

Commissioner's Memo  
11/18/2019

## Meal Modifications to Accommodate Students with Disabilities in School Meal Programs

### Memo Information

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Memo Type Informational

Unit Child Nutrition

Regulatory Authority USDA 7 CFR 15b, 7 CFR 15b.26(d), 7 CFR 210.10(m) and 220.8(m), Section 504 of the Rehabilitation Act of 1973, Individuals with Disabilities Education Act of 1990, and Americans with Disabilities Act Amendments Act of 2008

Response Required NO

Attention Superintendents; Principals; Equity Coordinators (Disability/Race/Gender/National Origin); Child Nutrition Directors/Managers

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### Memo Text

#### **ATTENTION: SUPERINTENDENTS, PRINCIPALS, CHILD NUTRITION DIRECTORS, 504 COORDINATORS**

Schools that participate in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) are required to comply with the United States Department of Agriculture regulations, including *Non Discrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance* 7 CFR 15b.

This regulation addresses the requirement of schools to ensure that children with disabilities have an equal opportunity to participate in and benefit from the NSLP and SBP.

#### **Statutes and Regulations:**

Federal laws require schools to protect the rights and privileges of children with disabilities and to ensure equal access to benefits when compared to children without disabilities. These laws include:

- Section 504 of the Rehabilitation Act of 1973
- Americans with Disabilities Act (ADA) of 1990
- Individuals with Disabilities Education Act of 1990
- ADA Amendments Act of 2008.

Schools that fail to make appropriate meal modifications for children with disabilities could be found in violation of Federal civil rights laws.

### **Reasonable Accommodations:**

Districts must provide and define “reasonable accommodations” at the local level for students with a disability that restricts their diets, and Child Nutrition Directors should work closely with their leadership and 504 teams to make these determinations.

Schools must provide modified meals at no extra charge, even when the cost of preparing the modified meal increases. Arkansas Act 428 of 2019, or the Hunger-Free Students’ Bill of Rights, ensures that students receive a meal regardless of their meal charges, and this applies in the case of a student with a modified meal as well.

### **Children with Disabilities:**

The question of whether a child has a disability has been simplified by the ADA Amendments Act, and should no longer require extensive analysis.

A disability is defined as:

- A physical or mental impairment that substantially limits one or more major life activities of such individual
- A record of such impairment
- Being regarded as having such an impairment

After the passage of the ADA Amendments Act, most physical and mental impairments constitute a disability, and medical statements signed by a state-licensed medical authority should be taken at face-value.

### **General Health Concerns:**

Food preferences, such as a preference that a child eat a specific diet because the parent or guardian believes it is healthier for the child, are not disabilities and do not require the school to provide a modification.

However, identifying the food preferences of students and offering choices are great ways to encourage participation in the school meal programs. Schools should make local decisions about how to handle

food preferences and notify parents of their policies.

### **Public Notifications:**

Schools must notify families of the process for requesting meal modifications for a child with a disability that restricts their diet, including the person responsible for coordinating modifications.

Schools are encouraged to make the process of requesting a meal modification as simple and straightforward as possible by:

- Including information about modification requests when sending out applications for free and reduced-price school meals;
- Posting a flyer with information about modification requests at the entrance of the school and/or school cafeteria;
- Including information about modification requests in student handbooks, provided to families annually; and,
- Posting information about modification requests in the same place school lunch menus are posted on school and/or district websites.

### **Medical Statement:**

A medical statement is required when a meal modification that is outside of the USDA Meal Pattern is requested, unless the school obtains written medical verification of the impairment during the IEP/504 Plan process.

The medical statement **must** include:

- Information about the child's physical or mental impairment that is sufficient to allow the school to understand how it restricts the child's diet;
- An explanation of what must be done to accommodate the child's disability; and,
- The food or foods to be omitted and recommended alternatives, in the case of a modified meal.

NOTE: Some situations may require more information.

The medical statement must be signed by one of the following state-licensed healthcare professionals with prescriptive authority in Arkansas: physician, chiropractor, podiatrist, nurse practitioner, dentist, or physician assistant.

A Registered Dietitian Nutritionist may make recommendations for alternate foods for children whose disability restricts their diet, but they may not sign the medical statement.

It is imperative for the school to accommodate students to the best of their ability while waiting for medical statements to be submitted. The school cannot unduly delay a student's meal modification while waiting for a medical statement to be submitted. Medical statements are not required to be updated annually, but the statement should reflect the current dietary needs of the student.

Schools may choose to require a medical statement when a meal modification for a child's disability can be made within the USDA Meal Pattern.

### **Serving Meals in an Integrated Setting:**

Schools must provide all meal services in the most integrated setting appropriate to the needs of the disabled child.

### **Reimbursement:**

Reimbursement for modified meals served to children with disabilities that restrict their diet is at the appropriate rate based on the child's eligibility for free, reduced price, or paid meals for the applicable program, regardless of the meal modification.

### **Accessibility:**

Schools are responsible for the accessibility of food service areas and for ensuring the provision of food service aides, where needed.

### **Procedural Safeguards:**

School food service staff and others in the district must work together to implement procedures for parents or guardians to request modifications to meal service for children with disabilities and to resolve grievances.

At a minimum, schools must notify parents and guardians of the process for requesting meal modifications to accommodate a child's disability and arrange for an impartial hearing process to resolve grievances related to requests for modifications based on a disability. The hearing process must include the opportunity for the child's parent or guardian to participate, be represented by counsel, and examine the record. It must also include notice of the final decision, and a procedure for review.

### **Sample Form:**

A sample Meal Modification Form has been developed by CNU and is attached. Districts may use the form with or without local edits. The form is not required by USDA or CNU, nor may this form or any other form be required by the district.

### **Additional Resources (see attached):**

USDA-FNS: *Accommodating Children with Disabilities in the School Meal Programs: Guidance for School Food Service Professionals*

SP 59-2016: *Policy Memorandum on Modifications to Accommodate Disabilities in the School Meal Programs*, September 27, 2016

SP 26-2017: *Accommodating Disabilities in the School Meal Programs: Guidance and Questions and Answers (Q & As)*, April 25, 2017

**If you have questions or concerns, please contact your district's Area Specialist or the Child Nutrition Unit at (501) 324-9502.**

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## Attachments

- [Meal\\_Modification\\_Sample\\_Form\\_120834.pdf](#)
- [SP26-2017os\\_120845.pdf](#)
- [USDA\\_Guidance\\_2017\\_120900.pdf](#)
- [SP59-2016os\\_120917.pdf](#)