Accommodating Individuals with Disabilities in Child Nutrition Programs

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.
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
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

• 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
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

<table>
<thead>
<tr>
<th>Nutrient</th>
<th>8 Fluid Ounces</th>
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<tbody>
<tr>
<td>Calcium</td>
<td>276 mg</td>
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<tr>
<td>Protein</td>
<td>8 g</td>
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<tr>
<td>Vitamin A</td>
<td>500 IU</td>
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<tr>
<td>Vitamin D</td>
<td>100 IU</td>
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<tr>
<td>Magnesium</td>
<td>24 mg</td>
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<td>Phosphorus</td>
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<tr>
<td>Potassium</td>
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<tr>
<td>Riboflavin</td>
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<tr>
<td>Vitamin B-12</td>
<td>1.1 mcg</td>
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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 a 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
• 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)
Provide notice of:
- Process for requesting modification
- Decisions
- Procedural Rights

Opportunity to examine the record and file a grievance

Impartial hearing

Review procedure

Parent/Guardian Notification
Additional Guidance

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

Questions

Contact your CN representative with any questions

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