United States Department of Agriculture

Food and Nutrition Service

3101 Park Center Drive
Alexandria, VA
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DATE: March 20, 2015

MEMO CODE: SP 31-2015 CACFP 12-2015, SFSP-14-2015

SUBJECT: Guidance on Prohibition of Separation by Gender during Child Nutrition Program Meal Service

TO: Regional Administrators
Deputy Regional Administrators
Regional Civil Rights Directors
Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

Background

This memorandum explains the prohibition on separation by gender during Child Nutrition Program meal service and outlines select circumstances under which gender-based separation may be permissible. This memorandum supersedes previously rescinded guidance SP 32-2012, CACFP 16-2012, as well as SFSP 12-2012, *"Prohibition of Separation by Gender during Child Nutrition Program Meal Service,"* originally issued May 9, 2012.

School food authorities (SFAs), organizations, and institutions impacted by this guidance are those participating in any of the following Child Nutrition Programs: National School Lunch Program; School Breakfast Program; Fresh Fruit and Vegetable Program; Special Milk Program; Child and Adult Care Food Program; and Summer Food Service Program. These include any schools, child or adult care institutions and facilities, camps (including residential facilities), and other sites, as defined in 7 CFR §§ 210.2, 215.2, 225.2, and 226.2, that are providing meal service as a Program activity.

Separation by Gender During Meal Service Prohibited

In general, SFAs, institutions, and organizations participating in the Child Nutrition Programs are not permitted to separate children on any protected basis during the service of Program meals or snacks, in keeping with Federal non-discrimination laws and policies as outlined for the Department of Agriculture (USDA) programs in 7 CFR Parts 15, 15a, and 15b. Federal law prohibits discrimination based on gender at any educational institution receiving Federal assistance.

Exceptions to the Prohibition on Gender-Separated Meal Service

For co-educational schools and school-based sites:

The Food and Nutrition Service (FNS) recognizes religious exemptions granted by the Department of Education (ED) without prior express approval. ED guidelines allow school and school-based sites to apply for an exemption when Federal law prohibiting gender separation is inconsistent with the institution's religious tenets. These exemptions apply broadly to operations, including the meal service at a given site, such as a faith-based school.

Additionally, ED guidelines specifically allow for the approval of gender-separate instruction at public primary and secondary non-vocational schools that could take a variety of forms. It is important to emphasize that since the general rule is that gender separation during meal service is prohibited, a co-educational school may not use limited ED approval of gender-separate instruction to justify blanket gender separation during meal service. Limited exemptions in such situations must be expressly approved by FNS.

For other institutions and organizations:

State agencies may approve exemptions allowing separation by gender during a Child Nutrition Program meal service for participating SFAs, organizations, and institutions, without express prior approval from FNS, in the following circumstances:

- Meal service at religious institutions operating under the dictates of the religion with which they are affiliated.
- Meal service at juvenile correctional facilities where combining members of the opposite gender would present a potential safety risk.
- Meal service at facilities that fully separate by gender as part of their normal operations (for example, gender-separated summer camps).

When requesting an exemption, the Child Nutrition Program operator must specify which of the above listed reasons apply and why separation by gender is necessary. State agencies must document all exemption requests, including the date of approval or disapproval, and if applicable, the duration of the approval. We recommend that exemption approvals are documented in the agreement between the Program operator and the State agency.

The above listed exemptions are the only acceptable bases for gender separation during Child Nutrition Program meal service. Any gender separation not based on the ED and/or FNS approval processes is strictly prohibited.

On a case by case basis, situations that do not clearly fit into any of the exemptions outlined above may be considered by the State agency in direct consultation with the FNS Regional Office, including the FNS Civil Rights Office and appropriate FNS National Office Child Nutrition Program staff.

State agencies are reminded to distribute this memorandum to Program operators immediately. Program operators should direct any questions concerning this guidance to their State agency. State agencies with questions should contact the appropriate FNS Regional Office.

Original Signed

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Child Nutrition Programs

Original Signed

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Food and Nutrition Service