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Modifications to Accommodate Disabilities

Nutrition Services Division Management Bulletin

Purpose: Policy, Beneficial Information

To: School Nutrition Program Operators

Number: SNP-02-2017

Attention: Food Services Directors

Date: March 2017

Reference: U.S. Department of Agriculture Food and Nutrition Service Policy Memorandum SP 59-2016

Supersedes: FNS Instruction 783-2, Rev. 2, Meal Substitutions for Medical or Other Special Dietary Reasons in the School Meal Programs; Management Bulletin CNP-10-2015: Accommodating Children with Special Dietary Needs

Subject: Modifications to Accommodate Disabilities in the School Meal Programs

This Management Bulletin (MB) provides information and policy that supersedes Food and Nutrition Service (FNS) Instruction 783-2, Rev. 2, Meal Substitutions for Medical or Other Special Dietary Reasons for the School Meal Programs. The U.S. Department of Agriculture (USDA) has provided updated guidance based on their grouping of the child nutrition programs and the level of accommodation whether for a disability or special dietary needs.

This MB provides important updates to requirements related to accommodating children with disabilities and only affects school food authorities (SFA) participating in the National School Lunch Program (NSLP), School Breakfast Program (SBP), Special Milk Program, and Fresh Fruit and Vegetable Program. This policy memo is available on the USDA FNS School Meals Policy Web page at <http://www.fns.usda.gov/school-meals/policy>.

It is important that SFAs continue to have the option to accommodate children with special dietary needs that are not considered a disability. This includes those accommodations

related to religious or moral convictions or personal preference. The USDA will issue separate guidance on accommodating special dietary needs and preferences that are not considered a disability.

The California Department of Education (CDE) MB CNP-10-2015, Accommodating Children with Special Dietary Needs, remains in effect for the Child and Adult Care Food Program and Summer Food Service Program until further guidance is issued.

This MB provides guidance on accommodating children, with and without disabilities, who have special dietary needs. It is available on the CDE MB CNP-10-2015 Web page at <http://www.cde.ca.gov/ls/nu/sn/mbsnp102015.asp>.

Background on Federal Statutes

For more information on the federal laws which dictate program guidance, refer to USDA SP 59-2016: Modifications to Accommodate Disabilities in the School Meal Programs on the USDA FNS School Meals Policy Web page at <http://www.fns.usda.gov/school-meals/policy>.

Individualized Education Program

One federal act that affects the modifications required to accommodate disabilities in the School Nutrition Programs (SNP) is the Individuals with Disabilities Education Act of 1990 (IDEA). This act requires an Individualized Education Program (IEP) which is defined as a plan or program developed in accordance with IDEA to ensure that a child who has a disability receives specialized instruction and related services. An IEP does not supersede a state licensed healthcare professional's written medical statement. It supports the medical statement to reiterate a child's nutritional needs. A written and signed medical statement must support the child's IEP.

For instance, the IEP may require breakfast to be served in a school that does not participate in the SBP. While these meals may not be claimed for federal reimbursement, funds from the nonprofit school food service account may be used to cover the cost associated with providing a meal required by the IDEA.

SFAs may use the same food service facilities or food service management company to provide the meals required under an IEP as it uses to provide SNP meals. The U.S. Department of Education (USDE) is responsible for the administration and enforcement of the IDEA. SFAs should direct inquiries regarding IDEA requirements to the USDE IDEA Web page at <http://idea.ed.gov>.

School Nutrition Program Regulations

The USDA regulations under Title 7, *Code of Federal Regulations* (7 CFR), sections 15b and 15b.26(d), implements Section 504 of the Rehabilitation Act of 1973 (Section 504) nondiscrimination requirements on recipients of federal financial assistance, such as SFAs, to serve special meals at no extra charge to children with disabilities. In addition, 7 CFR,

sections 210.10(m) and 220.8(m), require SFAs to make substitutions or modifications in the NSLP and SBP for children whose disabilities restrict their diets.

These regulations require SFAs to ensure that breakfast, lunch, snacks, or milk (meals) offered through the SNPs meet the respective meal pattern requirements established in the program regulations.

Children with Disabilities

The Americans with Disabilities Act (ADA) Amendments Act has simplified what determines a disability and it should no longer require extensive analysis. SFAs and local educational agencies (LEA) should not be involved in analyzing documentation to determine whether a particular physical or mental impairment is severe enough to qualify as a disability. The ADA Amendments Act amended the definition of disability, broadening it to cover most physical and mental impairments, and the goal is to ensure equal opportunity to participate in or benefit from the SNPs.

Section 504, the ADA, and 7 *CFR*, Section 15b, define a person with a disability as any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment. Major life activities are broadly defined and include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Major life activities also include **the operation of a major bodily function**, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

A physical or mental impairment does not need to result in a severe, life-threatening reaction to be considered a disability. It is sufficient that the impairment limits a major life activity. For instance:

- Digestion is an example of a bodily function that is a major life activity. A child whose digestion is impaired by a lactose intolerance may have a disability regardless of whether or not consuming milk causes the child severe distress. A modification in this case is appropriate.
- An allergic reaction that is controlled by taking medication should not be considered in determining whether the allergy is a disability. A modification in this case is appropriate.
- Dietary preference that a child eat a gluten-free diet because a parent believes it is better for the child, does not constitute a disability and does not require accommodation.

A physical or mental impairment that constitutes a disability must be on a case-by-case basis. The determination must be made without regard to whether mitigating measures may reduce the impact of the impairment.

Substitutions and other Reasonable Modifications

In many cases, reasonable dietary modifications for a child with a disability are managed within the meal pattern requirements when a well-planned variety of nutritious foods are available. However, the needs of a child with a disability may involve requests for accommodations that do not meet the meal pattern requirements.

Requiring a Medical Statement

SFAs are required to make substitutions to meals for children with a disability that restricts the child's diet on a case-by-case basis and only when supported by a written medical statement from a state licensed healthcare professional. **The CDE only permits the following state licensed healthcare professionals to complete and sign a written medical statement for a disability: licensed physicians, physician assistants, or nurse practitioners.**

California does not recognize other medical authorities as authorized to sign a written medical statement to determine a child's diet. Physician assistants and nurse practitioners both work under the direction of a licensed physician. This will safeguard program integrity while allowing appropriate flexibility for those families who do not have access to a licensed physician.

California allows electronic signatures. A written medical statement that is e-signed by the designated state licensed healthcare professional can also be considered an acceptable signature.

Medical statements must:

- Describe the physical or mental impairment sufficiently in order for the SFA to understand how it restricts a child's diet
- Explain what must be done to accommodate a child's disability
- Identify food or foods to be omitted from a child's diet
- Recommend food or choice of foods that must be substituted in a child's meals

If a written medical statement is unclear or lacks sufficient detail, the SFA must obtain appropriate clarification to ensure a proper and safe meal is provided to the child. SFAs may consider the services of a registered dietitian, when available, to assist in implementing meal modifications. SFAs may also contact the CDE for guidance.

The CDE developed a Written Medical Statement to Request Special Meals and/or Accommodations form to identify the information required to implement a sound nutrition plan for children with dietary restrictions. The medical statement form is available on the CDE SNP Forms Web page at <http://www.cde.ca.gov/ls/nu/sn/fm.asp>.

SFAs may choose to accommodate requests related to a disability that are not

supported by a written medical statement if the requested modifications meet the meal pattern requirements.

Assessing Requests for Substitutions and other Modifications

SFAs may consider expense and efficiency in choosing an appropriate approach to accommodate a child's disability. SFAs are not required to provide the specific substitution or other modification requested, but must offer a reasonable modification that effectively accommodates the child's disability and provides equal opportunity to participate in or benefit from the program.

SFAs are not required to provide a specific brand name food item that may be requested or identified on the written medical statement. Instead, the child affected by an allergy must be offered the appropriate food substitution which does not contain the allergen that adversely affects the child.

SFAs should consider the age and maturity of the child when determining what is appropriate during the decision-making process. For instance, younger children may need more assistance with selecting and eating their meals, while older children may be able to take more responsibility for some of their dietary decisions.

SFAs are not required to provide modifications that would fundamentally alter the nature of the program; however, this should rarely be the case. Instead, the emphasis should be on working with the parents and guardians to develop an approach that will meet the child's needs.

Serving Meals in an Integrated Setting

SFAs must provide all meal services in the most integrated setting appropriate to meet the needs of the child. Exclusion of any child from the environment is not considered an appropriate or reasonable modification. For instance, a child may not be excluded from the classroom and required to sit in the hallway during the service of breakfast in the classroom. A separate table available for children to control exposure to a severe food allergy may be an appropriate safeguard, yet it cannot simultaneously be used to segregate children as punishment for misconduct.

Reimbursement

Regardless of the meal accommodation, 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. These meal modifications do not have to meet the program meal pattern requirements in order to be claimed for reimbursement if they are supported by a signed written medical statement. However, SFAs should ensure that the meal modifications meet the nutritional needs of the child.

Any instruction or services included in a child's IEP related to a child's nutritional needs that are deemed necessary for the child to receive a free and appropriate public education must be provided at public expense and at no cost to the parents or guardians. SFAs should direct inquiries regarding funding and requirements pertaining to Part B of IDEA to the USDE IDEA Web page at <http://idea.ed.gov>.

Accessibility

SFAs and LEAs are responsible for the accessibility of food service areas and for ensuring the provision of food service aides, where needed, to assist in preparing and serving meal accommodations.

SNPs will not receive additional reimbursement for these types of accommodations. However, any additional costs for adaptive feeding equipment for aides are considered allowable costs for the nonprofit school food service account. Special education funds could be a source of supplemental funding if specified in the child's IEP or the LEA's general fund.

Procedural Safeguards

LEAs must work with the school food service staff to implement procedures for parents or guardians to request modifications to meal service for children with disabilities and to resolve grievances. Procedures in place to address requests to accommodate students with disabilities in the classroom in compliance with Section 504 or the IDEA may be used to fulfill this requirement. At minimum, the LEA must:

- Notify parents and guardians of the process for requesting meal modifications to accommodate a child's disability
- Arrange for an impartial hearing process to resolve grievances related to requests for modifications based on a disability
- Include the opportunity for the child's parent or guardian to participate, be represented by counsel, and examine the record
- Provide notice of the final decision and a procedure for review

LEAs that employ 15 or more individuals must designate at least one person to coordinate compliance with disability requirements. This position is often referred to as the Section 504 coordinator. The Section 504 coordinator is responsible for addressing requests for accommodations in the classroom which may also include ensuring compliance with disability requirements related to meals and the meal service. It is not required to designate a separate Section 504 coordinator responsible only for meal modifications. However, LEAs should ensure that school food service staff understand the procedures for handling requests for meal modifications and know how to contact the Section 504 coordinator.

Team Approach

A team approach to providing modifications for children with disabilities is strongly encouraged. Develop a team that includes the Section 504 coordinator, school administration staff, school medical personnel, and school food service staff. The most effective team will include:

- School food service staff
- Principal or program director
- School nurse
- School nutritionist

Any request for a modification related to the meal or meal service should be forwarded to the Section 504 coordinator and reviewed by the 504 team.

The Section 504 team will work with the child's parents or guardian to review the request and develop a solution as quickly as possible. The Section 504 team is encouraged to develop policies and practices that allow for the disabilities they most commonly encounter to be quickly and consistently addressed. The team should be advised that any medical information obtained must be kept confidential.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) safeguards the release of personal health information. SFAs will need to consult with an appropriate school official or seek legal counsel around HIPAA requirements.

Contact Information

If you have any questions regarding this subject, please contact Lori Porter, Child Nutrition Consultant (CNC), Southern School Nutrition Programs Unit (SNPU), by phone at 916-322-1454 or by e-mail at lporter@cde.ca.gov, or Ashley Osterman, CNC, Northern SNPU, by phone at 916-445-1261 or by e-mail at aosterman@cde.ca.gov.

Questions: Nutrition Services Division | 800-952-5609

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