Civil Rights in Child Nutrition Programs
Objectives

By the end of this presentation you will be able to:

• Implement correct Civil Rights procedures
• Provide reasonable modifications to accommodate disabilities for program participants
• Establish a Civil Rights complaint Procedure
• Have completed annual Civil Rights training
Topics Covered

- Legislation
- Assurances
- Public Notification
- Data Collection
- Language Assistance
- Modifications to Accommodate Disabilities
- Complaint Procedure
- Civil Rights Reviews and Resolution
- Training
- Customer Service
- Conflict Resolution
Civil Rights

LEGISLATION
Civil Rights Legislation

Title VI of the Civil Rights Act of 1964
• Race, Color, and National Origin

Civil Rights Restoration Act of 1987
• Clarifies the scope of the Civil Rights Act of 1964

Section 504 of the Rehabilitation Act of 1973 & Americans with Disabilities Act of 1990 (ADA); ADA Amendments Act of 2008
  – Disability
  Age Discrimination Act of 1975
  – Age
Title IX of the Education Amendments of 1972
  – Sex
Civil Rights Program Authorities

- 7 CFR Parts 15, 15a and 15b
  - Nondiscrimination, Education, Disability
- 7 CFR Parts 210, 215, & 220 (NSLP, SMP, SBP)
- 7 CFR Parts 225 & 226 (SFSP & CACFP)
- 7 CFR Part 245 (NSLP, SMP, SBP – Eligibility)
- 28 CFR Part 35: Nondiscrimination on the Basis of Disability in State/Local Government Services
- 28 CFR Part 42: Nondiscrimination in Federally Assisted Programs
Civil Rights Program Authorities

• Executive Order 13166
  – Addresses/improves access requirements for persons with Limited English Proficiency (LEP)
• USDA Department Regulation 4330-2
  – Prohibits discrimination in programs and activities receiving federal funds from the USDA
• FNS Instruction 113-1 & FNS Instruction 113-1 Appendix B (School Meals, SFSP, & CACFP)
• 7 CFR Part 16 “Equal Opportunity for Religious Organizations”
  – Allows religiously affiliated organizations to compete equally for USDA funds
Implementing Equal Opportunity for Religious Organizations

- This can be accomplished by:
  - Prohibiting discrimination for or against an organization on the basis of religion, religious belief, or religious character in the administration and distribution of federal funds.
  - Allowing a religious organization that participates in USDA programs to retain its independence and continue to carry out its mission, provided that direct USDA funds do not support any “explicitly religious activities such as worship, religious instruction, or proselytization.
  - Clarifying that faith-based organizations can use space in their facilities to provide USDA-funded service without removing religious art, icons, scriptures, or other religious symbols.
  - Ensuring that no organization that receives direct federal funds can discriminate against a program beneficiary, or prospective beneficiary, on the basis of religion or religious belief.
What is Discrimination?

Different treatment which makes a distinction of one person or a group of persons from others; either intentionally, by neglect, or by the actions or lack of actions based on a protected class.
Federally Protected Bases

For Federal Food and Nutrition Service programs, complaints are based on one or more of the six Federally protected bases:

1) Race
2) Color
3) National Origin
4) Age
5) Sex
6) Disability
Protected Classes Under Maine State Law

• Adds protections for persons with regard to:
  – Religion
  – Ancestry
  – Sexual orientation
  – Genetic Information

• All Federal Child Nutrition Programs operating in public school districts in the State of Maine must adopt both Federal and State protected classes
Civil Rights

ASSURANCES
Civil Rights Assurances

• To qualify for Federal financial assistance, the program application must be accompanied by a written assurance that the program or facility will be operated in compliance with the CR laws and implementing nondiscrimination regulations.

• A civil rights assurance must be incorporated in all agreements between State and local agencies and their subrecipients.
  – Retailer and vendor agreements must include an assurance of nondiscrimination.

• FNS Instruction 113-1, Appendix B contains required assurances language

• State agencies, local agencies, and other subrecipients must be in compliance with Civil Rights requirements prior to approval for Federal financial assistance.
Assurances Continued

• Why are there assurances?
  – Help clarify expectations
  – Eliminate discrimination against applicants, participants and beneficiaries
  – Prevent future discrimination
  – Address effects of past discrimination
Civil Rights

PUBLIC NOTIFICATION
Public Notification

• All FNS assistance programs must include a public notification system

• The purpose is to inform persons of:
  – Program availability
  – Program rights and responsibilities
  – The nondiscrimination policy
  – The procedure for filing a complaint
Public Notification Continued

- **Program Availability**
  Inform applicants and potentially eligible persons of the availability of the program and the steps necessary for participation.

- **Rights and Responsibilities**
  Inform applicants, participants, and potentially eligible persons of their program rights and responsibilities.

- **Nondiscrimination Statement**
  All information materials and sources, including websites, used by FNS, State agencies, or other subrecipients to inform the public about FNS programs must contain a nondiscrimination statement. The statement is not required to be included on every page of the program Web site. At a minimum, the nondiscrimination statement or a link to it must be included on the home page of the program information.

- **Complaint Information**
  Advise applicants and participants at the service delivery point of their right to file a complaint, how to file a complaint, and the complaint procedures.
Elements of Public Notification

– Make program information available to the public upon request;
– Prominently display the “And Justice for All” poster;
– Inform potentially eligible persons, applicants, participants and grassroots organizations of programs or changes in programs;
– Convey the message of equal opportunity in all photos and other graphics that are used to provide program or program-related information;
– Provide appropriate information in alternative formats for persons with disabilities and in the appropriate language(s) for LEP persons.
– Include the required nondiscrimination statements.
“And Justice For All” Poster

- Display the poster in a prominent location for all to view

- USDA AD-475A

- Order posters through Maine DOE at 624-6842
At a minimum, the full Nondiscrimination Statement should be on vital documents, including but not limited to:

- **Application Form(s)**
  - Free and Reduced Meal Application
  - Meal Application Cover Letter
  - Notification of Approval or Denial of Meal Benefits
  - Reminder Regarding Expiration of Previous Year Eligibility Benefits

- **Verification Materials**
  - Verification Notice
  - Verification Results Letter

- **Notice of Adverse Action Forms**

- **Program (Home) Web Page**

- **Public Information, including Program literature**
In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

(1) mail: U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW  
Washington, D.C. 20250-9410;

(2) fax: (202) 690-7442; or

(3) email: program.intake@usda.gov.

This institution is an equal opportunity provider.
De conformidad con la Ley Federal de Derechos Civiles y los reglamentos y políticas de derechos civiles del Departamento de Agricultura de los EE. UU. (USDA, por sus siglas en inglés), se prohíbe que el USDA, sus agencias, oficinas, empleados e instituciones que participan o administran programas del USDA discriminen sobre la base de raza, color, nacionalidad, sexo, discapacidad, edad, o en represalia o venganza por actividades previas de derechos civiles en algún programa o actividad realizados o financiados por el USDA.

Las personas con discapacidades que necesiten medios alternativos para la comunicación de la información del programa (por ejemplo, sistema Braille, letras grandes, cintas de audio, lenguaje de señas americano, etc.), deben ponerse en contacto con la agencia (estatal o local) en la que solicitaron los beneficios. Las personas sordas, con dificultades de audición o discapacidades del habla pueden comunicarse con el USDA por medio del Federal Relay Service [Servicio Federal de Retransmisión] al (800) 877-8339. Además, la información del programa se puede proporcionar en otros idiomas.

Para presentar una denuncia de discriminación, complete el Formulario de Denuncia de Discriminación del Programa del USDA, (AD-3027) que está disponible en línea en: [http://www.ascr.usda.gov/complaint_filing_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html) y en cualquier oficina del USDA, o bien escriba una carta dirigida al USDA e incluya en la carta toda la información solicitada en el formulario. Para solicitar una copia del formulario de denuncia, llame al (866) 632-9992. Haga llegar su formulario lleno o carta al USDA por:

1. correo: U.S. Department of Agriculture  
   Office of the Assistant Secretary for Civil Rights  
   1400 Independence Avenue, SW  
   Washington, D.C. 20250-9410;
2. fax: (202) 690-7442;
3. correo electrónico: program.intake@usda.gov.

Esta institución es un proveedor que ofrece igualdad de oportunidades.
The Maine Human Rights Act prohibits discrimination because of race, color, sex, sexual orientation, age, physical or mental disability, genetic information, religion, ancestry or national origin.

Complaints of discrimination must be filed at the office of the Maine Human Rights Commission, 51 State House Station, Augusta, Maine 04333-0051. If you wish to file a discrimination complaint electronically, visit the Human Rights Commission website at [https://www.maine.gov/mhrc/file/instructions](https://www.maine.gov/mhrc/file/instructions) and complete an intake questionnaire. Maine is an equal opportunity provider and employer.
Nondiscrimination Statement

USDA Nondiscrimination Statement (NDS)

Must get State Agency approval prior to use of the short version.

"This institution is an equal opportunity provider."

“Esta institución es un proveedor que ofrece igualdad de oportunidades.” (Spanish)

Other languages are available on FNS CRD website
Civil Rights

DATA COLLECTION
Racial/Ethnic Data Collection

• Purpose: To determine how effectively FNS programs are reaching potentially-eligible persons and beneficiaries.

• As a means of monitoring civil rights compliance, state agencies shall establish a system for the collection of racial/ethnic data of each person applying for and receiving benefits.

• Applicants shall be assured that the information is required for and used for statistical purposes only and has no effect on eligibility criteria.

• Data should be collected at the point of application or may be collected at the time of student enrollment by the school.
Racial/Ethnic Data Collection
Continued

- “...data will be used to determine how effectively FNS programs are reaching potential eligible persons and beneficiaries, identify areas where additional outreach is needed, assist in the selection of locations for compliance reviews, and complete reports as required.

- “...State agencies, local agencies, and other subrecipients are required to obtain data by race and ethnic category on potentially-eligible populations, applicants, and participants in their program service area...Systems for collecting actual racial and ethnic data must be established and maintained for all programs. (FNS Instruction 113-1 Section XII)
Racial/Ethnic Data Collection
Continued

• Applicants shall be assured that the information is required for and used for statistical purposes only and has no effect on eligibility criteria.

• Children are not to be surveyed.
Race and Ethnic Categories – Two Question Format

1. Ethnicity
   Hispanic or Latino
   Not Hispanic or Latino

2. Race (one or more of the following)
   American Indian or Alaskan Native
   Asian
   Black or African American
   Native Hawaiian or Other Pacific Islander
   White
Population Data Sources

US Census Data
• http://www.census.gov/2010census/data/

American Community Survey
• http://www.census.gov/acs/
Civil Rights

LANGUAGE ASSISTANCE
Limited English Proficiency (LEP):

Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.
LEP Requirements

• Federal agencies and recipients must take reasonable steps to ensure “meaningful” access to their programs and activities by LEP persons.

• Meaningful access is accomplished by proving reasonable, timely, appropriate, competent, qualified, accurate, and effective language services to individuals with LEP when accessing programs and services.

(FNS Instruction 113-1, Section VII; Title VI and its implementing regulations, Executive Order 13166, and Federal agency guidance)
Factors to consider in addressing LEP

1. The number or proportion of LEP persons eligible to be served or likely to be encountered within the area serviced by the recipient.

2. Frequency with which LEP individuals come in contact with the program.

3. Nature and importance of the program, activity, or service provided by the program.

4. Resources available to the recipient and costs.
Translation Resources

• Free and Reduced Meal Applications are available in a number of foreign languages at:

• Other program materials may need translation.

• Foreign language teachers, community organizations, and volunteers may be used.

• Make sure they understand the confidentiality requirements.

• Interpreter hotlines are another option.

• Children should not be used to translate program requirements to parents & guardians.
Language Assistance Resources

Migration Policy Institute’s National Center on Immigrant Integration Policy
• http://www.migrationpolicy.org/

Department of Justice site: LEP.GOV
• http://www.lep.gov/maps/

• Maine DOE has access to a company called LanguageLine Solutions
MODIFICATIONS TO ACCOMMODATE DISABILITIES
Disability Discrimination

Sections 504 of the Rehabilitation Act of 1973 and USDA implementing Regulation, 7 CFR Part 15b

• prohibit discrimination based on disability in programs or activities receiving Federal financial assistance.

Americans with Disabilities Act (ADA), 28 CFR Part 35, Title II, Subtitle A

• prohibits discrimination on the basis of disability in all services, programs and activities provided to the public by State and local governments.

These Civil Rights laws protect persons with disabilities if they are potential applicants or participants in any FNS-funded programs.
What is the definition of *disability*?

- A 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.

- Major life activity means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
  - functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, and reproductive functions. (ADA Amendments Act of 2008)
Access to the Program

• Provide reasonable modifications for meal accommodations.
  • *Maine DOE has a separate training on this*

• 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 disabled individuals should be accommodated in the least restrictive and most integrated setting possible.

• In the food allergy context, this most often comes into play where children with food allergies are ostracized in some way during meal time.
  – Allergy-free tables, such as peanut-free tables, are acceptable, as long as they are not also “punishment” tables.

• Providers must always balance safety vs. stigma. The severity of the allergy and age of the child are the primary considerations.
COMPLAINTS OF DISCRIMINATION
Complaints of Discrimination

- Complaints shall be accepted and forwarded to the USDA/FNS Regional Office of Civil Rights
- Maine Human Rights Commission must be notified
- Complaints must be filed within 180 days from the alleged act of discrimination
- Complaints may be written, verbal, or anonymous
- State agencies or subrecipient agencies may develop their own complaint forms, but the use of such forms cannot be a pre-requisite for acceptance
- A separate Civil Rights complaint log shall be maintained by the State and subrecipient agency
- Confidentiality is extremely important and must be maintained
Types of Complaints

Customer Service Complaint
• There has been a break down in service, and can result from a lack of customer focus, being insensitive, or demonstrating a lack of understanding

Civil Rights Complaint/Discrimination
• Characterized by the complainant verbalizing or submitting in writing that they feel they have been treated unfairly or discriminated against due to a protected class basis
Civil Rights Complaints Process

USDA Discrimination Complaint Form

English
AD-3027

Spanish
AD-3027 (Spanish)
Maine Human Rights Commission

Filing a complaint of discrimination

Complaints of discrimination must be filed at the office of the Maine Human Rights Commission, 51 State House Station, Augusta, Maine 04333-0051
Compliance Reviews

There are three types of compliance reviews:

1. Pre-Award Compliance Reviews (relates to fourth bullet point on slide #8)
2. Routine (Post-Award) Compliance Reviews
3. Special Compliance Reviews
Post Award/Routine Compliance Reviews

Areas of review
• Assurances
• Public Notification
• Racial and Ethnic Data Collection and Reporting
• Civil Rights Complaints
• Compliance Reviews
• Resolution of Noncompliance
• Civil Rights Training
• Disability Compliance
• Limited English Proficiency
• Verification of Citizenship or Immigration Status
Special Compliance Reviews

• May be scheduled or unscheduled;
• To follow-up on previous findings of noncompliance;
• To investigate reports of noncompliance by other agencies, media, or grassroots organizations;
• May be specific to an incident or policy;
• History of statistical underrepresentation of particular group(s);
• Pattern of complaints of discrimination.
Resolution of Non-Compliance

- A factual finding that any civil rights requirement, as provided by law, regulation, policy, instruction, or guidelines, is not being adhered to by a State agency, subrecipient agency, or a local site

- Steps must be taken immediately to obtain voluntary compliance

- A finding’s effective date is the date of notice to the reviewed entity
A Voluntary Resolution Agreement (VRA) is an agreement that recipient(s) are willfully consenting to undertake remedial actions to address identified areas of noncompliance or in violation with applicable civil rights laws and/or regulations.

The VRA may be between multiple parties such as the officials in authority to regulate civil rights laws (Food and Nutrition Service, Civil Rights Division, (FNS CRD)), recipient or sub-recipient (State agency or school), and program participant (Complainant).

Voluntary Resolution Agreements may be used to closeout a Civil Rights Compliance Review at the discretion of FNS CRD in lieu of issuing a written Compliance Review report with findings.
Common Civil Rights Findings

- Not all staff involved in CNP operation have received training
- Incorrect complete non-discrimination statement on program materials
- Maine nondiscrimination statement missing
Civil Rights

TRAINING
Civil Rights Training

- SFAs are responsible for annually, based on a calendar year, training all staff involved in any and all aspects of the Child Nutrition programs including:
  - All food service staff
  - Free and reduced meal application approval staff
  - Teachers responsible for Breakfast in the Classroom
  - Any program volunteers
- New employees must be trained before involvement in Child Nutrition duties
- Training must be documented with dates, names, signatures, and topics covered
Civil Rights Training

• Specific subject matter required, but not limited to:
  – Public notification systems
  – Collection and use of data
  – Requirements for language assistance
  – Requirements for reasonable accommodation
  – Compliant procedures
  – Civil Rights reviews
  – Resolution of noncompliance
  – Customer Service
  – Conflict resolution
Training on Complaint Procedure

• Staff should be able to identify a civil rights complaint if received
• They should know what to do if they receive a complaint
• Staff must understand that it is the basic right of persons to file a complaint of discrimination
Civil Rights

CUSTOMER SERVICE
Customer Service

• Although folks should never be discouraged from filing a complaint of discrimination, sometimes it is more of a program complaint, than a civil rights complaint.

• Good customer service reduces chances of discrimination.
Practice Good Customer Service

• Be courteous and thoughtful.
• Be patient and listen carefully.
• Treat all students equally.
  – No separation by protected bases in seating arrangements, serving lines, services and facilities, or eating periods.
  • As noted in the Accommodation section, allergy-free tables, such as peanut-free tables, are acceptable, as long as they are not also “punishment” tables.
Customer Service Continued

• Talk with kids and ask them how their day is going
• Encourage them to try new items
• Allow children to finish their meal without feeling rushed
• Be mindful of how you talk about the food you are serving
Civil Rights

CONFLICT RESOLUTION
Conflict Resolution

• It is possible to avoid a potential civil rights complaint with conflict resolution techniques.
  – Remain calm; ask about the situation.
  – Repeat it back to be sure you understand.
  – Try to help those involved work out their differences.
  – Get help from authority figures if threats or violence is possible.
Verification of Citizenship or Immigration Status

This issue should never give rise to discrimination.
Record Retention

• All records must be kept confidential and maintained on file for 3 years, plus the current year, unless an audit is actively being done.

• Local rules may require records to be maintained longer.
Maine Human Rights Commission
51 State House Station
Augusta, Maine 04333-0051
Telephone (and via Relay): 207-624-6290
Facsimile: 207-624-8729
Website: www.maine.gov/mhrc
Steve Miliano
Civil Rights Director, Northeast Regional Office
Food and Nutrition Service
10 Causeway St. Suite 501
Boston, MA 02222
POC steven.miliano@fns.usda.gov

Office: (617) 565-642
FAX: (617) 565-6473
Resources

- Maine Department of Education Child Nutrition Civil Rights page: https://www.maine.gov/doe/schools/nutrition/nondiscrimination

- Civil Rights Laws, Regulations, Executive Orders and related Other Guidance: https://www.fns.usda.gov/cr/civil-rights-laws-regulations


Nondiscrimination Statement

Federal
In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the Agency where they applied for benefits. Individuals who are deaf, hard of hearing, or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

(1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410;
(2) fax: (202) 690-7442; or
(3) email: program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

State
The Maine Human Rights Act prohibits discrimination because of race, color, sex, sexual orientation, age, physical or mental disability, genetic information, religion, ancestry or national origin.

Complaints of discrimination must be filed at the office of the Maine Human Rights Commission, 51 State House Station, Augusta, Maine 04333-0051. If you wish to file a discrimination complaint electronically, visit the Human Rights Commission website at https://www.maine.gov/mhrc/file/instructions and complete an intake questionnaire. Maine is an equal opportunity provider and employer.