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Beverly Eaves Perdue, Governor


Albert A. Delia, Acting Secretary

August 15, 2012

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SFSP 12-09

MEMORANDUM

TO: Institutions Participating in the Child and Adult Food Program
Sponsors of the Summer Food Service Program

FROM: Arnette Cowan, MS, RD, LDN 
Supervisor, Special Nutrition Programs

SUBJECT: Prohibition of Separation by Gender During Child Nutrition Program Meal Service

The attached memorandum titled, “Guidance on Prohibition of Separation by Gender in Schools during School Meals” sets forth guidance on the separation of children by gender during a Child Nutrition Program meal service. The memorandum also clarifies that this requirement applies to children not participating in the program meal, but in a facility that receives Federal funds.

MEMORANDUM

UNITED STATES DEPARTMENT OF AGRICULTURE (USDA)

FOOD AND NUTRITION SERVICE (FNS)

GUIDANCE ON THE PROHIBITION OF SEPARATION BY GENDER DURING THE SERVICE OF MEALS IN THE CHILD NUTRITION PROGRAMS

PURPOSE

- a. This memorandum sets forth guidance to all FNS Regional Offices, State administering agencies and school food authorities that receive federal funding from FNS, Child Nutrition Programs under USDA. The Child Nutrition Programs (CNPs) include: the National School Lunch Program, School Breakfast Program, Special Milk Program, Child and Adult Care Food Program, and the Summer Food Service Program. These programs receive federal funds for providing free, reduced price and paid program meals. Under USDA statutes and regulations, authorities may not separate children by gender in the service of program meals that fall under the aforementioned CNPs. In addition, this requirement applies to children who do not consume program meals, but are in a facility that receive federal funds from FNS.

- b. This guidance provides clarification to the statutory requirements that prohibit separating children by gender in any facility receiving federal funds appropriated for providing meals under the CNPs. Facilities are defined as schools, institutions, child care centers, day care homes and summer feeding sites.

AUTHORITY

- a. Title IX of the Education Amendment Act of 1972, 20 U.S.C. 1681, *et seq.*
- b. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.*
- c. The Richard B. Russell National School Lunch Act (NSLA), as amended, 42 U.S.C. 1760(j), *et seq.*
- d. The Child Nutrition Act of 1966 (CNA), 42 U.S.C. 1771, *et seq.*
- e. 7 C.F.R. 15a.12
- f. 7 C.F.R. 15a.31
- g. FNS Instruction 113-1

BACKGROUND

- a. FNS Headquarters and FNS Regional Offices received numerous inquiries and complaints regarding schools in different states that separate students in school facilities based on gender in the school facilities during the breakfast and/or lunch meal service periods.
- b. The school food authorities involved in separation by gender during the service of program meals have taken the position that this practice does not violate Title IX of the Education Amendment Act of 1972, the National School Lunch Act, and other relevant USDA regulations and guidance.

FNS GUIDANCE

- a. Upon consultation with the USDA Office of the General Counsel (OGC), FNS has determined that school authorities may not separate any students based on gender during the service of program meals.
- b. There are other methods to ensure safety and discipline without or separating students based on impermissible factors such as gender.
- c. Under the governing statute for the CNPs (CNA and NSLA), FNS does not have the authority to grant States and/or program providers a waiver to the requirements mandated under these acts in the enforcement of constitutional or statutory rights of individuals under Title IX ((42 U.S.C. 1760 (l) (4) (M) (iii)).
- d. An exemption by an educational institution controlled by a religious organization may be filed with the USDA pursuant to 15 C.F.R. 15a.12 (b). The exemption must be in writing and by the most senior official of the requesting institution. The request must also identify which part of this policy violates a specific tenet of the religious organization.

If you have additional questions regarding this guidance, please contact Anita Cunningham, Acting Director, FNS Office of Civil Rights, at 703-305-0986.