding equipment and the internal temperature of potentially hazardous food before delivery to classrooms, or other locations. For more information, refer to NFSMI’s SOP on hot and cold holding of potentially hazardous foods: <http://sop.nfsmi.org/HACCPBasedSOPs/HoldingHotandColdPHF.pdf>
- Advise school staff and volunteers to wash their hands properly before handling or serving food. For recommended hand washing procedures, refer to question 8.
- Provide serving utensils, or single-use disposable gloves.
- Minimize the amount of time that food is held in classrooms, or other locations. For example, drop food off as close to service time as possible and pick food up immediately after service.
- Provide basic food safety training in-house, or in conjunction with others, such as your local health department, or Cooperative Extension staff.

6. Can leftover food be saved and served again?

Determining whether leftovers may be served again involves many factors. Contact your local health department to discuss whether, and how, to handle leftovers.

The following suggestions may help you limit the amount of leftovers:

- Forecast the amount of food that you will need. Accurate planning will help minimize leftovers and manage food waste.
- Consider food quality when determining whether a leftover food item should be saved. Some food items may not be appealing when served again.

7. What food safety requirements should be followed when donating food from FNS Child Nutrition Programs?

FNS Child Nutrition Programs may donate food to any food banks or charitable organizations that are considered tax-exempt under section 501(c) (3) of the Internal Revenue Code. Refer to the FNS guidance on this topic for more information:

www.fns.usda.gov/cnd/governance/Policy-Memos/2012/SP11_CACFP05_SFSP07-2012os.pdf

Always follow State and local food safety regulations related to food donations.

8. Do students and staff need to wash their hands before serving or eating food in the classroom (or other serving site)?

The Centers for Disease Control and Prevention (CDC) recommends that everyone wash their hands before preparing or eating food to avoid food borne illness and spreading germs to others. Foodservice staff must follow all State and local food safety regulations when preparing or serving food, including those that address hand washing. When food is handled and served in the classroom, or other serving sites, teachers, students, other school staff, and volunteers also may handle food and should have clean hands.

CDC recommends the following procedures for proper hand washing:

- Wash hands with soap and water, if available.
- Wet hands with clean, running water (warm or cold) and apply soap.
- Rub your hands together to make a lather and scrub them well; be sure to scrub the backs of your hands, between your fingers, and under your nails.
- Continue rubbing your hands for at least 20 seconds. Need a timer? Hum the "Happy Birthday" song from beginning to end, twice.
- Rinse your hands well under running water.
- Dry your hands using a clean towel, or air-dry them.

According to CDC, an alcohol-based hand sanitizer that contains at least 60% alcohol is the best alternative when soap and water are not available. Alcohol-based sanitizer can reduce the number of germs on hands, but it does not eliminate all types of germs.

Source: www.cdc.gov/handwashing

9. Are resources available to support the implementation of this requirement?

Many of the standard operating procedures (SOPs) posted on the National Food Service Management Institute's website (<http://sop.nfsmi.org/>) will help you meet the requirement, and already may be in place in your operation. Related SOPs include:

1. Cleaning and Sanitizing Food Contact Surfaces
2. Holding Hot and Cold Potentially Hazardous Foods
3. Personal Hygiene
4. Preventing Contamination at Self-Service Bars
5. Serving Food

6. Transporting Food to Remote Sites (Satellite Kitchens)
7. Using and Calibrating Thermometers
8. Handling Ready-to-Eat Foods
9. Washing Fruits and Vegetables
10. Washing Hands

In addition, FNS has a resource for classroom teachers and aides who handle fresh produce in classrooms. It is available at:

<http://nfsmi.org/documentlibraryfiles/PDF/20110822025614.pdf>



**United States
Department of
Agriculture**

Food and
Nutrition
Service

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DATE: October 22, 2015

MEMO CODE: SP 01-2016, CACFP 01-2016, SFSP 01-2016

SUBJECT: Procuring Local Meat, Poultry, Game, and Eggs for Child Nutrition Programs

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

Recently, FNS has received a number of questions related to buying local meat, poultry, game, and eggs; this memorandum seeks to clarify the regulatory requirements related to food safety and answer specific questions related to these products with a series of questions and answers included as an attachment.

Three agencies within the Federal Government are responsible for establishing the rules and regulations that govern the sale and use of meat, poultry, game, and eggs in the Child Nutrition Programs (CNPs): the U.S. Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS), the Department of Health and Human Services (DHHS) Food and Drug Administration (FDA), and the USDA Food and Nutrition Service (FNS). Together these agencies establish rules and regulations to ensure that all products, served in CNP meals and otherwise, are safe, wholesome, and correctly labeled and packaged.

In turn, State and local governments adopt Federal regulations and guidelines and often tailor the rules to address specific issues. As such, the FDA Food Code and Federal food safety regulations are a baseline from which State, local, and Tribal authorities build their food safety regulatory programs. CNP operators must meet the conditions of the permit which has given them authority to operate as a food service establishment. State, local and Tribal governments issue these permits. It is critical that program operators, ranchers, farmers, and community stakeholders understand the relationship between Federal, State, local, and Tribal regulations.

FEDERAL GOVERNMENT

An overview of the Federal food safety regulations related to products served in CNPs is provided below.

USDA Food and Nutrition Service

FNS administers several programs that provide healthy food to children under the authority of the Richard B. Russell National School Lunch Act ([42 U.S.C. 1751 et. seq.](#)) and the Child Nutrition Act of 1966 ([42 U.S.C. 1771 et. seq.](#)). These programs include the National School Lunch Program, the School Breakfast Program, the Child and Adult Care Food Program, the Summer Food Service Program, the Fresh Fruit and Vegetable Program, and the Special Milk Program, which are collectively known as the Child Nutrition Programs (CNP). As it relates to meat, poultry, game, and eggs, FNS aligns its guidance with the Federal food safety agencies identified below.

USDA Food Safety and Inspection Service (FSIS)

The USDA's FSIS is the public health regulatory agency responsible for ensuring that the United States' commercial supply of meat, poultry, and egg products (liquid, frozen and dried) is safe, wholesome, and correctly labeled and packaged. FSIS draws its authority from the [Federal Meat Inspection Act of 1906](#) (FMIA), the [Poultry Products Inspection Act of 1957](#) (PPIA), and the [Egg Products Inspection Act of 1970](#) (EPIA). If a food item falls outside of those statutes FSIS is not authorized to regulate its sale or use. FSIS is authorized to provide voluntary inspection of species not covered in FMIA or PPIA under the USDA [Agricultural Marketing Act of 1946](#) (AMA).

DHHS Food and Drug Administration (FDA)

The FDA, part of the Department of Health and Human Services (DHHS), regulates products from animals *not* covered by FMIA, EPIA, and PPIA, such as game animals, shell eggs, and seafood. This authority is conferred by the [Federal Food Drug and Cosmetic Act](#) (FFDCA). If meat is offered for sale as human food, it is subject to the provisions of the FFDCA, which requires that food must be prepared from sound, wholesome, raw materials, and must be prepared, packed, and held at all times under sanitary conditions.

As mentioned above, the FDA publishes the Food Code, a *model*, which assists food control jurisdictions at all levels of government by providing a scientifically sound technical and legal basis for regulating the retail and food service segment of the industry (restaurants, grocery stores, and institutions, such as schools, hospitals, and nursing homes). State, local, and Tribal regulators use the FDA Food Code as a model to develop or update their own food safety statutes and regulations for retail and foodservice operations and to maintain consistency with national food regulatory policy. States are under no obligation to adopt all provisions in FDA's model code.

STATE GOVERNMENTS

States follow Federal rules and regulations and, in some cases, tailor programs to meet their needs. Two State-run programs, described below, are operated through agreements with FSIS that allow for State-level inspection of meat, poultry, and game.

State Meat and Poultry Inspection (MPI) Programs

State Meat and Poultry Inspection (MPI) programs are an integral part of the nation's food safety system. States hold cooperative agreements with FSIS in order to operate MPI programs, which must enforce requirements "at least equal to" those imposed under the FMIA and the PPIA. Products produced under State inspection are generally limited to intrastate commerce. MPI products may be shipped between States if a State opts into the Cooperative Interstate Shipment (CIS) program described below.

More than half of the States in the U.S. operate MPI programs. In States without MPI programs, the only option for meat and poultry inspection is USDA inspection. For more information on which States have State Meat and Poultry Inspection (MPI) programs, visit the [Food Safety and Inspection Service's Web site](#).

The Cooperative Interstate Shipment (CIS) Program

The Cooperative Interstate Shipment (CIS) program promotes the expansion of business opportunities for State Meat and Poultry Inspection (MPI) facilities. The CIS program allows facilities already participating in a State MPI program to operate as Federally-inspected facilities and ship products in interstate commerce. Products sold from a CIS program bear the Federal mark of inspection. For more information on which States participate in the CIS program, visit the [Food Safety and Inspection Service's Web site](#).

LOCAL GOVERNMENTS

Local governments must abide by State and Federal regulations. However, some local health jurisdictions (county health departments, etc.) use State rules and regulations as a guide to develop specific local program rules. This means that food codes and other applicable regulations may vary from locality to locality.

TRIBAL NATIONS

We have received several questions specifically about products served in CNPs located in Tribal communities and have summarized the work of the Indian Health Service (IHS) and FNS as it relates to Tribal issues.

DHHS Indian Health Service (IHS)

The IHS is part of the Division of Environmental Health Services (DEHS), within DHHS, which provides direct environmental health services and consultation to American Indian and Alaska Native Tribal governments, including the establishment and management of local Tribal Food Codes. DEHS uses the most recent edition of the FDA Food Code for non-regulatory consultation and evaluation of Tribal programs. DEHS also works with Tribal councils to pass local food code rules and encourages partnership with State and local entities to provide a comprehensive food safety program. Tribal Nations may implement their own food codes to support or supplant State and local food codes. However, Tribal Nations are encouraged to collaborate with State and local regulators.

Food and Nutrition Service and Traditional Foods

The USDA understands the importance of serving traditional foods and encourages Tribal Nations, along with all operators of CNPs, to source locally grown and raised foods. To support these efforts, two recently published documents outline how donated traditional foods can be used in CNPs and clarify how traditional foods can credit towards a reimbursable meal.

As described in the [*Service of Traditional Foods in Public Facilities memorandum \(SP 42-2015, CACFP 19-2015, SFSP 21-2015\)*](#), Section 4033 of the Agricultural Act of 2014 (Farm Bill) allows for the use of donated traditional foods, including wild game, at public and nonprofit facilities that primarily serve Indians. As allowed by this provision, wild game may be donated and served in CNPs. Additionally, the [*Child Nutrition Programs and Traditional Foods memorandum \(TA 01-2015\)*](#), clarifies that traditional foods may be served in CNPs and includes examples of how several traditional foods may contribute towards a reimbursable meal.

The attached questions and answers seek to help CNP operators better understand applicable food safety requirements and aid them in purchasing from local ranchers and producers as much as possible.

State agencies are reminded to distribute this memorandum to Program operators immediately. Local educational agencies, school food authorities, and other Program operators should direct any questions concerning this guidance to their State agency. State agencies with questions should contact the appropriate Food and Nutrition Service Regional Office.

Original Signed

Angela Kline
Director
Policy and Program Development Division
Child Nutrition Programs

Original Signed

Deborah J. Kane
Director
Office of Community Food Systems
Child Nutrition Programs

Attachment

Food Safety Clarifications for Child Nutrition Programs Questions and Answers

Part I – Meat and Livestock

1. How is livestock defined?

According to [9 CFR 301.2](#), livestock include cattle, sheep, swine, or goat and these animals are subject to the regulations within the [Federal Meat Inspection Act of 1906](#) (FMIA).

2. Do livestock need to be *slaughtered* under the U.S. Department of Agriculture (USDA) or State-inspection in order to be served in the Child Nutrition Programs (CNPs)?

Yes, all livestock sold for commercial consumption, including for service in CNPs, must be slaughtered under USDA or State inspection in either traditional brick and mortar facilities or mobile slaughter units. There are no exemptions from inspection for the slaughter of livestock to be sold as articles of commerce.

3. Do meat and meat food products such as spaghetti sauce with cooked meat need to be *processed* in USDA or State-inspected facilities in order to be served in the CNPs?

Not always. The further preparation of the Federal or State-inspected livestock into meat and meat food products must be done under inspection, unless exempted from inspection. The exemptions from inspection of Federal or State-inspected meat and meat food products are found in [9 CFR 303.1](#).

4. Can livestock slaughtered, and meat or meat food products processed in a Cooperative Interstate Shipment (CIS) facility or State Meat and Poultry Inspection (MPI) facility be served in the CNPs?

Yes, livestock slaughtered in and meat or meat food products processed under inspection in a USDA, MPI or CIS facility may be served in CNPs. These facilities may be traditional brick and mortar facilities or mobile slaughter units. Livestock and meat food products from amenable animals (meaning, species subject to the regulations found in the FMIA or the PPIA) inspected at State MPI facilities are only eligible for intrastate distribution. Animals slaughtered in and meat food products processed in CIS facilities, regardless of where the animal was raised, can be sold in interstate commerce.

5. Do livestock and meat food products donated to CNPs need to follow all inspection and processing requirements?

Yes, Food Safety and Inspection Service (FSIS) inspection and processing requirements must be followed for donated livestock and livestock products. The producer must have the livestock animal slaughtered, under Federal or State inspection. The processing must be done under inspection, unless exempted from FSIS inspection requirements. Exemptions for meat food products are found in [9 CFR 303.1\(d\)](#).

PART II- Poultry

1. How is poultry defined?

According to [9 CFR 381.1](#) domesticated poultry are chickens, turkeys, ducks, geese, guineas, ratites, or squabs and these animals are subject to the regulations of the [Poultry Products Inspection Act of 1957](#) (PPIA).

2. What are the inspection requirements for poultry?

Poultry sold for commercial consumption must be inspected at a USDA facility, a MPI program facility, or a CIS program facility in either a traditional brick and mortar plant or a mobile slaughter unit, unless exempted from inspection requirements. Unlike livestock, poultry exemptions do allow poultry slaughter and processing to occur without benefit of Federal or State inspection, within the limitations described in [9 CFR 381.1](#). Poultry produced under a poultry exemption are restricted to intrastate commerce only, meaning CNP operators cannot serve poultry products from neighboring States that are exempt from inspection.

3. Can CNP operators purchase poultry from a producer that operates under a poultry exemption?

While it is recommended that poultry come from USDA inspected facilities, State MPI, or CIS facilities, CNP operators may purchase poultry from producers that are exempt from inspection, unless restricted by State or local requirements. For example, the Illinois State Department of Agriculture does not allow uninspected poultry slaughtered or processed under a poultry exemption to be served in Illinois schools.

4. Can animals raised by Future Farmers of America, 4H Clubs, student clubs and/or culinary programs on school campuses be used in CNPs?

Yes, as long as the applicable inspection requirements are met. Additional requirements from State or local authorities may apply.

PART III - GAME ANIMALS

1. How are game animals and game birds defined and/or classified?

There are two types of game animals and game birds; wild and domesticated. Game animals are non-amenable, meaning they are not subject to the regulations found in the FMIA or the PPIA.

2. What are wild game animals and game birds?

Wild game animals and wild game birds are animals and birds that are live-caught or hunter-harvested. Wild game animals may include free ranging animals such as bison, antelope, caribou, deer, elk, moose, reindeer, snake, alligator, rabbit, squirrel and beaver. As noted in [9](#)

[CFR 362](#), wild birds include any migratory water fowl or non-domesticated game bird such as pheasant, grouse, quail, turkey, geese and ducks.

FSIS views “wild boar” as feral swine and amenable to the FMIA. To receive inspection, feral swine typically are captured, fed for a short time, receive ante mortem inspection, and are then slaughtered as any domestic swine.

3. What are domesticated game animals?

Domesticated game animals are raised (typically on a farm or reservation), slaughtered, and commercially sold. Examples of common domesticated game animals are bison and deer. Note that domesticated birds such as turkeys, ducks and geese fall under the jurisdiction of the PPIA and are not considered game animals.

Note: The term animal(s) will be used from this point forward to describe wild or domesticated game birds and/or wild or domesticated game animals collectively.

4. What is voluntary inspection?

Voluntary inspection is when an animal, not covered by FMIA and PPIA (non-amenable animals), is voluntarily slaughtered under inspection and processed under the supervision of inspectors at a USDA or State inspected facility. Since wild and domesticated game animals are not amenable to Federal inspection laws, the ranchers bringing such animals for inspection must pay for voluntary inspection. Voluntary inspection includes an inspection for wholesomeness of each animal and verification by FSIS inspectors that products are produced in a sanitary manner. Voluntary inspection is a value-added service provided by FSIS to facilitate the movement of safe wholesome food not subject to the FMIA or the PPIA in commerce.

States can expand the definition of amenable species. For example, South Dakota considers bison to be amenable; therefore, all bison slaughtered within the State are subject to mandatory State inspection.

Regardless of its origin, an animal killed outside of a State or Federal facility cannot be presented for voluntary or mandatory Federal or State inspection; voluntary inspection requires ante and post mortem inspection of animal carcasses by trained veterinarians. For example, hunter-harvested wild turkeys, ducks and geese that are not live caught and slaughtered at an inspection facility cannot be inspected.

5. What options are available to voluntarily inspect wild and domesticated game animals?

The two options available to have game animals voluntarily inspected are described below:

Option 1: Voluntary inspection at USDA facilities

FSIS provides voluntary inspection of domesticated and wild game animals on a fee-for-service basis at USDA facilities, upon request. Businesses, ranchers or hunters must request voluntary inspection from the appropriate USDA FSIS [Office of Field Operations District Office](#) and pay an hourly fee for the inspection service. The mark of inspection received from USDA voluntary inspection is different than the circular USDA Federal mark of inspection.

Option 2: Voluntary inspection at State Meat and Poultry Inspection (MPI) facilities

MPI facilities may also offer voluntary inspection for domesticated and wild game animals. Some State MPI programs have expanded their definition of amenable animals to include bison and deer. Therefore, the inspection of such animals is mandatory in those States and the business or rancher does not have to pay for inspection services. Voluntary inspection of game animals can occur at a mobile slaughter facility operating a MPI program.

6. Must domesticated and wild game animals be voluntarily inspected in State MPI or USDA facilities to be served in CNPs?

Yes, domesticated and wild game animals must be inspected at State or USDA facilities in order to be purchased for and served in CNPs. Note that State or local restrictions may apply and an exemption was added by section 4033 of the Farm Bill.¹

7. The Food Buying Guide (FBG) States that “game meat must be from [a] USDA inspected establishment;” will this language change?

The FBG footnote will be amended to reflect that purchased wild and domesticated game animals that are USDA *or* State inspected can be served in CNPs. The FBG will also clarify that donated, uninspected wild game served by certain program operators which primarily serve Indians is creditable in CNPs as allowed by section 4033 of the Farm Bill.

8. Can CNP operators use Federal funds to purchase and serve wild and/or domesticated game meat?

Yes, CNP operators can buy wild and domesticated game meat with Federal funds as long as the animals are slaughtered and inspected in a Federal inspected facility or State inspected program. Please note that State and local authorities may have stricter regulations, preventing the service of domesticated and wild game animals.

¹ As described in the *Service of Traditional Foods in Public Facilities memo* (SP 41-2015, CACFP 19-2015, SFSP 21-2015), Section 4033 of the Farm Bill allows for the use of donated traditional foods, including wild game, at public and nonprofit facilities that primarily serve Indians.

9. Can game meat inspected at either a State or Federal facility cross State lines and be served in CNPs in neighboring States?

Yes. Domesticated and wild game animals processed in State MPI facilities and Federal facilities via voluntary inspection can enter interstate commerce. Unlike other amenable livestock (cattle, swine, sheep, and goat) processed in MPI facilities eligible only for intrastate distribution, non-amenable animals (as defined Federally, regardless of State definition) are not subject to the FMIA or PPIA.

PART IV- Eggs

1. What is the definition of an egg?

As defined by the Food and Drug Administration (FDA) Food Code, "Egg" means the shell egg of avian species such as chicken, duck, goose, guinea, quail, ratites or turkey. "Egg Product" means all, or a portion of, the contents found inside eggs separated from the shell and pasteurized in a food processing plant, with or without added ingredients, intended for human consumption, such as dried, frozen or liquid eggs." Shell eggs come under the jurisdiction of the FDA and have to meet FDA guidelines. Liquid, frozen and dried egg products are regulated by FSIS. Only whole eggs (shell, liquid, frozen or dried) can be credited in CNPs

2. What egg products need to be inspected in order to be served in the CNPs?

Liquid, frozen and dried egg products used in CNPs are required to be USDA inspected. Before entering commerce, liquid, frozen and dried egg products must meet the regulatory requirements found in [9 CFR 590](#), which include the requirement to be pasteurized and be found negative for salmonella, before entering commerce.

3. Do shell eggs need to be pasteurized in order to be served in CNPs?

No, shell eggs are not required to be pasteurized to be used in CNPs. As outlined by the FDA Food Code, it is recommended that shell eggs meet at least grade B standards. Information regarding the grade B standards can be found in the [U.S. Standards, Grades, and Weight Class for Shell Eggs](#).

Before using unpasteurized shell eggs in CNPs, program operators are advised to check with their State agency and/or local health department and to review local health codes as there may be stricter State, local and/or school district restrictions regarding unpasteurized shell eggs. For example, some State agencies require shell eggs come from "approved sources," some have shell egg handling rules, and some do not allow unpasteurized shell eggs to be served to highly susceptible populations such as very young children.



Food and
Nutrition
Service

DATE: June 22, 2016

Park Office
Center

MEMO CODE: SP 41-2016, CACFP 13-2016, SFSP 15-2016

3101 Park
Center Drive
Alexandria
VA 22302

SUBJECT: The Use of Share Tables in Child Nutrition Programs

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

Using “share tables” is an innovative strategy to encourage the consumption of nutritious foods and reduce food waste in the National School Lunch Program (NSLP), School Breakfast Program (SBP), Child and Adult Care Food Program (CACFP), and Summer Food Service Program (SFSP). This memorandum provides a reminder of the opportunities presented by share tables, extends the use of share tables to the at-risk afterschool component of the CACFP, and gives an overview of the food safety requirements Child Nutrition Program (CNP) operators must follow when choosing to include share tables in their meal service. CNP operators include school food authorities, local educational agencies (LEAs), CACFP institutions, and SFSP sponsors.

The Food and Nutrition Service (FNS) encourages State agencies to support CNP operators in their efforts to increase consumption of nutritious foods and minimize food waste in their programs. As a reminder, all CNP operators must plan, prepare, and order food with the goal of providing one meal per child at each meal service. If a school, CACFP institution, or SFSP sponsor has leftover or unusable foods on a frequent basis, menu planning and production practices should be adjusted to reduce leftovers or unusable foods.

Share Table Overview

FNS regulations require participating schools, CACFP institutions, and SFSP sponsors to provide reimbursable meals that meet specific meal pattern requirements outlined in 7 CFR 210.10, 220.8, 226.20, and 225.16, respectively. However, FNS recognizes that, for various reasons, children may not always want to consume certain food or beverage items included in their meal. “Share tables” are tables or stations where children may return whole food or beverage items they choose not to eat, if it is in compliance with local and State health and food safety codes. These food and beverage items are then available to other children who may want additional servings.

Share tables allow food or beverage items to be reused in a number of ways, depending on the Program's preference:

- Children may take an additional helping of a food or beverage item from the share table at no cost;
- Food or beverage items left on the share table may be served and claimed for reimbursement during another meal service (i.e., during an afterschool program when leftover from a school lunch); and/or
- Food or beverage items may be donated to a non-profit organization, such as a community food bank, homeless shelter or other non-profit charitable organization (see SP 11-2012, CACFP 05-2012, SFSP 07-2012, *Guidance on the Food Donation Program in Child Nutrition Programs*, http://www.fns.usda.gov/sites/default/files/SP11_CACFP05_SFSP07-2012os.pdf).

FNS Instruction 786-6 provides FNS the authority to allow the use of share tables and the recycling of food and beverage items in CNPs. The Instruction allows milk (when the milk carton is unopened and the proper temperature is maintained) and other meal components that are served to be retrieved for re-service if such a practice is permitted under local and State health and food safety codes. The Instruction also states that food or beverage items should only be reused in situations where it is necessary to prevent food waste. It is important to note that when using a share table, CNP operators are able to claim the reimbursable meal at the point of service even if a child then puts one or more of the meal components on the share table. When food items are left on the share table at the end of the meal service, that food can be used in later meals that are claimed for reimbursement.

As always, CNP operators should take steps to encourage consumption of the meal, including preparing appealing meals and serving them in a convenient manner. For example, CNP operators are encouraged to promote meal consumption by including an option of cut up whole fruit to make it easier to eat, and engaging children through taste tests, student advisory committees, and nutrition education. These practices help ensure children get the most out of the food assistance programs.

Food Safety Requirements for Share Tables

As with all foods and beverages prepared for the NSLP, SBP, CACFP, and SFSP, CNP operators choosing to use share tables must follow the food safety requirements outlined in 7 CFR 210.13, 220.7, 226.20(l), and 225.16(a), respectively. In addition, CNP operators must be aware of all applicable local and State health and food safety codes to ensure their use of share tables does not violate any of those codes. It is important to keep in mind that local and State health and food safety codes may be more restrictive than the FNS requirements, or may place specific limitations on which food or beverage items may be reused. To ensure compliance with food safety requirements, CNP operators should discuss plans for a share table with their local health department and State agency prior to implementation. Further, schools must ensure that their policies for saving and sharing food or beverage items are consistent with the LEA's Hazard Analysis and Critical Control Point (HACCP) plan.

Regional Directors

State Directors

Page 3

Please see section 3-306.14 of the 2013 the Food and Drug Administration (FDA) Food Code for more information about food safety considerations when re-serving food (available at: <http://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/FoodCode/>). In addition, see the attachment for a list of food safety requirements and other best practices to consider when establishing a share table.

Other Strategies to Reduce Food Waste

FNS has additional resources available to Program operators interested in reducing food waste in the CNPs:

- Creative Solutions to Ending School Food Waste: <http://www.fns.usda.gov/school-meals/creative-solutions-ending-school-food-waste>
- Join the Food Waste Challenge: <http://www.usda.gov/oce/foodwaste/join.htm>
- The Smarter Lunchroom Movement: <http://smarterlunchrooms.org/>
- SP 41-2014, *Clarification of the Policy on Food Consumption Outside of Foodservice Area*, <http://www.fns.usda.gov/sites/default/files/SP41-2014os.pdf>

State agencies are reminded to distribute this information to Program operators immediately. Program operators should direct any questions regarding this memorandum to the appropriate State agency. State agency contact information is available at <http://www.fns.usda.gov/cnd/Contacts/StateDirectory.htm>. State agencies should direct questions to the appropriate FNS Regional Office.

Original Signed

Angela Kline

Director, Policy and Program Development Division

Child Nutrition Programs

Attachment

Attachment: Share Tables Food Safety Requirements and Other Best Practices

This resource provides a list of food safety requirements and other best practices to consider when establishing a share table.

Step 1 (REQUIRED): Follow Federal, State, and local health and food safety requirements:	
<ul style="list-style-type: none"> • Comply with FNS food safety requirements outlined in 7 CFR 210.13, 226.20(l), and 225.16(a). • Comply with all local and State health and food safety codes, including storage of reused items. • <u>Schools only</u>: Ensure policies for saving and sharing food or beverage items are consistent with the local educational agency’s Hazard Analysis and Critical Control Point (HACCP) plan. 	
Step 2: Establish clear guidelines for food components that may and may not be shared or reused as part of a later reimbursable meal:	
<ul style="list-style-type: none"> • <i>Food components FNS recommends sharing:</i> <ul style="list-style-type: none"> ○ Unopened pre-packaged items, such as a bag of baby carrots or sliced apples stored in a cooling bin. ○ Whole pieces of fruit, such as apples or bananas. ○ Unopened milk, if immediately stored in a cooling bin maintained at 41°F or below. 	<ul style="list-style-type: none"> • <i>Food components FNS does not recommend sharing:</i> <ul style="list-style-type: none"> ○ Unpackaged items, such as a salad bowl without a lid. ○ Packaged items that can be opened and resealed. ○ Open items, such as an opened bag of baby carrots or sliced apples. ○ Perishable foods, when a temperature control mechanism is not in place.
Step 3: If sharing items that require cooling is permissible under local and State laws, establish strict food safety guidelines to prevent the risk of foodborne illness:	
<ul style="list-style-type: none"> • Maintain proper temperature (and temperature logs) (<i>41 degrees Fahrenheit or colder</i>) by storing food components in a temperature controlled storage bin, such as an ice tub or cooler. • Make note of expiration dates on packaged foods, and do not intermix reused items with items that have not yet been prepared and served yet. • Decide how many times a food item can be re-used (recommended just once). 	
Step 4: Supervise the share table at all times to ensure compliance with food safety requirements:	
<ul style="list-style-type: none"> • Ask supervisors to make sure packaging of items placed on the share table is not open, punctured, or otherwise compromised. • If cooling bins are used, have supervisors monitor the bin to ensure that time and temperature control requirements are met. • Invite children to participate as “share table helpers,” or assistant monitors, teaching them about the importance of food safety and recycling. 	
Step 5: Promote the share table to children and families:	
<ul style="list-style-type: none"> • Provide children and families with information about share table guidelines. • Ask for input from parents and guardians, and make sure families are comfortable with their children participating in the share table option. • Explain the share table concept to children, taking care to emphasize the importance of healthy eating and trying new foods whenever possible. • Display signage outlining share table “rules” and encouraging recycling. 	



Food and
Nutrition
Service

Park Office
Center

3101 Park
Center Drive
Alexandria
VA 22302

DATE: September 27, 2016

SUBJECT: Policy Memorandum on Modifications to Accommodate
Disabilities in the School Meal Programs

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

The attached policy memorandum, “*Modifications to Accommodate Disabilities in the School Meal Programs*,” includes important updates to requirements related to accommodating children with disabilities participating in the School Meal Programs. Previous Food and Nutrition Service (FNS) guidance on this issue was included in FNS Instruction 783-2, Rev. 2, *Meal Substitutions for Medical or other Special Dietary Reasons*. The attached memorandum supersedes that Instruction as it relates to the National School Lunch Program, School Breakfast Program, Special Milk Program for Children, and the Fresh Fruit and Vegetable Program. Instruction 783-2, Rev. 2 remains in effect for the Child and Adult Care Food Program and the Summer Food Service Program until further guidance is issued, at which time Instruction 783-2 will be rescinded.

The Americans with Disabilities Act (ADA) Amendments Act of 2008 made important changes to the meaning and interpretation of the term “disability.” The changes demonstrated Congress’s intent to restore the broad scope of the ADA by making it easier for an individual to establish that he or she has a disability. After the passage of the ADA Amendments Act, most physical and mental impairments constitute a disability. Therefore, rather than focusing on whether or not a student has a disability, schools should focus on working collaboratively with parents to ensure an equal opportunity to participate in the School Meal Programs and receive program benefits. The attached memorandum clarifies changes made by the ADA Amendments Act and reflects the position FNS will take in compliance reviews and enforcement actions.

Of note, the memorandum retains previous requirements regarding submission of a note from a State licensed healthcare professional documenting the disability. However, the policy memorandum clarifies that any person who is authorized to write medical prescriptions under State law qualifies as a State licensed healthcare professional. For example, in many States, this will include licensed nurse practitioners as well as licensed physicians.

Regional Director

State Director

Page 2

The memorandum also explains procedural safeguards required to ensure parents and children have notice of the procedure for requesting meal modifications and the process for resolving disputes. Use of approved existing procedures designed to address requests to accommodate students with disabilities in the classroom will meet these requirements. The memorandum also notes that school food service staff must be made aware of the procedures for handling requests for meal modifications.

State agencies are reminded to distribute this memorandum to Program operators immediately. Local educational agencies, school food authorities, and other Program operators should direct any questions concerning this guidance to their State agency. State agencies with questions should contact the appropriate FNS Regional Office.

Original Signed

Angela Kline
Director
Policy and Program Development Division
Child Nutrition Programs

Original Signed

Roberto Contreras
Director
Civil Rights Division

Attachment



Food and
Nutrition
Service

Park Office
Center

3101 Park
Center Drive
Alexandria
VA 22302

DATE: September 27, 2016

MEMO CODE: SP 59-2016

SUBJECT: Modifications to Accommodate Disabilities in the School Meal Programs

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

This memorandum outlines the requirements for school food authorities (SFAs) and local educational agencies (LEAs) participating in the National School Lunch Program, School Breakfast Program, Special Milk Program for Children, or the Fresh Fruit and Vegetable Program (School Meal Programs) to provide reasonable modifications to Program meals or the meal service to accommodate children with disabilities. This memorandum supersedes FNS Instruction 783-2, Rev. 2, *Meal Substitutions for Medical or other Special Dietary Reasons* for the School Meal Programs. Instruction 783-2, Rev. 2 remains in effect for the Child and Adult Care Food Program and the Summer Food Service Program until further guidance is issued, at which time Instruction 783-2 will be rescinded.

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

SFAs are required to make substitutions to meals for children with a disability that restricts the child'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, 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.

GOVERNING STATUTES

Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) prohibits discrimination on the basis of 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, as amended (ADA) prohibits discrimination based on disability in the provision of State and local government services, such as public schools. Title III of the ADA prohibits discrimination based on disability by private entities that provide public accommodations, including private schools. The ADA applies regardless of whether or not a school receives Federal financial assistance. Section 504, Title II, and Title III require recipients of Federal financial assistance, such as SFAs and LEAs, to make reasonable modifications to accommodate children with disabilities, including reasonable modifications to meals and the meal service.

SFAs and LEAs should also be aware that the Individuals with Disabilities Education Act of 1990, as amended (IDEA) imposes requirements on States which may affect them, including the service of meals, even when such service is not required by the School Meal Programs. For example, the individualized education program (IEP) developed for a child under the IDEA may require a breakfast to be served in a school that does not participate in the School Breakfast Program. While these meals may not be claimed for Federal reimbursement because the school does not participate in the program, funds from the non-profit school food service account may be used to cover the cost associated with providing a meal required by the IDEA.

Additionally, the SFA may use the same food service facilities or food service management company to provide the meals required under an IEP as it uses to provide Program meals. Inquiries regarding the IDEA's requirements should be directed to the U.S. Department of Education, which is the agency responsible for the IDEA's administration and enforcement.

PROGRAM REGULATIONS

USDA regulations at 7 CFR 15b, "Nondiscrimination on the Basis of Handicap in Programs and Activities receiving Federal Financial Assistance" implements Section 504's nondiscrimination requirements. 7 CFR 15b.26(d) requires recipients of Federal financial assistance, such as SFAs, to serve special meals at no extra charge to children with disabilities. In addition, Program regulations at 7 CFR 210.10(m) and 220.8(m) require SFAs to make substitutions to meals to accommodate children with disabilities that restrict their diet.

I. Children with Disabilities

The question of whether a child has a disability for purposes of this memorandum has been simplified by the ADA Amendments Act, and should no longer require extensive analysis. SFAs and LEAs should not be engaged 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 SFAs 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 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 need not be life threatening to constitute a disability. It is enough that it limit a major life activity. For example, digestion is an example of 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 on the impairment. For example, the fact that a child 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, 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

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

A. Requiring a Medical Statement

Program regulations require SFAs to provide modifications for children 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 210.10(m), and 220.8(m). In addition, meals that do not meet the Program meal pattern are not eligible for reimbursement unless supported by a medical statement. However, SFAs 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.

The medical statement should include a description of the child's physical or mental impairment that is sufficient to allow the SFA to understand how it restricts the child'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 to be omitted and recommending alternatives. In other cases, more information may be required. For example, if the child would require caloric modifications or the substitution of a liquid nutritive formula to accommodate a disability, this information must be included in the statement.

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

B. Assessing Requests for Substitutions and other Modifications

SFAs may consider expense and efficiency in choosing an appropriate approach to accommodate a child's disability. SFAs are not required to provide the specific substitution or other modification requested, but must offer a reasonable modification that effectively accommodates the child's disability and provides equal opportunity to participate in or benefit from the program

For example, a child with an allergy to a specific ingredient found in a menu item may request that the SFA provide a particular brand name version as a substitute. Generally, the SFA is not required to provide the brand name item identified, but must offer to provide a substitute which does not contain the specific allergen that affects the child.

When determining what is appropriate, the age and maturity of the child should factor into all decisions. For instance, younger children may need greater assistance with selecting and eating their meals, whereas older children may be able to take a greater level of responsibility for some of their dietary decisions.

SFAs are not required to provide modifications that would fundamentally alter the nature of the program; however, this should very rarely be the case. SFAs concerned that a requested modification would fundamentally alter the nature of the program should contact their State agency for assistance. Instead, generally, the emphasis should be on working with parents and guardians to develop an approach that will be effective for the child.

C. Serving Meals in an Integrated Setting

SFAs must provide all meal services in the most integrated setting appropriate to the needs of the disabled child. *See* 7 CFR part 15b.26(d). Exclusion of any child from the Program environment is not considered an appropriate or reasonable modification. For example, a child may not be excluded from the classroom and required to sit in the hallway during the service of “breakfast in the classroom” as 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 this table to segregate children as punishment for misconduct.

III. Reimbursement

Reimbursement for modified meals served to children with disabilities that restrict their diet is at the appropriate rate based on the child’s eligibility for free, reduced price, or paid meals 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. However, SFAs should ensure that meal modifications meet the nutritional needs of the child.

Any instruction or services included in a child’s IEP related to a child’s nutritional needs that are deemed necessary for the child to receive a “free appropriate public education” must be provided at public expense and at no cost to the parents or guardians. Part B of IDEA funds may be used for this purpose. Inquiries regarding the

IDEA's requirements should be directed to the U.S. Department of Education, <http://idea.ed.gov>.

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." SFAs and LEAs 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 School Meal Program 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 school food service account. Sources of supplemental funding may include special education funds if specified in the child's IEP or the LEA's general account.

V. Procedural Safeguards

LEAs must work with the school food service staff to implement procedures for parents or guardians to request modifications to meal service for children with disabilities and to resolve grievances. *See* 7 CFR 15b.25 and 15b.6(b). Procedures in place to address requests to accommodate students with disabilities in the classroom in compliance with Section 504 or the IDEA may be used to fulfill this requirement.

At a minimum, the LEA must notify parents and guardians of the process for requesting meal modifications to accommodate a child's disability and arrange for an impartial hearing process to resolve grievances related to requests for modifications based on a disability. The hearing process must include the opportunity for the child's parent or guardian to participate, be represented by counsel, and examine the record. It must also include notice of the final decision, and a procedure for review.

LEAs that employ 15 or more individuals must designate at least one person to coordinate compliance with disability requirements. *See* 7 CFR part 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 classroom may also be responsible for ensuring compliance with disability requirements related to meals and the meal service. A separate 504 Coordinator responsible only for meal modifications is not required. However, LEAs should ensure that school food service staff understand the procedures for handling requests for meal modifications and know how to contact the Section 504 Coordinator.

VI. Team Approach

When implementing the guidelines in this memorandum, a team approach to providing modifications for children with disabilities is strongly encouraged. Developing a team that includes the Section 504 Coordinator, representation from schools and school medical personnel, such as a school nurse, as well as school food service staff will help ensure consistent decisions and implementation and tracking of meal modifications. The most effective team will include school food service staff, a principal or Program Director, a school nurse, and others with training in this area, such as a school nutritionist. Any request for a modification related to the meal or meal service should be forwarded to the Section 504 Coordinator, and reviewed by the 504 team.

The 504 team will work with the child's parents or guardian to review the request and develop a solution as quickly as possible. The 504 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.

State agencies are reminded to distribute this memorandum to Program operators immediately. LEAs, SFAs, and other Program operators should direct any questions concerning this guidance to their State agency. State agencies with questions should contact the appropriate FNS Regional Office.

Original Signed

Angela Kline
Director
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Child Nutrition Programs

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Roberto Contreras
Director
Civil Rights Division



Food and
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Park Office
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3101 Park
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Alexandria
VA 22302

DATE: April 25, 2017

MEMO CODE: SP 26-2017

SUBJECT: Accommodating Disabilities in the School Meal Programs:
Guidance and Questions and Answers (Q&As)

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

This Question and Answer (Q&A) memorandum is designed to provide practical guidance related to accommodating disabilities in the School Meal Programs, which are the National School Lunch Program (NSLP), the School Breakfast Program (SBP), the Fresh Fruit and Vegetable Program (FFVP), the Special Milk Program (SMP), and the NSLP Afterschool Snacks Program. This Q&A discusses relatively common situations which have raised questions in the past. These examples illustrate certain principles and give general direction on what local educational agencies (LEAs), school food authorities (SFAs), and schools must do to comply with Federal law and ensure children with disabilities have an equal opportunity to participate in the School Meal Programs.

The attached questions have been grouped under the following headings: General Information; What is a Disability?; Procedural Safeguards; Requesting a Modification; Making a Meal Modification; Reimbursement for Modified Meals; Accommodations to the Meal Service; Non-Disability Situations; and Miscellaneous. The Food and Nutrition Service (FNS) of the United States Department of Agriculture (USDA) will revise this Q&A as needed to address other questions as they arise.

With the release of this guidance, the following memorandum is rescinded with regard to the School Meal Programs only. The memorandum still applies with regard to the Child and Adult Care Food Program and the Summer Food Service Program:

- SP 36, CACFP 10, SFSP 12-2013: *Guidance Related to the ADA Amendments Act*, April 26, 2013.

Recent Guidance on Accommodating Disabilities

On September 27, 2016, USDA-FNS issued SP 59-2016: *Policy Memorandum on Modifications to Accommodate Disabilities in the School Meal Programs* to update Departmental requirements related to accommodating children with disabilities participating in the NSLP and SBP. This Q&A memorandum is a companion piece to SP 59-2016. To view SP 59-2016, please see: <http://www.fns.usda.gov/policy-memorandum-modifications-accommodate-disabilities-school-meal-programs>.

The question of whether a child has a disability for purposes of making modifications to Program meals has been simplified by the ADA Amendments Act of 2008 (P.L. 110-325; September 25, 2008) and should no longer require extensive analysis. After the passage of the ADA Amendments Act, most physical and mental impairments will constitute a disability. The central concern for SFAs should be ensuring equal access to Program benefits for children with disabilities.

Circumstances often vary, even when a disability diagnosis may be the same. The nature of the disability and age of the child should be considered when developing appropriate modifications. Each situation should be treated on a case-by-case basis. SFAs and schools should direct specific questions to the State agency if they are unsure how to proceed.

State agencies are reminded to distribute this information to Program operators immediately. Program operators should direct any questions regarding this memorandum to the appropriate State agency. State agency contact information is available at <https://www.fns.usda.gov/school-meals/school-meals-contacts>. State agencies should direct questions to the appropriate FNS Regional Office.

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General Information

1. How has the Americans with Disabilities Act (ADA) changed since the Food and Nutrition Service (FNS) last issued guidance on meal modifications?

The ADA Amendments Act of 2008 made important changes to the meaning and interpretation of the term “disability” under the ADA and under Section 504 of the Rehabilitation Act of 1973. The ADA Amendments Act simplified the question of whether a child has a disability by requiring a broad interpretation of what constitutes a disability. Under the ADA, anything that substantially limits a major life activity (most physical and mental impairments) constitutes a disability. This includes conditions that impair immune, digestive, neurological, and bowel functions, as well as many others.

School food authorities (SFAs) and local educational agencies (LEAs) should not be engaged in weighing medical evidence against legal requirements in order to determine if a medical or physical condition is severe enough to meet the definition of a disability. Rather, the focus should be on what can be done to ensure equal opportunity to participate in or benefit from the Programs. A discussion of the legal definition of disability can be found on page 5 of SP 59-2016: *Policy Memorandum on Modifications to Accommodate Disabilities in the School Meal Programs*, <http://www.fns.usda.gov/policy-memorandum-modifications-accommodate-disabilities-school-meal-programs>.

The process of providing modified meals for children with disabilities should be as inclusive as possible. It is essential that SFAs work collaboratively with parents and guardians to ensure children receive a safe meal and have an equal opportunity to participate in the School Meal Programs. FNS recommends using a team approach that includes parents and guardians and (as age-appropriate) the child, when providing modified meals. If a team (Individualized Education Plan (IEP) or 504) already exists, the SFA may use this team to address a child’s nutritional needs.

2. How does an SFA know if a child’s condition meets the definition of a disability and requires a meal modification?

According to the ADA, most physical and mental impairments will constitute a disability. This includes conditions that impair immune, digestive, neurological, and bowel functions, as well as many others. General health concerns, such as a parent’s preference that a child eat a gluten-free diet because the parent believes it is healthier for the child, are not disabilities and do not require a modification. All disability considerations must be viewed on a case-by-case basis. A more comprehensive discussion can be found on page 5 of SP 59-2016.

SFAs must require a written medical statement in order to receive reimbursement for meals served to children with disabilities that do not meet Program meal pattern requirements. SFAs will be reimbursed for a modified meal that is within the meal pattern, regardless of whether they have obtained a written medical statement. SFAs may, however, choose to request a written medical statement from a State licensed healthcare professional in support of a request for a modification in all cases. For more information, please see “Reimbursement for Modified Meals,” questions 30 through 32.

What is a Disability?

3. Is a food allergy considered a disability?

A food allergy will generally be considered a disability. Under the definition of disability in the ADA, a food allergy does not need to be life-threatening or cause anaphylaxis in order to be considered a disability. A non-life-threatening allergy may be considered a disability and require a meal modification, if it impacts a major bodily function or other major life activity (such as digestion, respiration, immune response, skin rash, etc.).

4. Is a food intolerance recognized as a disability?

A food intolerance may be considered a disability if it substantially limits a major life activity. For example, if a child’s digestion (a major bodily function) is impaired by gluten intolerance, their condition may be considered a disability regardless of whether or not consuming wheat causes severe distress.

5. Is autism considered a disability?

Autism is considered a disability, and may require a reasonable modification if it substantially limits a major life activity, such as the activity of eating. For example, some children with autism will eat only certain foods due to their repetitive and ritualistic behavior patterns. Any physical or mental impairment preventing a child from consuming a meal is considered a disability.

6. Is obesity considered a disability?

Obesity is recognized by the American Medical Association as a disease and may be considered a disability if the condition of obesity substantially limits a major life activity.

7. Are phenylketonuria (PKU), diabetes, and celiac disease considered conditions that require modifications to Program meals?

Yes. All three conditions are considered disabilities and may require reasonable modifications.

8. How is a temporary or episodic disability addressed?

If a disability is episodic, and when active substantially limits a major life activity, the child must be provided a reasonable modification.

The question of whether a temporary impairment is a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual. Even if the condition is temporary, but severe and lasts for a significant duration, SFAs must provide a reasonable modification for the duration of the condition. For example, if a child was involved in a serious accident and is unable to consume food for a significant period of time unless the texture is modified, the school must make an accommodation for the child, even though the child is not “permanently” disabled. On the other hand, a cold, the flu, or a minor broken bone are generally not considered conditions that require a reasonable modification to Program meals.

9. Can a school food service professional assume a child’s condition is not a disability because it is not listed under “categories of disease and conditions” in the ADA?

No. As noted in the law, the “categories of diseases and conditions” are not all inclusive. Therefore, there are more conditions that meet the definition of disability than are listed in the law. In addition, when a modification request is supported by a medical statement, the written medical statement does not need to provide a specific diagnosis by name or use the term “disabled” or “disability” (though statements that use these terms are sufficient). If an SFA has questions regarding the information provided in the medical statement, the SFA should request the parent or guardian seek clarification from a State licensed healthcare professional.

Procedural Safeguards

10. What are Procedural Safeguards?

The Procedural Safeguards process, codified at 7 CFR 15b, requires LEAs to provide notice and information to parents and guardians regarding how to request a reasonable modification and their procedural rights, which include the right to:

- File a grievance if they believe a violation has occurred regarding the request for a reasonable modification,

- Receive a prompt and equitable resolution of the grievance,
- Request and participate in an impartial hearing to resolve their grievances,
- Be represented by counsel at the hearing,
- Examine the record, and
- Receive notice of the final decision and a procedure for review, i.e., right to appeal the hearing's decision.

Information on this requirement can be found in USDA's regulation, *Non Discrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance*, at 7 CFR 15b.25, "Procedural Safeguards," at 7 CFR 15b.6(b), "Adoption of Grievance Procedures," and in SP 59-2016.

11. Can LEAs use procedures already in place to address the educational needs of children with disabilities to comply with the Procedural Safeguards process for meal modifications?

Yes. Procedures in place to address requests to accommodate children with disabilities in the school, in compliance with Section 504 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (IDEA), may be used to fulfill the requirement to maintain a Procedural Safeguards process for meal modifications. (IDEA was enacted by Congress in 1975 to ensure children with disabilities have the opportunity to receive a free appropriate public education, just like other children.)

LEAs employing 15 or more individuals must ensure their Procedural Safeguards process provides for a prompt and equitable resolution of grievances, and must designate at least one person to coordinate compliance with disability requirements. This individual is often referred to as the Section 504 Coordinator (see: 7 CFR 15b.6). In many cases, the 504 Coordinator is responsible for addressing requests for accommodations in the school in general. As part of their general responsibilities, this individual may also be responsible for ensuring compliance with disability requirements related to meal modifications and the meal service. Regardless of whether the coordinator is a school food service employee, the coordinator must ensure school food service professionals understand the procedures for handling meal accommodation requests.

12. Who should work with the Section 504 Coordinator to manage accommodations to the meal and meal service?

The process of providing modified meals for children with disabilities should be as inclusive as possible. It is essential that school food service professionals work together with the child's parent or guardian to ensure their child receives a safe meal and has an equal opportunity to participate in the School Meal Programs. LEAs are strongly encouraged to develop a Section 504 Team to discuss best practices and develop a more holistic plan to create a safe learning environment for all children.

The most effective team will include school food service staff, school administrators, school medical personnel, parents or guardians, children (when age-appropriate), and other school officials with relevant experience, such as school nutritionists. Using a “team approach” ensures information is shared consistently throughout the school environment and will help to protect children in situations where food is served outside the cafeteria, such as during classroom parties. Additionally, involving parents and guardians early in the process allows school employees to develop rapport with the family, and this prevents any miscommunication or misunderstanding about their child’s needs.

Requesting a Modification

13. What is considered a “reasonable modification”?

A reasonable modification is a change or alteration in policies, practices, and/or procedures to accommodate a disability that ensures children with disabilities have equal opportunity to participate in, or benefit from, a program. A request for a reasonable modification must be related to a child’s disabling condition. Federal law and USDA regulations at 7 CFR 15b.13 require that schools make reasonable modifications to accommodate children with disabilities. Reasonable modifications to effectively accommodate children with disabilities must be made on a case-by-case basis. A meal modification must be related to the disability or limitations caused by the disability. Further discussion of “reasonable modifications” can be found on pages 5-7 of SP 59-2016.

14. What are examples of modification requests an SFA might receive?

A household may request a modification to the meal or the meal service to accommodate a disability. For example, if a child has a food allergy, a meal accommodation may require the SFA to ensure no food item offered to the child contains substances that may trigger an allergic reaction, and also to ensure adherence to proper food safety protocol to prevent cross-contamination with other allergen-containing foods. For example, if a child has a peanut allergy, the SFA must ensure no foods served to the child contain peanuts or include peanuts as an ingredient.

If a modification request indicates a brand name item, in most instances, a generic brand is sufficient, unless the brand name item is medically necessary. This can be determined through the inclusive process with the parent(s) or guardian(s).

Modifications to the meal service may involve ensuring facilities and personnel are adequate to provide necessary services. In certain situations, disability accommodations may require additional equipment; separate or designated storage/preparation areas, surfaces, or utensils; and specific staff training and/or expertise. For example, some children may require the physical assistance of a food

service aide to consume their meal, while other children may need assistance tracking their dietary intake (e.g., carbohydrate intake for children with diabetes).

15. When is a medical statement required?

SFAs must obtain a written medical statement from a State licensed health care professional in order to receive reimbursement for meal modifications when the modified meal does not meet the Program meal pattern requirements (7 CFR 210.10). In most States, a nurse practitioner or physician's assistant may write medical prescriptions and therefore could write the medical statement. In some cases, it may be appropriate and helpful for the State licensed health care professional to provide a written referral to a registered dietitian or other qualified professional. The dietitian could provide recommendations for substitutions and additional assistance with meal modifications.

The State agency may not require that the written medical statement provide a specific diagnosis by name or use the term "disabled" or "disability" (though statements that use these terms are sufficient). For further discussion of the written medical statement, please see page 6 of SP 59-2016.

Schools may receive reimbursement for a meal modification request without a medical statement when the accommodation can be made within the Program meal pattern. For example, if a child has a common allergy to one fruit or vegetable, the school food service can simply substitute another fruit or vegetable. FNS encourages schools to use flexibilities whenever possible. In situations where the SFA does not obtain a medical statement, FNS encourages SFAs to make note of the actions taken in acknowledging children's accommodations. Doing so helps to safeguard children in all areas of the school environment.

16. Who is authorized to sign a medical statement?

A State licensed healthcare professional authorized to write medical prescriptions can sign the medical statement. This may include a doctor, a nurse practitioner, or a physician's assistant. FNS guidance refers to individuals authorized to sign the medical statement as "State licensed healthcare professionals." For more information, see: SP 32 CACFP 13 SFSP 15-2015: *Statements Supporting Accommodations for Children with Disabilities in the Child Nutrition Programs*, March 30, 2015, <https://www.fns.usda.gov/statements-supporting-accommodations-children-disabilities-cnp>.

17. In situations where a medical statement is necessary, what must be included in the medical statement?

The medical statement must include the following:

- Information about the child's physical or mental impairment that is sufficient to allow the SFA to understand how it restricts the child's diet;
- An explanation of what must be done to accommodate the child; and
- The food or foods to be omitted and recommended alternatives, if appropriate.

In some cases, more information may be required. For example, if the child requires caloric modifications or the substitution of a liquid nutritive formula to accommodate a disability, this information must be included in the statement.

SFAs should not deny or delay a requested modification because the medical statement does not provide recommended alternatives. When necessary, SFAs should work with the child's parent or guardian to obtain a supplemental medical statement.

18. How did the medical statement change in the revised guidance?

The written medical statement is no longer required to identify the specific disability, or to use the terms "disability" or "disabled" (though statements that use these terms are sufficient). Instead, the medical statement need only include a description of the child's physical or mental impairment that is sufficient to allow the SFA to understand how it restricts the child's diet. The medical statement should also include a description of what must be done to accommodate the child's impairment.

When SFAs believe the medical statement is unclear, or lacks sufficient detail, they must obtain appropriate clarification so that safe meals can be provided. However, SFAs should not allow requests for additional information to delay meal modifications. Further discussion of the written medical statement can be found on page 6 of SP 59-2016.

19. If a child has an IEP that includes information about a necessary meal modification due to a disability, must the SFA also obtain a medical statement for the child before making the modification?

If the child's IEP or 504 Plan includes the same information required in the medical statement, as described in question 17, or if the required information is obtained by the school during the development or review of the IEP or 504 Plan, it is not necessary for the SFA to obtain a separate medical statement. Using a team approach can help LEAs ensure the IEP or 504 Plan will include the information needed to fulfill FNS requirements for the medical statement. Clear communication about the requirements for the medical statement can help reduce the burden for families, school food service professionals, and LEA officials working to accommodate children in the school setting.

20. Can an SFA decline to provide a requested meal modification?

It is almost never appropriate for an SFA to decline to provide an effective meal modification to accommodate a child's disability, if the modification request is related to the child's disabling condition. The exception would be a modification request that would fundamentally alter the nature of the Program (see page 7 of SP 59-2016). If an SFA has concerns about a request, the SFA is responsible for working with the parent or guardian to develop an appropriate modification and, as applicable, suitable alternatives for the child.

If an SFA declines a request, the SFA must ensure that the child's parent or guardian understands their rights under the Procedural Safeguards process. Please see "Procedural Safeguards," questions 10 through 12, for more information on these requirements.

21. Can the Offer versus Serve (OVS) provision be used to accommodate a meal modification?

No. Schools operating OVS must ensure children with disabilities have the opportunity to select all required food components for the meal. For example, a child who has Celiac disease or a gluten intolerance must have a choice of a bread/grain item that is gluten-free. The SFA may not use OVS to eliminate a specific food component for a child with a disability; in this case, the SFA must offer a grain substitute for a child who cannot consume gluten.

22. In situations where a medical statement is necessary, how often must the medical statement be updated?

FNS does not require SFAs to obtain updated medical statements on a regular basis. When SFAs receive updated medical information, they must ensure that medical statements on file reflect the current dietary needs of participating children. SFAs may require updates as necessary to meet their responsibilities, but should carefully consider the burden obtaining additional medical statements could create for parents and guardians when establishing such requirements.

23. If the medical statement does not provide sufficient information for the SFA to accommodate the child's disability, what should the SFA do?

When an SFA receives a medical statement signed by a State licensed healthcare professional requesting a meal modification to accommodate a child's impairment, the SFA must provide a reasonable modification to Program meals. If a medical statement is provided and does not fully explain the modification needed, the SFA should immediately contact the child's parent or guardian for guidance and ask the family to provide an amended medical statement as soon as possible. However, clarification of the medical statement should not delay the SFA from providing a

meal modification. SFAs should follow the portion of the medical statement that is clear and unambiguous to the greatest extent possible, while obtaining additional information. For more information, see question 31.

24. If a child no longer needs a meal modification, can the SFA stop providing meal modifications without the State licensed healthcare professional's approval?

FNS does not require SFAs to obtain written documentation from a State licensed healthcare professional rescinding the original medical order prior to ending a meal modification. FNS recommends, however, that SFAs maintain documentation when ending a meal accommodation. For example, an SFA could ask the child's parent or guardian to sign a statement indicating their child no longer needs a meal accommodation before ending the accommodation.

Making a Meal Modification

25. Does a meal modification request due to an allergy extend only to the specific allergen (e.g., peanuts), or does the request also extend to food products including a derivative of the allergen as an ingredient?

The SFA must provide the child with a safe meal and a safe environment to consume the meal. School food service professionals must ensure all meals and snacks they provide meet the prescribed guidelines and are free of all ingredients suspected of causing an allergic reaction. The SFA must ensure proper storage, preparation, and cleaning techniques are used to prevent exposure to allergens through cross contamination. The Section 504 Team should develop a strategy or a food allergy management plan for the daily management of food allergies for individual children. The FNS Office of Food Safety links to a number of food allergy resources to help SFAs in this effort: <https://www.fns.usda.gov/ofs/food-safety-resources>.

Sometimes, it may be advisable to prepare a separate meal "from scratch" using ingredients allowed on the special diet rather than serving a meal using processed foods. The general rule in these situations is to exercise caution at all times. SFAs must not serve foods to children at risk for allergic reactions if the food's ingredients are unknown.

26. What if the information needed to provide a child with a safe meal is not available on a food label?

If a food label does not provide adequate information, it is the responsibility of the SFA to obtain the information necessary to ensure a safe meal. This can be accomplished by contacting the supplier or manufacturer or checking with the State agency. Private organizations may also be consulted for information and advice.

27. If a child with a disability must have a breakfast each morning, is the SFA required to provide a breakfast for this child when the school does not operate the School Breakfast Program (SBP)?

FNS guidance does not require the SFA to provide meals to children with disabilities beyond the meals provided to other children. For instance, if the school does not have a breakfast program, FNS guidance does not require the SFA to begin participating in the SBP or to initiate a program exclusively for children with disabilities. However, schools may have additional obligations to students with disabilities under the ADA, IDEA, and Section 504 beyond the scope of FNS guidance. For instance, an IEP may require a school to provide a breakfast meal, and the school may choose to have the SFA handle this responsibility. Please see page 4 of SP 59-2016 for more information.

28. If a State licensed healthcare professional prescribes portion sizes exceeding the minimum quantity requirements set forth in Program regulations, is the SFA required to provide these additional quantities?

Yes. The SFA must provide the child food portions exceeding the minimum quantity requirements, if specifically prescribed in the medical statement. In other situations, a medical statement may prescribe portion sizes below the minimum quantity requirements set forth in Program regulations. In this situation, the SFA is also required to follow the direction of the medical statement, and provide smaller quantities.

29. If a child has a disability and a specific brand name substitute is requested, does the SFA have to provide the brand name requested?

Generally, SFAs are not required to provide the specific brand requested, unless the brand name item is medically necessary. Instead, the SFA must provide a reasonable modification that accommodates the child's disability and provides equal opportunity for the child to participate in and benefit from the Program. In situations where the requested substitute is very expensive or difficult to procure or obtain, it would be reasonable for the SFAs to follow up with the family to see if a different substitute would be safe and appropriate for the child. For example, if the medical statement lists a specific brand of lactose-free milk, the SFA could check with the family to see if it would be safe and appropriate for the SFA to provide a different brand. In this instance, the family could then affirm the brand-name change.

Reimbursement for Modified Meals

30. Can SFAs receive Federal reimbursement for modified meals that do not meet the Program meal pattern requirements?

Modified meals that do not meet the Program meal pattern requirements served to a child due to a disability are eligible for reimbursement. However, in order to receive reimbursement for such meals, the school must obtain and keep on file written documentation of the medical statement that supports the meal modification. The documentation must be signed by a State licensed healthcare professional.

Modified meals that meet the Program meal pattern requirements are eligible for reimbursement regardless of whether the school obtains a medical statement. FNS does not require a medical statement for meal modifications within the Program meal pattern.

31. May schools claim a meal outside the regular meal pattern for reimbursement while waiting for the child’s parent or guardian to submit a medical statement?

Yes. Schools should not unduly delay a child’s meal modification while waiting for the family to submit a medical statement. In this situation, school officials must document the initial conversation with the family where school officials first learned of the child’s need for an accommodation. School officials should follow up with the family if the school does not receive the requested medical statement as anticipated and maintain a record of this contact. School officials should diligently continue to follow up with the family until a medical statement is obtained or the request is rescinded.

32. Will SFAs receive additional reimbursement to cover the costs of providing modified meals or accommodations to the meal service?

No. SFAs will not receive additional reimbursement to cover the extra costs sometimes associated with providing a reasonable modification; however, SFAs may use funds from the non-profit school food service account, the general fund, or special education funds (if specified in the child’s IEP) to cover the additional food or food service costs.

Accommodations to the Meal Service

33. Must an SFA provide nutrition information for all food available each day for children who need to track their dietary intake?

The SFA is not necessarily required to provide all of the nutrition information for all Program meals, as it would be very burdensome to provide this information. For example, if a child with diabetes must track their carbohydrate intake, the SFA would not be required to provide nutrition information for all food choices available during the lunch and/or breakfast meal service. The SFA could instead develop a cycle menu with input from the child's parent or guardian, medical professionals, the school nutritionist and nurse, and other members of the Section 504 Team as appropriate. The SFA would only have to provide nutrition information for the foods on the planned cycle menu for the child with a disability, as opposed to all foods offered through the Programs.

34. May an SFA serve meals to children with disabilities in an area separate from the cafeteria where the majority of the school children eat?

Federal civil rights legislation, including Section 504 of the Rehabilitation Act of 1973, IDEA, and Titles II and III of the ADA, requires that in providing nonacademic services, including meals, school districts must ensure children with disabilities participate along with children without disabilities to the maximum extent appropriate. This allows children to interact with and learn from other children with backgrounds different from their own.

However, under some circumstances it may be appropriate to require children with certain special needs to sit at a separate table. For example, if a child requires a large amount of assistance from an aide in order to consume their meals, it may be necessary for the child and the aide to have more space during the meal service.

Additionally, SFAs may determine a separate, more isolated eating area would be best for children with severe food allergies. Prior to developing a special seating arrangement, the SFA should determine, with input from the child's family and physician, if this type of seating arrangement would truly be helpful for the child. If the SFA does develop a special seating arrangement, other children should be permitted to join the child with the food allergy, provided they do not bring any foods that would be harmful to the child.

SFAs may not, however, segregate children from the regular meal service due to their disability simply as a matter of convenience, and it is not appropriate to simultaneously use a separate table to segregate children who are being punished for misconduct.

Non-Disability Situations

35. Are SFAs required to accommodate a meal modification request for a child who does not have a disability but has a food preference?

No. However, SFAs may make meal modifications for children who do not have disabilities. When providing a substitution for a child without a disability, the substitution must be consistent with the meal pattern requirements specified in Program regulations in order for the meal to be reimbursable (see: 7 CFR 210.10 (m)(3)). When a modification is made within the meal pattern, SFAs are not required to obtain a medical statement.

36. If an SFA provides meal modifications for non-disability reasons (e.g., food preferences for religious reasons or a child's vegetarianism) are the modified meals eligible for Federal reimbursement?

FNS encourages schools to provide a variety of foods for children to select from in order to accommodate food preferences. Meal modifications to accommodate a food preference or for religious, ethnic, moral, or other reasons may be reimbursed, provided these meals adhere to the standards found in Program regulations (see 7 CFR 210.10 (m)(3)).

Miscellaneous

37. Is a Food Service Management Company (FSMC) that contracts with an SFA to operate the school's food service obligated to accommodate children with disabilities?

Yes. SFAs must make reasonable modifications for children with disabilities, regardless of whether the school district operates the food service or contracts with a FSMC. As applicable, modifications for children with disabilities should be included in the FSMC contract. SFAs that do not need dietary accommodations at the time a FSMC bid is prepared should still include sufficient information in the bid to ensure the FSMC is aware that dietary accommodations may be required during the term of the contract.