Accommodating Disabilities in the School Meal Programs

State Agency Training
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Presented by Dana Parker, Director of Training
Introduction

• NSLP & SBP aim to provide all children with nutrition meals regardless of background
• SFA’s must comply with USDA regulations
• This includes ensuring children with disabilities equal opportunity to participate in programs
• 2.8 Million school aged children with disability in 2010
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)
- USDA LEP Guidance
- 28 CFR 41 (Government-wide 504 Regulation)
- USDA Departmental Regulation 4330-2
- And many more…
Recent Guidance

• Memo SP 59-2016 Policy on Modification to Accommodate Disabilities in School Meal Program

• Memo replaces FNS Instruction 783-2 Rev 2 Meal Substitution for Medical or other Special Dietary Reasons
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, not placing a high burden on the disabled person to prove he or she has a disability.
ADA Amendments Act of 2008

- Better align with Congressional intent
- SFA would work with families to ensure children with a disability have equal opportunity
- LEA or SFA should not engage in weighing medical evidence against legal requirements to determine if medical or physical condition meets the disability definition
- Most physical and mental impairments constitutes a disability
Memo SP 26-2017

• Question and answer discusses common situation found
• Ensures SFA’s are working with participants to ensure equal opportunities to all
• Website: https://www.fns.usda.gov/school-meals/accommodating-disabilities-school-meal-programs-guidance-and-qas
## Expanded Definition of Disability

### Major Life Activities
- Seeing, hearing,
- Walking
- Speaking, learning, reading
- Eating
- Breathing

### Major Life Activities
- Major Bodily Functions
- Digestive
- Immune system
- Respiratory
- Circulatory
- Neurological/Brain
School Food Service Scenario (1)

- **Question:** A child with autism is very sensitive to food textures, and will only eat foods with a smooth texture. Is the child’s condition considered a disability, and if so, must the school food service (SFA) or center make a modification for the child?
• **Answer**: Yes. According to the ADA any physical or mental impairment impacting the “major life activity” of eating is considered a disability. Some children with autism have sensory sensitivities and prefer food of a certain texture or color and therefore, children with autism may need other reasonable meal modifications.
Reasonable Modifications

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

• Consider costs/resources, and the participant’s age and ability
• “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
School Food Service Scenario (2)

• **Question:** The “regular” menu item for lunch at the local middle school is whole grain rich pasta with cheese and vegetable toppings. Must the school food service director prepare whole grain rich pasta with *lactose-free cheese* and vegetable toppings for a child with lactose intolerance?
• **Answer:** No. In a disability situation, the meal modification or meal item substituted does not need to mirror the menu item offered each day. The SFA’s responsibility is to serve the child a safe meal that accommodates their disability, not to mirror the Program meal served that day.
School Food Service Scenario (2) Response Cont.

• In the example used in this question, the SFA would not be required to serve a whole grain rich pasta dish, and could instead serve a different meal that meets the child’s modification request, such as a sandwich with whole grain rich bread.
Fundamental Alteration

**Exception:** 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.
Fundamental Alteration Cont.

• **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.

• **Before making the decision to deny a modification should be discussed with State Agency**
School Food Service Scenario (3)

• **Question:** A number of children at a high school receive modified meals due to a disability. The SFA has medical statements on file supporting all of the modified meals. Is the SFA eligible to receive the additional 6 cent reimbursement for compliance with the program meal pattern?
School Food Service Scenario (3)
Response

• **Response:** Yes. Modified meals that do not meet the meal pattern due to a disability are still eligible to receive the additional 6 cent reimbursement.
Major Food Allergens Resource

• US Food and Drug Administration-Food Allergies: What You Need to Know.

• https://www.fda.gov/Food/IngredientsPackagingLabeling/FoodAllergens/ucm079311.htm
Major Food Allergies

- Peanuts
- Milk
- Eggs
- Wheat
- Soy
- Tree nuts (e.g., almonds, pecans, or walnuts)
- Fish (e.g., bass, flounder, or cod)
- Crustacean shellfish (e.g., crab, lobster, or shrimp)
- An ingredient containing protein derived from one of the eight allergens listed above
Integrated Environment

- Integration clause in Section 504 requires Program operators to serve disabled individuals 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 shunned in some way during meal time.
- Providers must always balance safety vs. stigma. Age, ability and severity of allergy are the primary considerations.
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
Food Service Scenario (4)

• **Question:** A large number of children in an elementary school or center have a peanut allergy. Should the organization go “peanut-free?”
• **Answer**: Universal exclusion of specific foods (or food groups) is not FNS policy, but could be appropriate depending on local circumstances. However, if a school chooses to enact a universal ban, the specific allergen must never be present in the school, as the family will assume the school is a safe place for their child based on the stated ban.
Implementation & Compliance

• Develop procedures to address requests to accommodate children with disabilities
• Develop a process to provide notice to parent/guardian to explain their rights
• Use Section 504 of the Rehabilitation Action of 1973 or IDEA to fulfill requirement to maintain Procedural Safeguards for meal modifications.

• Best Practice - Assemble a Team to implement guidelines and render decisions on modification requests
USDA Prohibits the Following Discriminatory Actions

• Denying a person with a disability the opportunity to participate in or benefit from the recipient’s aid, benefit, or services.
• Providing a person with a disability an opportunity to participate that is not equal to the opportunity provided to others.
• Providing a person with a disability an aid, benefit, or service that is not as effective as the aid, benefit, or service provided to others.
• Providing a person with a disability a different aid, benefit, or service, unless doing so is necessary to provide an aid, benefit, or service that is as effective as those provided to others.
Medical Statement Requirements

Are required when the meal modification does not meet meal pattern requirements

– Must include

• Information about the child’s physical or mental impairment is sufficient to all SFA to understand how it restricts the child’s diet
Medical Statement Requirements Cont.

• Statement provides sufficient information about impairment (diagnosis not required and should not be requested), how it restricts diet, and how to accommodate condition

• What must be done to accommodate the child’s disability

• The food or foods to be omitted and recommended alternative, in the case of a meal modification
Understanding the Medical Statement

• When new medical statement is submitted, SFA must work closely with Section 504/ADA Coordinator, and school nurse

• If medical statement is unclear, the SFA should contact child’s parent/guardian for an amended statement
  – Do not delay the meal modification
  – Follow portion of statement that is clear
Brand Name Request

• If medical statement of meal modification request a brand name is SFA responsible to purchase the “Brand Name” product?

• Answer, it would depend
  – If the medical statement indicates a brand name product, the SFA could discuss with parents or guardian concerning another product. If the family affirms the brand name is not necessary, the SFA could use generic brand
Offer vs Serve

• Children with meal modifications must have option to select all food components/items available to other children
• SFA cannot accommodate a child’s disability by asking them to exclude a food component/item
• The SFA may not use OVS to eliminate a specific food component for a child with a disability
Procurement of Special Meals

• SFA must make reasonable modification for children with disabilities, regardless whether the SFA operates the food service or contracts with a Food Service Management Company

• Meal modification for children with disabilities must be included in the FSMC contract
QUESTIONS?

Office phone: 405-521-3327
Desk phone: 405-522-5039
E-mail: dana.parker@sde.ok.gov