

Accommodating Individuals with Disabilities in Child Nutrition Programs



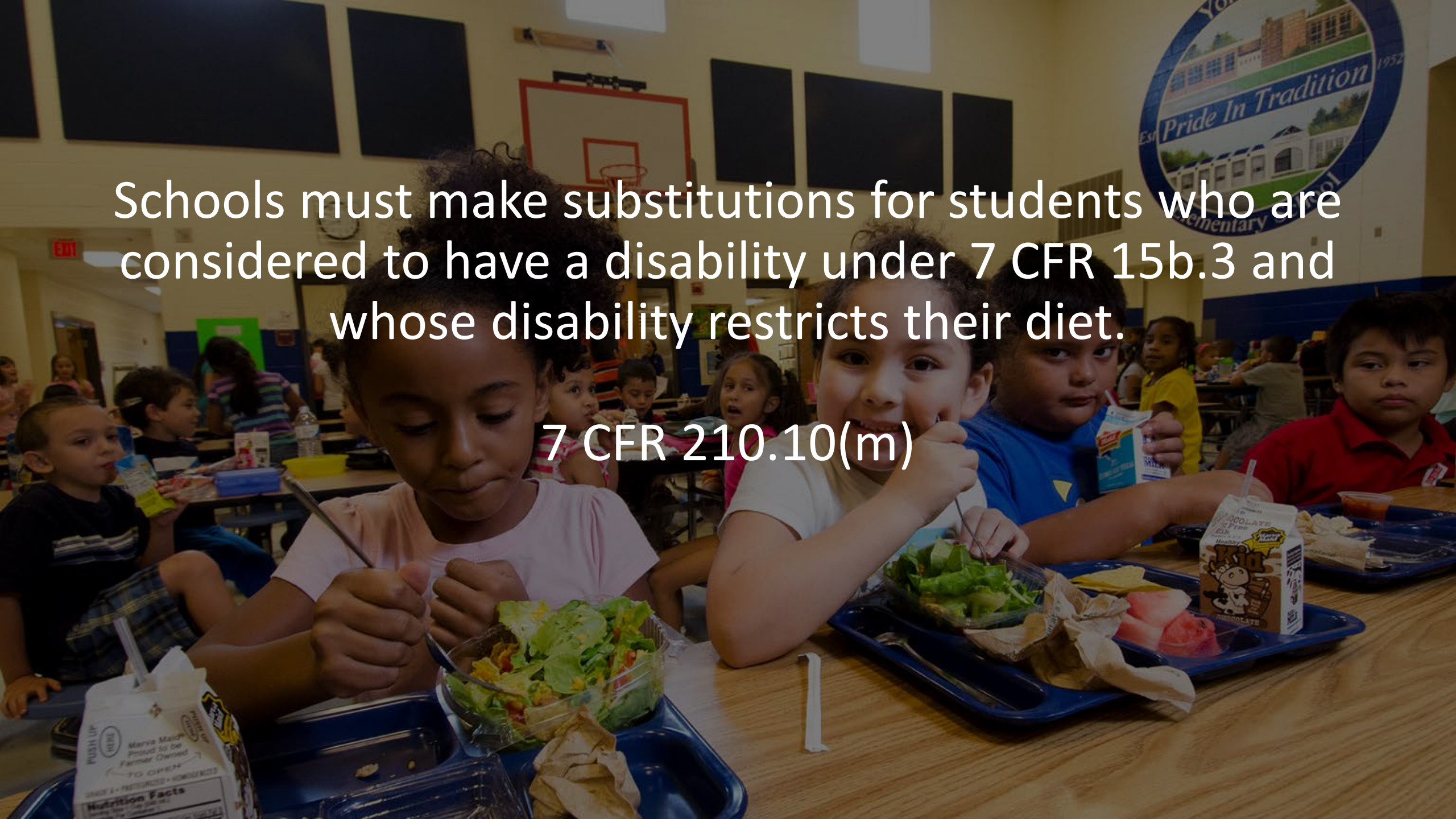
New York State
EDUCATION DEPARTMENT

CHILD NUTRITION KNOWLEDGE CENTER

1 hour Professional Standards Training


Schools must make substitutions for students who are considered to have a disability under 7 CFR 15b.3 and whose disability restricts their diet.

7 CFR 210.10(m)



Civil Rights Authorities

- Title VI of the Civil Rights Act of 1964
- Civil Rights Restoration Act of 1987
- Section 504 of the Rehabilitation Act of 1973
- ADA of 1990
- ADA of 2008
- Title IX of the Education Amendments of 1972
- Age Discrimination Act of 1975
- 7 CFR Parts 15, 15a, 15b and 15c
- FNS 113-1
- Executive Order 12250
- Executive Order 13166
- 28 CFR 41
- USDA Departmental Regulation 4330-2
- **2017 Edition of Accommodating Children with Disabilities in the School Meal Programs**



ADA Amendments Act of 2008: Implementation

- The term “**substantially limits**” requires a lower degree of functional limitation than the standard previously applied by the courts . An impairment does not need to prevent or severely or significantly restrict a major life activity to be considered “substantially limiting.” Nonetheless, not every impairment will constitute a disability.
- The term “**substantially limits**” is to be construed **broadly** in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA.
- The determination of whether an impairment substantially limits a major life activity **requires an individualized assessment**, as was true prior to the ADAAA.
- With one exception (“ordinary eyeglasses or contact lenses”), the determination of whether an impairment substantially limits a major life activity shall be made **without regard to the ameliorative effects of mitigating measures**, such as medication or hearing aids.
- An impairment that is **episodic or in remission** is a **disability** if it would substantially limit a major life activity when active.
- In keeping with Congress’s direction that the primary focus of the ADA is on whether discrimination occurred, **the determination of disability should not require extensive analysis.**

The expanded definition of DISABILITY:

Major Life Activities:

Seeing, hearing, walking, speaking,
learning, eating, breathing



Major Bodily Functions:

Digestive Immune system, respiratory,
circulatory, neurological/brain



MAJOR LIFE ACTIVITIES



Major Life Activities

- Caring for oneself
- Performing manual tasks
- Seeing, hearing, speaking
- Eating, Sleeping, Walking
- Standing
- Lifting, Bending
- Breathing
- Reading, Learning, Thinking
- Communicating
- Working



Major Bodily Functions

- Functions of the immune system
- Normal Cell Growth
- Digestive, Bowel, Bladder
- Neurological, brain
- Respiratory
- Circulatory
- Endocrine
- Reproductive

The background features a large, light blue circle on the left and a wavy, multi-colored line (blue, green, and yellow) on the right, both set against a white background.

Reasonable Modifications

Program accessibility



ENSURE ALL FOOD SERVICE AREAS ARE
ACCESSIBLE



PROVIDE AUXILIARY AIDS AND SERVICES,
SUCH AS: ADAPTIVE FEEDING
EQUIPMENT, OR FOOD SERVICE AIDES

Integrated Environment

- Section 504 contains an integration clause
- Applies to food allergies
- Balance safety versus stigma



Reasonable modification



A change or alteration in policies, practices and procedures to accommodate a disability



Providing the modification is your goal, not determining if the individual has a disability



You may negotiate a modification, the modification requested does not always have to be the modification provided



Case by case basis

For Your Consideration

- Costs/Resources
 - Facts
 - “Lifestyle” choice versus disability
- ▶ Health concerns or preferences that a child eat a specific diet because the parent/guardian believes it is healthier for the child are not disabilities and do not require a modification.

- Refer to:
- Accommodating Disabilities in the School Meal Programs: Guidance and Questions and Answers (Q&As)

follow this link

<https://fns-prod.azureedge.net/sites/default/files/cn/SP26-2017os.pdf>

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 when the person requesting the modification believes more should be done

Food Allergies



MANY FOOD
ALLERGIES FALL
UNDER THE
DEFINITION OF
DISABILITY

Medical statement requirements

Statement :

- Provides information about impairment-DIAGNOSIS NOT REQUIRED
- States how diet is restricted
- States how to accommodate condition

You may seek clarification:

- Do not delay modification
- Do not request medical records
- Do not require note signed by physician, it may be signed by any State licensed healthcare professional

(Physician, Nurse Practitioner, Physician's Assistant)

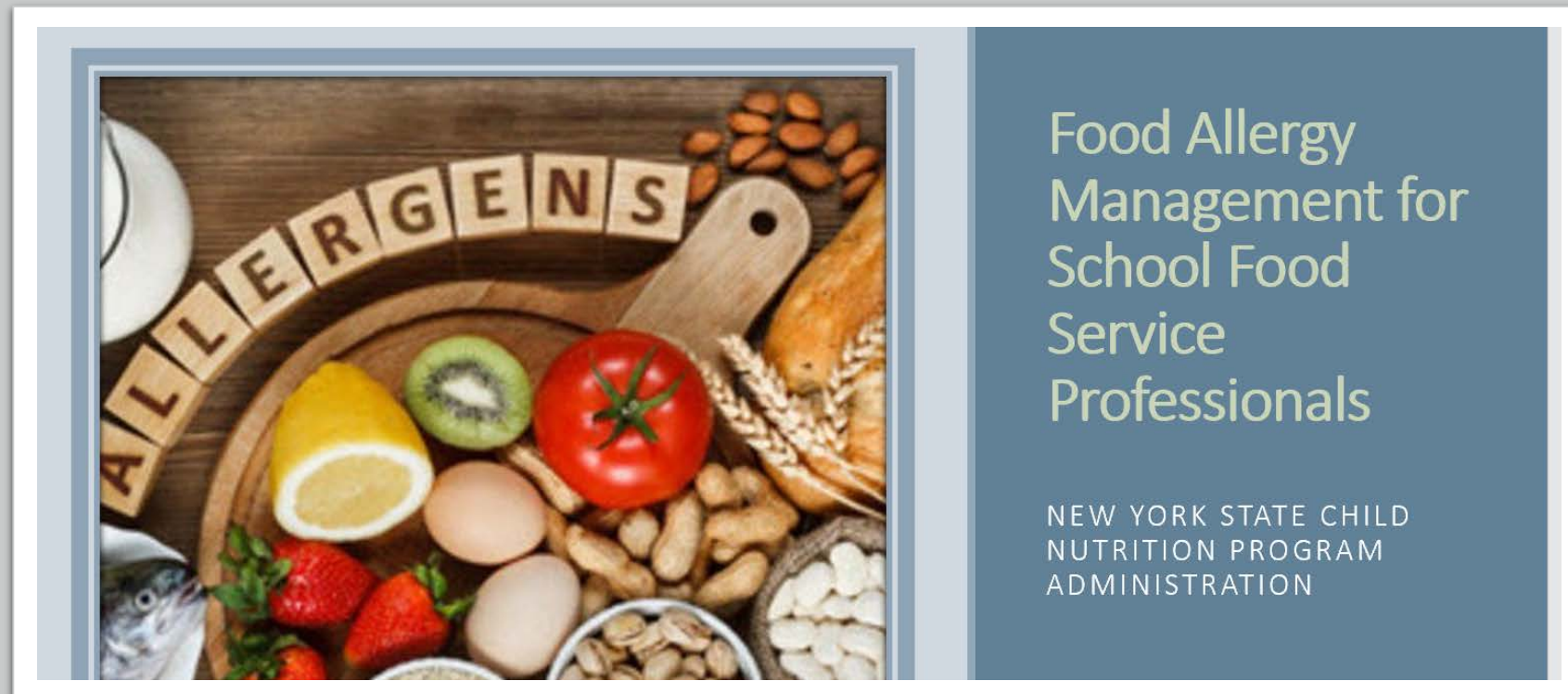
Food Allergy Medical Statement



- *Includes 3 essential components:
 - The food to be avoided (allergen)
 - Brief explanation of how exposure affects the student
 - Recommended substitute(s)

Food allergy management training designed specifically for Child Nutrition Program staff

- Refer to Child Nutrition Knowledge Center Training tab, under CN Snip-Its



Food Service Role

- Tracking Dietary Intake
- Food Safety/Sanitation





Special Circumstances

- Portion Sizes
- Brand Name Requests
- Offer vs. Serve
- Procurement of Special Meals

Fluid Milk Substitute Nutrient Requirements



Nutrient	8 Fluid Ounces
Calcium	276 mg
Protein	8 g
Vitamin A	500 IU
Vitamin D	100 IU
Magnesium	24 mg
Phosphorus	222 mg
Potassium	349 mg
Riboflavin	0.44 mg
Vitamin B-12	1.1 mcg

Procedural Safeguards and Training



SFAs must have a procedure in place to ensure parents know how to request a meal modification and how to file an grievance if a requested modification is not granted

Must include:

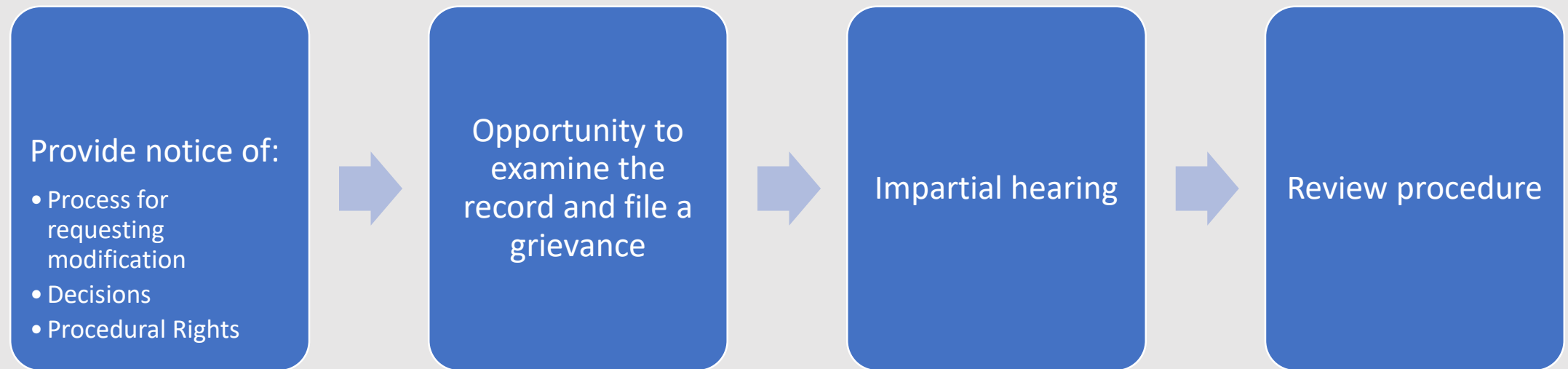
- How to file a grievance
- Receive a prompt and equitable resolution
- Request and participate in an impartial hearing to resolve the grievance
- Must be represented by counsel at the hearing
- Examine the record
- Receive notice of the final decision and procedure for review

Compliance



- SFA must develop procedures for parents/guardians to request modifications
- Train school and food service staff
- Appoint a 504 coordinator
- Assemble a team (best practice)

Parent/Guardian Notification





Additional Guidance

SP 26-2017: Accommodating Disabilities in the School Meal Programs: Guidance and Questions and Answers (Q and As)

- <http://www.fns.usda.gov/school-meals/accommodating-disabilities-school-meal-programs-guidance-and-qas>.



Questions

Contact your CN representative with any questions

New York State Education Department
Child Nutrition Program Administration
(518) 473- 8781
CN@nysed.gov