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August 31, 2009

MEMORANDUM

CACFP 09-12
SFSP 09-09

To: Institutions Participating in the Child and Adult Care Food Program
Sponsors of the Summer Food Services Program

From: Donna Beard MS, RD, LDN
Child Nutrition Program Assistant

Subject: **Meal Substitutions for Medical or Other Special Dietary Reasons**

The purpose of this memorandum is to re-issue guidance on meal substitution documentation from a previous memo CACFP 98-29, dated July 31, 1998, Subject: Meal Substitutions in the Child and Adult Care Food Program.

Child Nutrition Program regulations require participating school food authorities, institutions and sponsors to offer to all participants breakfasts, lunches, suppers, supplements and milk which meet the meal patterns identified in the Program regulations. Departmental regulations further **require** substitutions to the standard meal patterns for participants who are considered disabled under 7 CFR Part 15b and whose disability restricts their diet; and **permit** substitutions for other participants who are not disabled but are unable to consume regular Program meals because of medical or other special dietary needs. The provisions requiring substitutions for disabled participants respond to the requirements of Section 504 of the Rehabilitation Act of 1973 and to the U.S. Department of Agriculture's implementing regulations, 7 CFR Part 15b, which provide that no otherwise qualified disabled individuals shall, solely on the basis of disability, be excluded from participation in, be denied benefit of, or subjected to discrimination under any program or activity receiving Federal financial assistance.

This Instruction outlines the policy for food substitutions and other modifications in the meal patterns necessary to meet the dietary requirements of Program participants with disabilities and with other special dietary needs. School food authorities, institutions and sponsors are **required** to offer Program meals to participants with disabilities whenever Program meals are offered to the general populations served by the Programs. School food authorities, institutions and sponsors should be aware that the Individuals with Disabilities Education Act (IDEA) imposes requirements on States which may affect them, including the service of meals even when such service is not required by the Child Nutrition Programs.



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For example, the individualized education program developed for a child under the IDEA may require a meal to be served outside of the regular meal schedule for Program meals or may require a breakfast to be served in a school food authority which does not participate in the School Breakfast Program. While the school food authority, institution or sponsor may not claim these meals as Program meals, it may use the same food service facilities or food service management company to provide these meals as it uses to provide Program meals, and Program funds may be used to pay for the costs associated with the IDEA-required meals. Inquiries regarding the IDEA's requirements should be directed to the U.S. Department of Education, the Agency responsible for the IDEA's administration and enforcement.

School food authorities, institutions and sponsors may also have responsibilities under the Americans with Disabilities Act (ADA). Inquiries regarding a school food authority's, institution's or sponsor's responsibilities under the ADA should be directed to the U.S. Department of Education, the agency responsible for the enforcement of the ADA's requirements in elementary and secondary education systems.

I DISABLED PARTICIPANTS (formerly known as HANDICAPPED PARTICIPANTS)

"Handicapped person" is defined in 7 CFR §15b.3 (i) 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 an impairment" (See Attachment 7 CFR 15 b 3).

"Major life activities" are defined in 7 CFR §15b.3 (k) as "functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working."

School food authorities, institutions and sponsors participating in the Child Nutrition Programs are **required** to make substitutions or modifications to the meal patterns for those participants with disabilities who are unable to consume the meals offered to nondisabled participants.

Determinations of whether or not a participant has a disability which restricts his or her diet are to be made on an individual basis by a licensed physician. (Licensed physicians include Doctors of Osteopathy in many states.) The physician's medical statement of the participant's disability must be based on the regulatory criteria for "handicapped person" defined in 7 CFR Part 15b.3 (i) and contain a finding that the disability restricts the participant's diet. In those cases in which the school food authority, institution or sponsor has consulted with the physician issuing the statement and is still unclear whether the medical statement meets the regulatory criteria, the school food authority, institution or sponsor may consult the State agency.

A participant whose disability restricts his or her diet shall be provided substitutions in foods only when supported by a statement signed by a licensed physician. The medical statement shall identify:

A The participant's disability and an explanation of why the disability restricts the participant's diet;

B The major life activity affected by the disability; and

C The food or foods to be omitted from the participant's diet, and the food or choice of foods that must be substituted. If the disability would require caloric modifications or the substitution of a liquid nutritive formula, for example, this information must be included in the statement. If the disabled participant requires only textural modification(s) to the regular Program meal, as opposed to a meal pattern modification, the medical statement is recommended, but not required. In such cases, the purpose of the statement is to assist the school food authority, institution or sponsor in providing the appropriate textural modification(s). Unless otherwise specified by the physician, the meals modified for texture will consist only of food items and quantities specified in the regular menus.

The State agency should make 7 CFR 15b.3 available to school food authorities, institutions and sponsors. The school food authority, institution or sponsor should also provide parents or guardians with 7 CFR Part 15b.3, so that their physicians may correctly assess whether an individual's disability meets the regulatory criteria. School food authorities, institutions and sponsors should use the services of a Registered Dietitian to assist in implementing the medical statement, as appropriate.

Generally, participants with food allergies or intolerances, or obese participants are not "handicapped persons", as defined in 7 CFR 15b.3 (i), and school food authorities, institutions and sponsors are not required to make substitutions for them. However, when in the physician's assessment food allergies may result in severe, life-threatening reactions (anaphylactic reactions) or the obesity is severe enough to substantially limit a major life activity, the participant then meets the definition of "handicapped person", and the food service personnel must make the substitutions prescribed by the physician.

II PARTICIPANTS WITH OTHER SPECIAL DIETARY NEEDS

School food authorities, institutions or sponsors may, at their discretion, make substitutions for individual participants who are not "handicapped persons", as defined in 7 CFR 15b.3(i), but who are unable to consume a food item because of medical or other special dietary needs. Such substitutions may only be made on a case-by-case basis when supported by a statement signed by a recognized medical authority. In these cases, recognized medical authorities may include physicians, physician assistants, nurse practitioners or other professionals specified by the State agency.

Note: In North Carolina, there are no other professionals specified by the State Agency.

For these nondisabled participants, the supporting statement shall include:

A An identification of the medical or other special dietary need which restricts the participant's diet; and

B The food or foods to be omitted from the participant's diet, and the food or choice of foods that may be substituted.

School food authorities, institutions and sponsors are not required to make substitutions for participants whose conditions do not meet the definition of "handicapped person" set forth in 7 CFR 15b.3(i). For example, individuals who are overweight or have elevated blood cholesterol generally do not meet the definition of disabled person, and thus school food authorities, institutions, and sponsors are not required to make meal substitutions for them. In fact, in most cases, the special dietary needs of nondisabled participants may be managed within the normal Program meal service when a well-planned variety of nutritious foods is available to children, and/or "offer versus serve" is available and implemented.

III REIMBURSEMENT AND AVAILABILITY OF SUBSTITUTIONS

Reimbursement for meals served with an authorized substitute food to disabled participants or to participants with other special dietary needs shall be claimed at the same reimbursement rate as meals which meet the meal pattern. Furthermore, there shall not be a supplementary charge for the substituted food item(s) to either a disabled participant or to a participant with other special dietary needs. 7 CFR 15b.26(d) (1) specifies that, in providing food services, recipients of Federal financial assistance "may not discriminate on the basis of handicap" and "shall serve special meals, at no extra charge, to students whose handicap restricts their diet." While any additional costs for substituted foods are considered allowable Program costs, no additional Child Nutrition Program reimbursement is available. Sources of supplemental funding may include special education funds (if the substituted food is specified in the child's individualized education program); the general account of the school food authority, institution or sponsor; or, for school food authorities, the nonprofit school food service account.

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." The school food authority, institution or sponsor is responsible for the accessibility of food service sites and for ensuring the provision of aides, where needed. As with additional costs for substituted foods, any additional costs for adaptive feeding equipment or for aides are considered allowable costs. However, no additional Child Nutrition Program reimbursement is available. Sources of supplemental funding may include special education funds (if specified in the child's individualized education program); the general account of the school food authority, institution or sponsor; or, for school food authorities, the nonprofit school food service account.

7 CFR 15b.26(d) (2) further provides that recipients provide all food services in the most integrated setting appropriate to the needs of the disabled persons as required by 7 CFR 15b.23(b).

That section requires Program recipients to ensure that disabled persons participate with nondisabled persons to the maximum extent appropriate to the needs of the disabled person in question.

V COOPERATION

When implementing the guidelines of this Instruction, food service personnel should work closely with the parent(s) or responsible family member(s) and with all other school, child care, medical and community personnel who are responsible for the health, well-being and education of participants with disabilities or with other special dietary needs to ensure that reasonable accommodations are made to allow such individuals' participation in the meal service. This cooperation is particularly important when accommodating children or elderly adults whose disabling conditions require significant modifications or personal assistance.

Attachment

[Code of Federal Regulations]
[Title 7, Volume 1]
[Revised as of January 1, 2005]
From the U.S. Government Printing Office via GPO Access
[CITE: 7CFR15b.3]

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TITLE 7--AGRICULTURE

PART 15b_NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE--Table of Contents

Subpart A_General Provisions

Sec. 15b.3 Definitions.

As used in this part, the term or phrase:

(a) The Act means the Rehabilitation Act of 1973, Public Law 93-112, 87 Stat. 390 (1973), as amended by the Rehabilitation Act Amendments of 1974, Public Law 93-651, 89 Stat. 2 (1974) and Public Law 93-516, 88 Stat. 1617 (1974) and the Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978, Public Law 95-602, 92 Stat. 2955 (1978). The Act appears at 29 U.S.C. 701-794.

(b) Section 504 means section 504 of the Act, 29 U.S.C. 794.

(c) Education of the Handicapped Act means the Education of the Handicapped Act, Public Law 92-230, Title VI, 84 Stat. 175 (1970), as amended by the Education of the Handicapped Amendments of 1974, Public Law 93-380, Title VI, 88 Stat. 576 (1974), the Education for All Handicapped Children Act of 1975, Public Law 94-142, 89 Stat. 773 (1975), and the Education of the Handicapped Amendments of 1977, Public Law 95-49, 91 Stat. 230 (1977). The Education of the Handicapped Act appears at 20 U.S.C. 1401-1461.

(d) Department means the Department of Agriculture and includes each of its operating agencies and other organizational units.

(e) Secretary means the Secretary of Agriculture or any officer or employee of the Department to whom the Secretary has delegated or may delegate the authority to act under the regulations of this part.

(f) Recipient means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) Federal financial assistance or assistance means any grant, contract (other than a procurement contract or a contract of insurance or guaranty), cooperative agreement, formula allocation, loan, or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel;

(3) Real and personal Federal property or any interest in Federal property, including:

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(i) A sale, transfer, lease or use (on other than a casual or transient basis) of Federal property for less than fair market value, for reduced consideration or in recognition of the public nature of the

recipient's program or activity; and

(ii) Proceeds from a subsequent sale, transfer or lease of Federal property if the Federal share of its fair market value is not returned to the Federal Government.

(4) Any other thing of value.

(h) Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(i) Handicapped person means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

(j) Physical or mental impairment means (1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis, cancer; heart disease; diabetes; mental retardation; emotional illness; and drug addiction and alcoholism.

(k) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(l) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(m) Is regarded as having an impairment means (1) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (2) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others towards such impairments, or (3) has none of the impairments defined in paragraph (j) of this section but is treated by a recipient as having such an impairment.

(n) Qualified handicapped person (used synonymously with otherwise qualified handicapped individual) means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question, but the term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others;

(2) With respect to public preschool, elementary, secondary, or adult educational services, a handicapped person, (i) of an age during which non-handicapped persons are provided such services, (ii) of an age during which it is mandatory under State law to provide such services to handicapped persons, or (iii) to whom a State is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets all academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(o) Handicap means any condition or characteristic that renders a person a handicapped person as defined in paragraph (i) of this section.

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(p) For purposes of Sec. 15b.18(d), Historic Preservation Programs are those that receive Federal financial assistance that has preservation of historic properties as a primary purpose.

(q) For purposes of Sec. 15b.18(e), Historic properties means those buildings or facilities that are eligible for listing in the National Register of Historic Places, or such properties designated as historic under a statute of the appropriate State or local government body.

(r) For purposes of Sec. 15b.18(d), Substantial impairment means a significant loss of the integrity of finished materials, design quality or special character which loss results from a permanent alteration.

(s) Program or activity means all of the operations of any entity described in paragraphs (s)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship--

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (s)(1), (2), or (3) of this section.

[47 FR 25470, June 11, 1982, as amended at 55 FR 52139, Dec. 19, 1990; 68 FR 51342, Aug. 26, 2003]

