

# Civil Rights In Child Nutrition Programs



Child Nutrition  
Maine Department of Education

# 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

# Legislation

Civil Rights

# 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 LEP Policy Guidance (79 Fed. Reg. No. 229. Friday, November 28, 2014)
- ▶ 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 carryout 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:

- Race
- Color
- National Origin
- Age
- Sex (including gender identity and sexual orientation)
- Disability

# Protected Classes Under Maine State Law

- ▶ Adds protections for persons with regard to:
  - ▶ Religion
  - ▶ Ancestry
  - ▶ 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 - Bostock Memo

- ▶ Discrimination on the basis of sex in programs or activities receiving Federal financial assistance **includes** discrimination on the basis of sexual orientation and discrimination on the basis of gender identity.
- ▶ This policy update is consistent with the Supreme Court's decision in *Bostock v. Clayton County*, 140 S. Ct. 1731, 590 U.S. \_\_\_\_ (2020), and applies to prohibitions against discrimination based on sex in all FNS programs.
- ▶ Updates Federal non-discrimination statement: sex (including gender identity and sexual orientation)
- ▶ Updated poster will be released

# Assurances

Civil Rights

# 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

# Public Notification

Civil Rights

# 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**

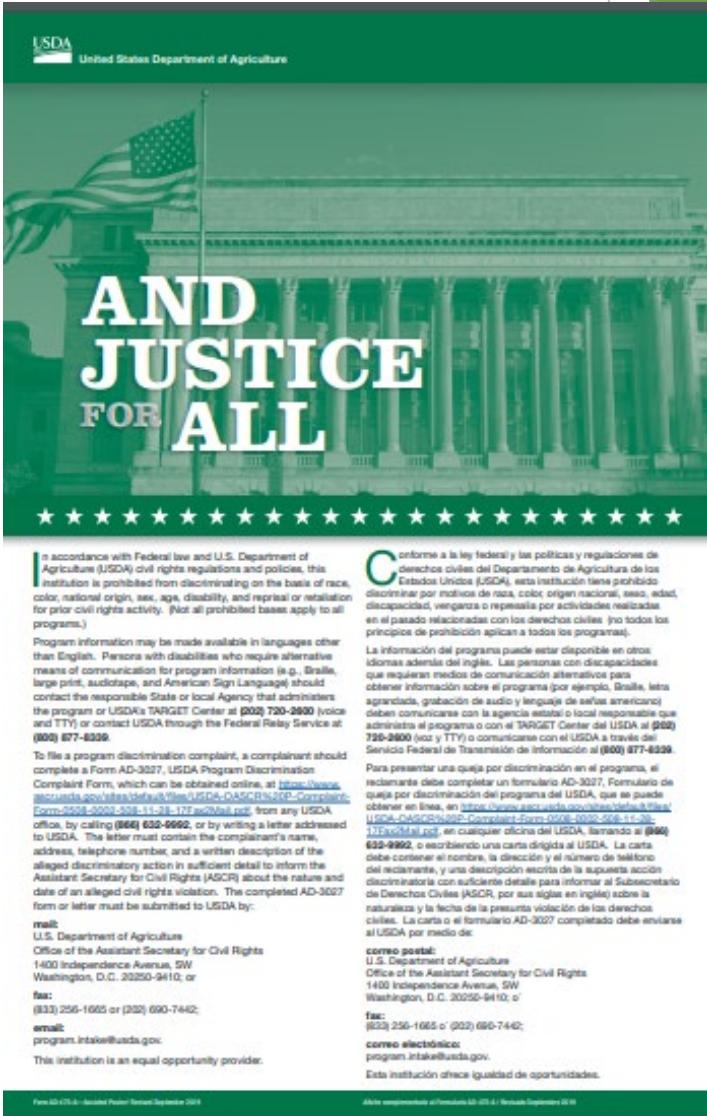
Advise applicants and participants at the service delivery point of their right to file a complaint, how to file a complaint, and the complaint procedures.

# 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



# **Nondiscrimination Statement - Use**

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**

# Nondiscrimination Statement

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the responsible State or local Agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form* which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted 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; or

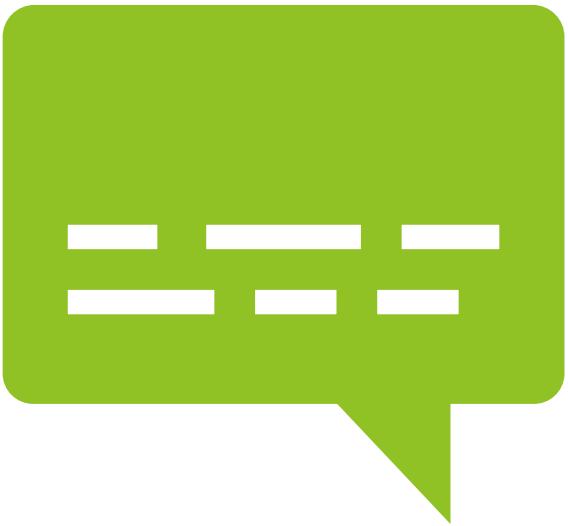
**(2) fax:**

(833) 256-1665 or (202) 690-7442; or

**(3) email:**

[program.intake@usda.gov](mailto:program.intake@usda.gov)

This institution is an equal opportunity provider.



## **Translated versions of the Non-Discrimination Statement**

[https://www.fns.usda.gov/  
cr/fns-nondiscrimination-  
statement](https://www.fns.usda.gov/cr/fns-nondiscrimination-statement)

# Maine Nondiscrimination Statement

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.

# 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

# Data Collection

Civil Rights

# 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

- ▶ <https://data.census.gov/cedsci/>

## American Community Survey

- ▶ <http://www.census.gov/acs/>

# Language Assistance

Civil Rights

# LEP 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 providing 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)

# LEP - Four Factor Analysis

## 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:
  - ▶ <https://www.fns.usda.gov/cn/translated-applications>
- ▶ 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

Civil Rights

# 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.

# Disability Discrimination

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

Civil Rights

# 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 prerequisite 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

# Civil Rights Reviews

Civil Rights

# Compliance Reviews

There are three types of compliance reviews

1. Pre-Award Compliance Reviews
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 Noncompliance

- 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

# Voluntary Resolution Agreement

- ▶ 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

# Training

Civil Rights

# Civil Rights Training

- Child Nutrition Program Sponsors, including 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
  - ▶ Complaint 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

# Customer Service

Civil Rights

# Customer Service

- ▶ Although people 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

# Conflict Resolution

## Civil Rights

# 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.

# 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 Contact Information

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](http://www.maine.gov/mhrc)

# USDA Contact Information

Steve Miliano  
Civil Rights Director, Northeast Regional  
Office Food and Nutrition Service  
10 Causeway St. Suite 501  
Boston, MA 02222  
POC  
[stephen.miliano@fns.usda.gov](mailto:stephen.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/nondiscriminatio  
n](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](https://www.fns.usda.gov/cr/civil-rights-laws-regulations)

- USDA Program Discrimination Complaint Procedure:

[https://www.usda.gov/oascr/filing-program-discrimination-  
complaint-usda-customer](https://www.usda.gov/oascr/filing-program-discrimination-complaint-usda-customer)

- Human Rights Commission Intake Form:

[https://www.maine.gov/mhrc/file-a-complaint/general-  
intake-form](https://www.maine.gov/mhrc/file-a-complaint/general-intake-form)

# Questions?

Contact the Child Nutrition office:

Adriane Ackroyd

207-592-1722

[adriane.ackroyd@maine.gov](mailto:adriane.ackroyd@maine.gov)

# Nondiscrimination Statement

## Federal

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Washington, D.C. 20250-9410; or
- (2) fax:  
(833) 256-1665 or (202) 690-7442; or
- (3) email:  
[program.intake@usda.gov](mailto:program.intake@usda.gov)

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