

United States Department of Agriculture

MODIFICATIONS TO ACCOMMODATE INDIVIDUALS WITH DISABILITIES IN COMMUNITY MEALS PROGRAMS

**2018 Child Nutrition Tri-State Conference
May 9, 2018**



Civil Rights Program Authorities

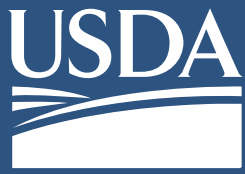
- Title VI of the Civil Rights Act of 1964
- Civil Rights Restoration Act of 1987
- **Section 504 of the Rehabilitation Act of 1973**
- **Americans with Disabilities Act (ADA) of 1990**
- **ADA Amendments Act of 2008**
- Title IX of the Education Amendments of 1972
- Age Discrimination Act of 1975



Civil Rights Program Authorities (cont'd)

- 7 Parts 15, 15a, **15b** and 15c
- **FNS 113-1 and its Appendices**
- **Executive Order 12250 (Disability)**
- Executive Order 13166 – (LEP)
- **28 CFR 41 (Government-wide 504 Regulation)**
- USDA Departmental Regulation 4330-2

And many more...

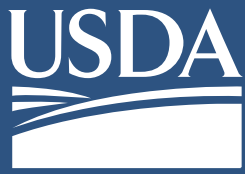


Disability Law

Legal Framework: Section 504, ADA,
implementing regulations and policy guidance

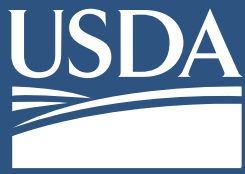
Duty to Provide Reasonable Modifications:
understand & accept that (sometimes) providing
modifications is nebulous

Relationship between Section 504 and the ADA
(Titles II & III) in light of the Americans with
Disabilities Act Amendments Act



Coverage of All Operations

Even one dollar of Federal money brings the entire scope of the operations within the jurisdiction of Section 504, even where the requested modification is not related to the part of the operations that receives Federal money.

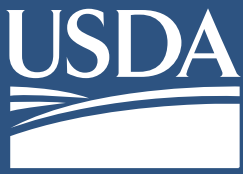


ADA Amendments Act of 2008

EXPANDED AND CLARIFIED the definition of Disability.

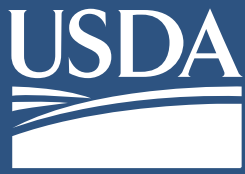
DID NOT change the expectation to provide a Reasonable Modification.

DID make very clear that the emphasis must be on providing the reasonable modification, and the disabled person does not carry a high burden of 'proving' he or she has a disability.



Disability Definition

- I. A person with a physical or mental impairment that substantially limits one or more major life activities.
- II. A person who has a record of such an impairment.
- III. A person who is regarded as having such an impairment.



Expanded Definition of Disability

Revised “Substantially Limits”

- Need not prevent, or severely/significantly restrict a major life activity
- Individualized assessment
- Without regard to ameliorative effects of mitigating measures
- May include an impairment that is episodic or in remission if it would substantially limit a major life activity when active

Expanded Definition of Disability

Major Life Activities

Seeing, hearing,
Walking
Speaking, learning, reading
Eating
Breathing, etc.

New Category of “Major Life Activities”

Major Bodily Functions

Digestive
Immune system
Respiratory
Circulatory
Neurological/Brain, etc.



Types of Disability Discrimination

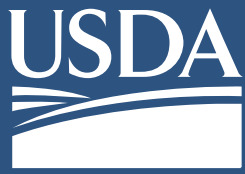
- Discrimination because of the disability
 - Denying benefits or opportunity to participate
 - Segregating individuals with disabilities
 - Aiding, perpetuating or contracting with others that discriminate

- Failure to provide a reasonable modification

- Ineffective Communication

- Inaccessible Facilities





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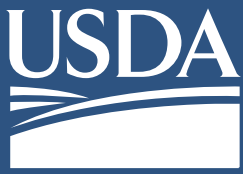
**Updated Guidance:
Modifications to Accommodate Disabilities
in the
Child and Adult Care Food Program and
Summer Food Service Program**

Date Issued: June 22, 2017

Covers CACFP and SFSP

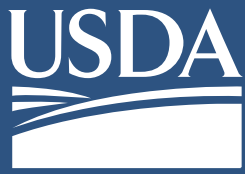
Copy available on FNS website at:

<https://www.fns.usda.gov/modifications-accommodate-disabilities-cacfp-and-sfsp>



Reasonable Modifications

- A change or alteration in policies, practices, and procedures to accommodate a disability
- Duty to negotiate over modification. This means simply saying “no” is almost never appropriate.
- Providing appropriate modifications – not ferreting out whether the participant has a disability or any possible abuse of the process – is the primary objective
- On a case-by-case basis



Reasonable Modifications

The modification provided—

- should be related to the disability or limitations caused by the disability
- does *not* have to be the modification requested
- must (generally) be free of charge
- should be implemented even where the person requesting modification believes more should be done

Reasonable Modifications: Key Considerations

- Consider costs/resources and ability of the participant
- “Stereotypes” regarding certain conditions or individuals can never drive decisions. Decisions must be based on facts.
- Meal accommodations do not need to mirror the meal or meal item substituted.
- “Lifestyle” choices (e.g. vegetarian) are not considered disabilities and need not be accommodated unless related to an underlying disability



Fundamental Alteration

Modifications are not required that would fundamentally alter the nature of the program.

If the modification requested would cause undue financial burden on the program or activity that would make continued operation of the Program unfeasible, the modification need not be provided.



Note: Denying a modification(s) under the fundamental alteration exception should not result in the denial of access to the program or other benefits or services. State Agencies are advised to consult with FNS before relying on this exception.

Food Allergies

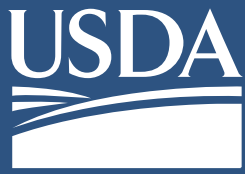
- Many food allergies fall under the definition of disability expanded by the ADA Amendments Act (ADAAA).
- According to the CDC: “In the United States, the following eight foods or food groups account for 90% of serious allergic reactions: milk, eggs, fish, crustacean shellfish, wheat, soy, peanuts, and tree nuts.”
- Applies to much more than just “life threatening” allergic reactions
- “Digestive” and “Respiratory” functions are specifically listed in the ADAAA

Food Allergies: Key Considerations

Universal exclusions of specific foods or food groups is not an FNS policy, but could be appropriate depending on the circumstances, and is within the discretion of recipients



Program operators should consider their ability to consistently maintain an allergen-free facility



Program Accessibility

Ensure food service areas are accessible

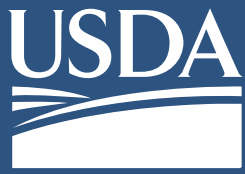
Provide auxiliary aids and services, if needed.

Examples include-

- Food service aides
- Adaptive feeding equipment
- Meal tracking assistance
- Other effective methods

Integrated Environment

- Integration clause in Section 504 means that individuals with disabilities should be accommodated in the least restrictive and most integrated setting possible.
- In the food allergy context, this most often comes into play where participants with food allergies are ostracized in some way during meal time.
- Providers must always balance safety vs. stigma. Age, ability and severity of allergy are the primary considerations.



Medical Statement Requirements

- Statement provides sufficient information about impairment (diagnosis not required and should not be requested), how it restricts diet, and how to accommodate condition
- Seek clarification if inadequate or unclear
- Clarification should not unnecessarily delay modification – it could be characterized as harassment/denial
- Need not be from a physician if State law authorizes others to write prescriptions
- Cannot request medical records/charts
- Medical Statement may be requested, but is not required for substitutions within meal pattern requirements

Example: Medical Statement Supporting Modification to Accommodate a Food Allergy

Three essential components:

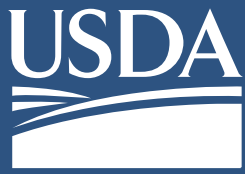


- 1) The food to be avoided (allergen)
- 2) Brief explanation of how exposure to the food affects the participant
- 3) Recommended substitute(s)*

Implementation & Compliance

1. Develop procedures for parents/guardians, participants and their representatives to request reasonable modifications
2. Train staff and volunteers on reasonable modification procedures and legal requirements
3. Appoint a person to provide technical assistance on reasonable modification matters
4. *Assemble a Team to implement guidelines and render decisions on modification requests

**Recommended*



Procedural Safeguards

1. Provide Notice (in appropriate languages and formats) of -
 - a. Process for requesting modification
 - b. Decision in writing
 - c. Nondiscrimination and accessible services
 - d. Location of accessible facilities
2. In addition, Program operators with 15 or more employees must –
 - a. designate a Section 504 Coordinator; and
 - b. establish a grievance procedure to promptly and fairly resolve complaints.



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Questions ?



Contact Information

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