



Civil Rights Presentation  
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Education Administrator  
July 28, 2023

AND  
JUSTICE  
FOR ALL

# ALSDE CNP CIVIL RIGHTS MISSION POLICY

- To provide guidance and direction for comprehensive immunity against discrimination in employment practices and administration of public programs.
- To ensure that all eligible individuals who participate in the Child Nutrition Programs are honorably treated with dignity and respect.

# Agenda

- Civil rights coverage and legal authorities
- Areas of compliance
  - Assurances
  - Public notification
  - Complaints of discrimination
  - Civil rights training
  - Race and ethnicity data collection
  - Meaningful access for persons with Limited English Proficiency (LEP)
  - Equal opportunity for persons with disabilities
  - Compliance reviews and resolution of noncompliance
  - Verification of citizenship
- Questions

# Why Civil Rights Training?

- Training is required so that individuals involved in all levels of administration of programs that receive Federal financial assistance understand Federal laws, regulations, instructions, policies and other guidance.

# Civil Rights

- The rights of personal liberty guaranteed by the 13<sup>th</sup> and 14<sup>th</sup> Amendments of the Constitution and Acts of Congress
- Terms “civil rights” and “equal employment opportunity (EEO)” are not interchangeable

# Civil Rights Concepts

- Stereotyping

- Preconceived beliefs or oversimplified generalizations about a particular group

- Prejudice

- A set of rigid and unfavorable attitudes toward a particular group that is formed without considering facts

# Civil Rights Concepts

- Discrimination

- Different treatment which makes a distinction of one person or a group of persons from others, either intentionally, by neglect, or by the actions or lack of actions based on a protected class

# Civil Rights Authorities

- Title VI of the Civil Rights Act of 1964
  - Race, Color, and National Origin
- Civil Rights Restoration Act of 1987
  - Clarifies the scope of the Civil Rights Act of 1964 to specify that entities receiving Federal funds must comply with civil rights legislation in all of their operations
- Section 504 of the Rehabilitation Act of 1973 & Americans with Disabilities Act (ADA) of 1990 and ADA Amendments Act of 2008
  - Disability
- Title IX of the Education Amendments of 1972
  - Sex (including gender identity\* and sexual orientation\*)
- Age Discrimination Act of 1975
  - Age

\*The enclosed “non discrimination” language herein was added pursuant to the May 5, 2022, USDA memorandum. However, although included as currently required for audit compliance by the USDA, the State of Alabama objects to its **inclusion, applicability** and the **application** of this language due to currently pending legal challenges in the matter of THE STATE OF TENNESSEE, ET AL. V. USDA, ET AL., Case No. 3:22-cv-00257, and may be subject to change or removal.



# Civil Rights Authorities

- 7 CFR 15(a)(b)(c)
  - USDA implementing regulation for Federally assisted programs
- 7 CFR 16, “Equal Opportunity for Religious Organizations”
  - Gives equal footing to religiously affiliated organizations

# Civil Rights Authorities

- 28 Part 35
  - Covers nondiscrimination on the basis of disability in State/local government services (public entities)
- 28 CFR 36
  - Covers nondiscrimination on the basis of disability in public accommodation services
- 28 CFR 41
  - Implementation of Executive Order 12250, Nondiscrimination on the Basis of Handicap in Federally Assisted Programs
- 28 CFR 42
  - Covers nondiscrimination in Federally assisted programs

# Civil Rights Legal Authorities

- Executive Order 13166 - "Improving Access to Services for Persons with Limited English Proficiency" (August 11, 2000)
- "USDA Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons With Limited English Proficiency" (79 Fed. Reg. No. 229, Friday, [p. 70771 – 70784] USDA LEP Policy Guidance
- "Meaningful Access for Persons with Limited English Proficiency (LEP) in the School Meal Programs: Guidance and Q&As" (SP 37-2016, May 25, 2016)

# Civil Rights Authorities

- “Policy Memorandum on Modifications to Accommodate Disabilities in the School Meal Programs” (SP 59-2016 / FNS-GD-2016-0067, September 27, 2016)
- “Accommodating Disabilities in the School Meal Programs: Guidance and Questions and Answers (Q&A)” (SP 26-2017, April 25, 2017)
- “Accommodating Children with Disabilities in the School Meal Programs: Guidance for School Food Service Professionals” (SP 40-2017, July 25, 2017)

# Civil Rights Legal Authorities

- USDA Departmental Regulation 4330-002
  - Prohibits discrimination in programs and activities funded in whole or in part by the USDA
- USDA Departmental Regulation 4300-003
  - Equal Opportunity Public Notification Policy
- FNS Instruction 113-1 and Appendix B (CNP)
  - Civil Rights compliance and enforcement

# NSLP/SBP/SMP/CACFP/SFSP Authorities

- Richard B. Russell National School Lunch Act of 1946
  - Signed by President Harry Truman and established the National School Lunch Program (NSLP)
- Child Nutrition Act of 1966
  - Signed by President Lyndon B. Johnson; Special Milk Program (SMP) incorporated into the Act and School Breakfast Program (SBP) established

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# NSLP/SBP/SMP /CACFP/SFSP Authorities

- 7 CFR Part 210 (NSLP)
- 7 CFR Part 215 (SMP)
- 7 CFR Part 220 (SBP)
- 7 CFR Part 245 (NSLP / SMP / SBP) [Eligibility]

# NSLP/SBP/SMP /CACFP/SFSP Authorities

- 7 CFR Part 225 (SFSP)
- 7 CFR Part 226 (CACFP)
- 7 CFR 250 (Commodity component for NSLP, SFSP, and CACFP regulations)
- FNS Eligibility Manual for School Meals
  - Provides additional guidance on determining and verifying eligibility



# What is Discrimination in CNP?

- Different treatment which makes a distinction of one person or a group of persons from others, either intentionally, by neglect, or by the actions or lack of actions based on a protected class

## Protected classes for CNP

- Race
- Color
- National origin
- Age
- Sex (including gender identity\* and sexual orientation\*)
- Disability

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# Reprisal/Retaliation

- Anyone can allege reprisal or retaliation (Retaliation/Reprisal means the act of intimidating, threatening, coercing, or unlawfully discriminating against any individual for filing a complaint, testifying, assisting, or participating in any manner in an investigation, proceeding or hearing or any other right or privilege secured by the Civil Rights statutes and regulations enforced by FNS).

# Assurances

- To qualify for federal financial assistance, an application must be accompanied by a written assurance that the entity to receive financial assistance will be operated in compliance with all nondiscrimination laws, regulations, instructions, policies, and guidelines.
- A Civil Rights Assurance must be incorporated in all agreements between state and local agencies.
- See FNS Instruction 113-1, Appendix B and Form FNS-74 for Program-specific assurance language.

# Assurances

- Sub-recipient agreements must also include a Civil Rights assurance of nondiscrimination.
- Example: Many SFAs contract with Food Service Management Companies (FSMC) to provide food service to students. SFAs are responsible for ensuring that their FSMCs follow CR requirements.
- These assurances are binding on the program applicant and its successors, transferees, and assignees, if they receive assistance or retain possession of any assistance from USDA.

# Public Notification

- All FNS assistance programs (i.e., CNP) must include a public notification system.
- Elements of public notification
  - Program availability
  - Complaint information
  - Nondiscrimination statement

# Elements of Public Notification

- Program availability
  - Inform applicants, participants, and potentially eligible persons of their program rights and responsibilities and the steps necessary for participation
- Complaint information
  - Advise applicants and participants at the service delivery point of their right to file a complaint, how to file a complaint, and the complaint procedures

# Methods of Public Notification

- State agencies and their sub-recipients must:
  - Make program information available to the public upon request
  - Prominently display the *And Justice for All* poster at service delivery points
  - Inform applicants or participants of programs or changes in programs

# Methods of Public Notification

- State agencies and their sub-recipients must:
  - Provide information in alternative formats and languages as necessary
  - Convey a message of equal opportunity in all photographic or pictorial program information
  - Notify persons with disabilities about the availability of reasonable modifications and auxiliary aids and services
  - Notify persons with limited English proficiency (LEP) of their right to free language assistance services



# Elements of Public Notification

- Nondiscrimination statement
  - All information materials and sources, including websites, must contain a nondiscrimination statement.
  - The statement is not required to be included on every page of the program website.
  - At a minimum, the nondiscrimination statement or a link to it must be included on the home page of the program information.

# Nondiscrimination Statement Requirements

- At a minimum, the full version of the Nondiscrimination Statement must be on:
  - Application form(s)
  - Notification of eligibility or ineligibility
  - Notice of adverse action form
  - Program (home) webpage
  - Public information, including program literature
  - Complaint forms

# Nondiscrimination Statement

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity\* and sexual orientation\*), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: [USDA Program Discrimination Complaint Form](#) from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

1. **Mail:** U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue,  
SW Washington, D.C. 20250-9410; or
2. **Fax:** (202) 690-7442; or
3. **Email:** [program.intake@usda.gov](mailto:program.intake@usda.gov).

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# Spanish Nondiscrimination Statement

De acuerdo con la ley federal de derechos civiles y las normas y políticas de derechos civiles del Departamento de Agricultura de los Estados Unidos (USDA), esta entidad está prohibida de discriminar por motivos de raza, color, origen nacional, sexo (incluyendo identidad de género\* y orientación sexual\*), discapacidad, edad, o represalia o retorsión por actividades previas de derechos civiles.

La información sobre el programa puede estar disponible en otros idiomas que no sean el inglés. Las personas con discapacidades que requieren medios alternos de comunicación para obtener la información del programa (por ejemplo, Braille, letra grande, cinta de audio, lenguaje de señas americano (ASL), etc.) deben comunicarse con la agencia local o estatal responsable de administrar el programa o con el Centro TARGET del USDA al (202) 720-2600 (voz y TTY) o comuníquese con el USDA a través del Servicio Federal de Retransmisión al (800) 877-8339.

Para presentar una queja por discriminación en el programa, el reclamante debe llenar un formulario AD-3027, formulario de queja por discriminación en el programa del USDA, el cual puede obtenerse en línea en: <https://www.usda.gov/sites/default/files/documents/USDAProgramComplaintForm-SpanishSection508Compliant.pdf> de cualquier oficina de USDA, llamando al (866) 632-9992, o escribiendo una carta dirigida a USDA. La carta debe contener el nombre del demandante, la dirección, el número de teléfono y una descripción escrita de la acción discriminatoria alegada con suficiente detalle para informar al Subsecretario de Derechos Civiles (ASCR) sobre la naturaleza y fecha de una presunta violación de derechos civiles. El formulario AD-3027 completado o la carta debe presentarse a USDA por:

- (1) correo: U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW  
Washington, D.C. 20250-9410;
- (2) fax: (833)256-1665 o (202) 690-7442; o
- (3) correo electrónico: [program.intake@usda.gov](mailto:program.intake@usda.gov).
- Esta entidad es un proveedor que brinda igualdad de oportunidades.

# USDA Nondiscrimination Statement: Short Versions

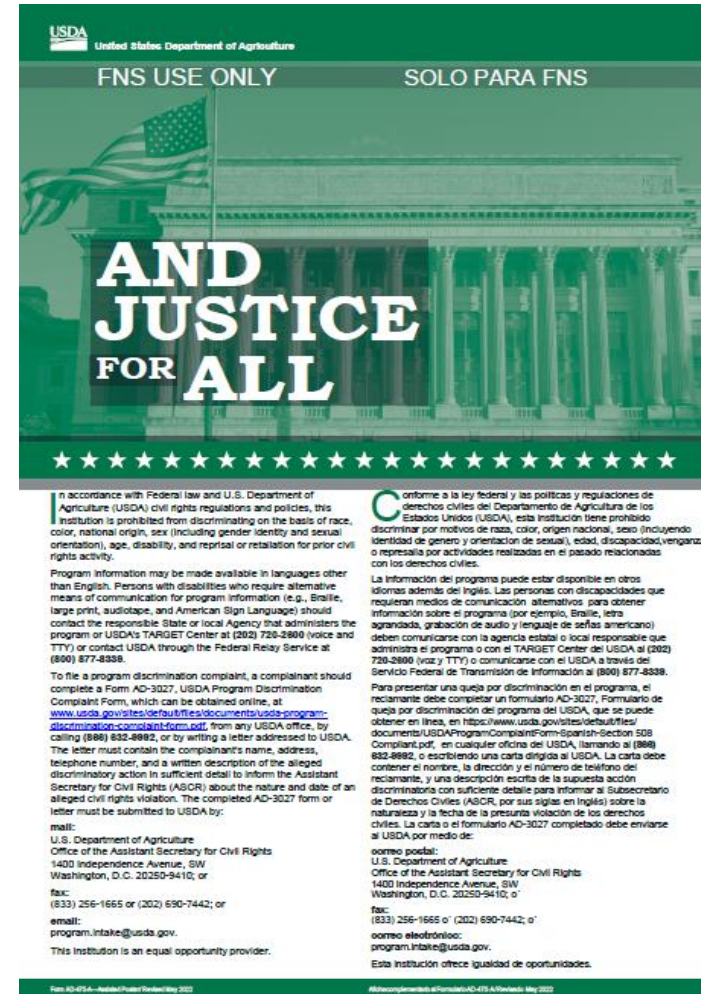
- This institution is an equal opportunity provider.
- Esta institución es un proveedor que ofrece igualdad de oportunidades. (Spanish)

# Nondiscrimination Statement: Short Versions

- Can only be used in special circumstances
  - Prior approval is not necessary but recommended if not sure if it is appropriate to use the short statement.
  - Requests will be sent to the Regional FNS Civil Rights Officer for approval.
- Translations are available in other languages on the FNS website at <https://www.fns.usda.gov/cr/fns-nondiscrimination-statement>.

# And Justice for All Poster

- All sites must display posters in a prominent location for all to view
- AD-475A
- Required version for CNP
- The 2022 version with updated wording will be available soon.



# Complaints of Discrimination

- Anyone can allege different treatment based on protected class(es) or for reprisal or retaliation.
  - Race
  - Color
  - National origin
  - Age
  - Sex (including gender identity\* and sexual orientation)\*
  - Disability

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# Complaint Procedures

- Process complaints in accordance with FNS Instruction 113-1 and the FNS State Agency Complaints Processing MOU.
- SFAs and other sponsors forward complaints based on race, color, national origin, sex, disability, and reprisal/retaliation to the ALSDE.
- ALSDE forwards complaints based on race, color, national origin, sex, disability, and reprisal/retaliation to FNS Civil Rights Division, Regional Civil Rights Officer, within 5 calendar days of receipt.

# Complaint Procedures: Additional Information

- Complaints based on age (or a combination of age and other bases)
  - Forward age complaints to FNS Civil Rights Division **within 5 working days** of receipt regardless of complaint procedure utilized above.
  - Age complaints are mediated before investigated.
- Complaint log
  - Civil rights complaints must be kept confidential and maintained in a log separate from program complaints.

# Complaint Procedures: Additional Information

- Applicants and participants must file within 180 days of the alleged action, with exception
  - Complaints may be written, verbal, or anonymous
  - Confidentiality is extremely important
  - USDA process for filing a complaint and complaint form
  - [Filing a Civil Rights Complaint \(English\)](#) or <https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf>
  - [Spanish version](#) or [Departamento de Estado Unidos denuncia de discriminación de la agricultura forma \(usda.gov\)](#)

# Civil Rights Complaints Process

- Complaints should include:
  - Name, address, and telephone number of complainant
  - The location and name of the organization or office
  - The nature of the incident or action
  - The names, titles, and business addresses of persons who may have knowledge of the discriminatory action
  - The date(s) during which the alleged discriminatory actions occurred
  - The basis for the alleged discrimination

# Civil Rights Training: Purpose

Training is required so that individuals involved in all levels of administration of programs understand federal laws, regulations, instructions, policies, and other guidance.

# Civil Rights Training Requirements

- State agencies are responsible for training local agencies and sub-recipients on an annual basis.
- Local agencies are responsible for training their staff and sub-recipients on an annual basis.
  - Includes “frontline staff” and those who supervise frontline staff
- New employees must receive civil rights training before participating in child nutrition program activities.
- Volunteers, if any, must also receive training appropriate for their roles and responsibilities.

# Civil Rights Training

- Assurances
- Public notification
- Complaints of discrimination
- Civil rights training
- Race & ethnicity data collection
- Language access
- Disability access
- Compliance reviews & resolution of noncompliance
- Conflict resolution
- Customer service

# Sample of Customer Service Training

Service is:

Effectively communicating with customers,

Responding to their needs,

Valuing their worth, and

Instilling excellence through

Courtesy, confidence, and

Enthusiasm.



# Sample of Conflict Resolution Training

- **IDENTIFY THE PROBLEM.** Identify the problem based on the information the customer gives you.
- **DETERMINE A SOLUTION.** Depending on the specifics of the conversation and your knowledge of your organization, the solution may involve calling the customer again.
- **GAIN APPROVAL FROM THE CUSTOMER.** If the customer does not agree to the proposed solution, it will resolve nothing!

# Sample of Conflict Resolution Training

- **MAKE AN AGREEMENT.** You and the customer should determine what is to be done, when it is to be done, and by whom. If it is not possible, suggest an alternative.
- **FOLLOW UP.** Personally make sure that the customer has been satisfied; and provide feedback.

# Race and Ethnicity Data Collection

- Data collection is mandatory.
- Collect race and ethnicity data in accordance with FNS policy.
- Establish a system for the collection of race and ethnicity data for each person applying for and receiving benefits to monitor Civil Rights Compliance.

# Race and Ethnicity Data Collection

- Use data to:
  - Determine how effectively FNS programs are reaching potentially eligible people and beneficiaries.
  - Identify areas where additional outreach is needed.
  - Assist in the selection of locations for compliance reviews.
  - Complete reports as required.
- Maintain data for 3 years
- Submit to FNS as requested

# Race and Ethnicity Data Collection

## Inform applicants:

- Provision of race and ethnicity information is voluntary and kept confidential.
  - May use the school enrollment system, the income eligibility form, or other student data sources. May **not** use visual identification.
- Information is required for and used for statistical purposes to determine how effectively FNS programs are reaching potentially eligible persons.
- Provision of race and ethnicity data has no effect on eligibility for FNS programs.
- May choose one category for ethnicity.
- May choose more than one category for race.

# Race and Ethnicity Data Collection: Question Format

- Collect data using a two-part question
  - **Part 1: Ethnicity**
    - Hispanic or Latino
    - Not Hispanic or Latino
  - **Part 2: Race (*may select more than one*)**
    - American Indian or Alaska Native
    - Asian
    - Black or African American
    - Native Hawaiian or Other Pacific Islander
    - White

# Race and Ethnicity Data Collection Methods

- If an applicant chooses not to voluntarily self-identify race & ethnicity:
  - The agency must collect this information using another method.
    - School enrollment data
    - Direct certification data
- Additionally, online applications must provide an opportunity for applicants/participants to self-identify.

# Race and Ethnicity Data Collection Methods

- Collect and retain data at the service delivery point for each program as specified in the program regulations, instructions, policies and guidelines.
- Do not survey children.
- Pose questions to parents/legal guardians.
- CACFP/SFSP non-enrolled sites: When race and ethnic data cannot be obtained from an IEF or other method, the response may be marked as “unknown.” (CACFP 09-2022, SFSP 05-2022 dated June 13, 2022)



# Race and Ethnicity Data Collection Disparities

- If disparities or incidents of underrepresentation exist, investigate the causes.
- If necessary, take action to ensure equal opportunity to participate in the program(s).

# Limited English Proficiency (LEP) and Program Access

- Who are persons with LEP?
  - Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English because of their national origin.

# LEP and Program Access

- Recipients of Federal financial assistance have a responsibility to take reasonable steps to ensure meaningful access to their programs and activities by persons with LEP.
- Provide reasonable, timely, appropriate, and competent language services at no cost to individuals with LEP.
- Ensure online services such (ex., PayPams or School Bucks) include translated versions of the school meal application or information on how to request them.
- LEA/SFA must develop a Language Access Plan with policies and procedures to ensure meaningful access that coincides with the ALSDE's plan, policies, and procedures.

# LEP and Program Access

- Failure to provide “meaningful” access to persons with LEP could be discrimination on the basis of national origin.
- Title VI and its USDA implementing regulations at [7 CFR 15](#), [Executive Order 13166](#), [USDA LEP Guidance](#) and the [USDA FNS Meaningful Access for Persons with Limited English Proficiency \(LEP\) in the School Meal Programs: Guidance and Q&As \(Memo SP 37-2016, May 25, 2016\)](#)

# LEP and Program Access

- Factors in ensuring “meaningful” access include:
  - Conduct a self-assessment of need and available resources.
  - The four-factor analysis is a “starting point” to help determine what type of language assistance is reasonable when ensuring meaningful access.

# LEP: Four Factor Analysis

## 1. Identify the LEP Communities in your area.

Assess the number or proportion of persons with LEP from each language group within service area to determine appropriate language assistance services.

## 2. Determine the frequency with which LEP persons encounter the program.

This may include students with LEP and their families applying for program benefits, participating in your meal programs, meeting with school nutrition staff or accessing your website.

# LEP: Four Factor Analysis

3. Determine the nature and importance of the program, activity, or service provided by the program to people's lives
4. Determine the resources available and the costs.

# LEP and Program Access

- ALSDE will conduct an assessment to determine language profile for the State, taking into account regional differences and updating as appropriate.
- Translation of vital documents is required.
- Interpretation services are also required.
- Staff training regarding how to provide LEP populations with meaningful access is paramount (frontline staff).



# LEP and Program Access

- Examples of language services
  - Bilingual staff and qualified staff interpreters
  - Telephone interpreter lines
  - Qualified interpretation services (oral)
  - Qualified translation services (written & sight)
  - Qualified community organizations and volunteers

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334-694-4516 (Federal Programs)

# LEP and Program Access

- Language Assistance Services:
  - Offer and provide qualified, competent language assistance services for free to individuals with LEP.
  - Utilize qualified and competent interpreters to communicate with LEP persons involving discussion of vital information and presentation of information about FNS programs.
  - A “**qualified interpreter**” is a highly trained individual who mediates spoken communication between people speaking different languages without adding, omitting, or distorting meaning, or editorializing.

# LEP: Language Access Plan & Qualified Interpreters

- Use qualified and competent translators when translating vital documents.
- A person who is a qualified interpreter may or may not be competent to translate.
- **“Qualified Translator”** is a highly trained individual who is able to render text from a source language into a target language while preserving meaning and adhering to generally accepted translator ethics and principles, including confidentiality.

# LEP Access to Websites and Digital Services

- State agencies must ensure access to websites and digital services for individuals with LEP, including:
  - ✓ Online applications and digital services
  - ✓ Websites and forms
  - ✓ Brochures
- At minimum, vital information on websites and digital services must be available to LEP persons in a language they can understand.
- Translated website and hyperlinks
- Multilingual taglines that instruct LEP persons on how to receive vital information in their primary language

# Machine Translations

- Software or online applications that automatically translate written material from one language to another without the involvement of a human translator or reviewer
- Reduces the accuracy of posted information when read in translated form

# Telephone Voice Mail Menus

- Should be recorded in the most common languages encountered
- “You have reached the SNAP, Select #1 for English, #2 for Spanish, or #3 for “No English” or “Interpreter”

# LEP: Hiring Bilingual Staff

- When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options.
- Competency requires more than self-identification as bilingual.
- Some bilingual persons may communicate effectively when communicating information directly in a non-English language, but not be competent to interpret (or translate) in and out of English.

# LEP: Family, Friends and Children

- Do not plan to rely on a LEP person's family members, friends, or informal interpreters.
- Do not ask LEP persons to bring their own interpreters.
- Permit use of family and friends if appropriate only after offering free language assistance.
- Be aware that issues of confidentiality, privacy, competency or conflict of interest may also arise.
- Do not use minor children as interpreters unless in an exigent situation when no qualified interpreter is available.



# LEP and Program Access

- Population data sources
  - [US Census data](#)
  - [American Community Survey](#)
  - [Migration Policy Institute's National Center on Immigrant Integration Policy](#)
  - [Data and Language Maps | LEP.gov](#)

# Disability Access

- Section 504 of the Rehabilitation Act prohibits discrimination on the basis of disability in programs & activities that receive Federal financial assistance, such as CNP.
- Title II of the Americans with Disability Act prohibits discrimination based on disability in the provision of State & local government services (public entities), such as public schools.
- Title III of ADA prohibits discrimination based on disability by private entities that provide public accommodations, including private schools.

# Disability Access

- Section 504, Title II, and Title III require SFAs, LEAs, and CACFP sponsors to make reasonable modifications to accommodate children with disabilities, including reasonable modifications to meals & the meal service.
- These statutes and regulations also require SFAs and LEAs to ensure equally effective communication by providing necessary auxiliary aids and services.

# Disability Access

- What is the definition of disability?
- Section 504, the ADA, and the USDA regulations for Section 504 at 7 CFR Part 15b define a person with a disability as:
  - A 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

# Disability Access

- Major life activity means functions such as caring for oneself, performing manual tasks, walking, seeing, eating, hearing, speaking, breathing, learning, reading and working.
- Functions of the immune system, normal cell growth, **digestive**, bowel, bladder, neurological, brain, immune, respiratory, circulatory, cardiovascular, **endocrine**, and reproductive functions. (ADAAA of 2008)

# Examples of Disability Discrimination

- Discrimination because of a disability (not an exclusive list)
  - Denying benefits or opportunity to participate
  - Segregating individuals with disabilities
  - Aiding, perpetuating, or contracting with others that discriminate
- Failure to provide a reasonable modification
- Ineffective communication
- Inaccessible facilities

# Reasonable Modifications

- ALSDE, SFAs, LEAs, and sponsors **must** provide reasonable modifications in policies and practices, and procedures to accommodate applicants and participants with disabilities when necessary.
- Reasonable modifications:
  - Must be related to the disability or limitation caused by the disability.
  - The individual with a disability does not carry a high burden of 'proving' that he or she has a disability.

# Reasonable Modifications

- A change or alteration in policies, practices, and/or procedures to accommodate a disability
  - Funded by the service provider, not by applicants and participants
  - Provides equal level of service to applicants and participants in an alternative way
  - Accommodates even where the person requesting modification believes more should be done
  - Accommodates individuals who may need assistance in the meal service or consuming their meals



# Reasonable Modifications

- Modify the meal plan to accommodate a disability in accordance with FNS policy guidance for meal modifications.
- Ensure food service areas are accessible.
- Provide aids and services, if needed.

## Examples:

- Food service aides
- Adaptive feeding equipment
- Meal tracking assistance
- Other effective methods

# Service Animals

- Any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.
- The work or task performed by a service animal must be directly related to the individual's disability.
- Additionally, state and local government agencies (public entities) must make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability that has been individually trained to do work or perform tasks for the benefit of the individual with a disability.
- Covered entities cannot ask about the person's disability, require medical documentation, require a special identification card or training documentation for the dog or miniature horse, or ask the animal to perform the work or task.

# Program Accessibility

- Ensure accessibility of state and local agency websites, and online application systems to persons with visual impairments and other disabilities.
- Physical program access must be accessible to persons in wheelchairs, mobility aids, and Other Power-Driven Mobility Devices necessary for persons with mobility, circulatory, respiratory, or neurological disabilities.

# Equally Effective Communication

- ALSDE, SFAs, LEAs, and sponsors must provide equally effective communication through the provision of auxiliary aids and services to individuals who are deaf, hard-of-hearing, blind and other disabilities that require communication assistance (i.e., interpreters, large print, etc.)
- ALSDE, SFAs, LEAs or sponsors (if a public entity) **must give primary consideration** to the choice of aid or service requested by the person who has a communication disability and **honor the person's choice**, unless it can demonstrate that another equally effective means of communication is available, or that the use of the means chosen would result in a fundamental alteration or an undue burden.
- Private sponsors (public accommodations) are encouraged to **consult with** the person with a disability to discuss what aid or service is appropriate.

# Equally Effective Communication

- “Effective communication” means that whatever is written or spoken must be clear and understandable to people with disabilities as it is for people who do not have disabilities.
- The key to communicating effectively is to consider the nature, length, complexity, and context of the communication and the person’s normal method(s) of communication.
- Staff must accept telephone calls placed through TRS (telecommunications relay service) and VRS (video relay service).

# Equally Effective Communication

- The DOJ “Effective Communication Rule” applies to communicating with the person who is receiving the covered entity’s goods or services as well as with that person’s parent, spouse, or companion in appropriate circumstances.
- The term “companion” includes any family member, friend, or associate of a person seeking or receiving an entity’s goods or services who is an appropriate person with whom the entity should communicate.

# Integrated Environment

- The Integration Clause in Section 504 means that disabled individuals should be accommodated in the least restrictive and most integrated setting possible.
- In the food allergy context, this most often comes into play where children with food allergies are ostracized in some way during mealtime.
- Providers must always balance safety vs. stigma. Age and severity of allergy are the primary considerations.

# Auxiliary Aids & Services

**Auxiliary aids and services include, but are not limited to:**

- Accessible electronic and information technology
- Qualified interpreters on-site or through Video Remote (VRI)  
Interpreting services
  - ✓ A qualified interpreter is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.
- Voice, text, and video-based telecommunications products and systems
- Braille or tactile displays
- Screen reader software



# Fundamental Alteration

- SFAs and sponsors are not required to change their policies and procedures in any way that would cause a “fundamental alteration” in the nature of their goods or services, would undermine safe operation of the child nutrition program, or would cause a “direct threat” to the health or safety of others.

# Implementation & Compliance

- Develop procedures for parents/guardians to request reasonable modifications and auxiliary aids and services.
- Train school and food service staff on reasonable modifications and auxiliary aids and services, procedures and legal requirements.
- Appoint a Section 504/ADA Coordinator to ensure compliance.
- Assemble a team to implement guidelines and render decisions on modifications and auxiliary aids and services requests.

# Procedural Safeguards

- Provide Notice (in appropriate languages and formats) of:
  - Process for requesting modification
  - Decision
  - Procedural rights
- Opportunity to examine the record and file a grievance.
- An impartial hearing with parental participation and legal representation (if desired), and
- A review procedure (avenue for appeal).

# Disability Discrimination Complaints

- The grievance procedure must include a complaints procedure that coincides with FNS Instruction 113-1 and the FNS State Agency Complaint Processing MOU.
- State agencies must have a 504/ADA Coordinator responsible for ensuring compliance.
- State agencies must have Section 504/ADA policies and procedures that include the ADAAA requirements for program access.
- State agencies must publish grievance procedures and due process standards for “fair and prompt” resolution of 504/ADA complaints.

# Section 504/ADA Coordinator

- A State or local government that employs 50 or more persons must designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the ADA.
- A recipient or subrecipient that employs 15 or more individuals must also appoint a Section 504 coordinator to coordinate services and resources for individuals with disabilities.
- One person may coordinate implementing regulations, directives and guidance for both statutes.
- The name, office address, and telephone number of the Section 504/ADA Coordinator must be provided to all interested persons.

# Compliance Reviews: Overview

- Examine the activities of state agencies, local agencies, and sub-recipients to determine civil rights compliance.
- FNS civil rights and program staff review state agencies.
- FNS staff and state agencies review local agencies and sub-recipients.
- Significant findings must be provided in writing to the reviewed entity and FNS.

# Types of Compliance Reviews

- There are three types of compliance reviews:
  - Pre-award compliance reviews
  - Routine (post-award) compliance reviews
  - Special compliance reviews

# Pre-Award Compliance Reviews: Overview

- State and local agencies must be in compliance with civil rights requirements prior to approval for Federal financial assistance.
- Usually conducted as desk reviews.
- Reports must be maintained in appropriate program files.

(FNS Instruction 113-1, Appendix B)



# Pre-Award Compliance Reviews: NSLP, SBP, SMP, CACFP, and SFSP

- Pre-award Civil Rights information included as part of the application must, at a minimum, include:
  - Copies of free and reduced-price policy statements, letters to parents, public releases, and any other materials used to publicize the program's availability and nondiscrimination requirements.
  - Estimated data on the racial and ethnic makeup of the applicant organization's program service area and enrollment.

# Pre-Award Compliance Reviews:

- LEAs, SFAs, and CACFP sponsors are required to be equipped with the policies, procedures, and resources to ensure meaningful access for persons with LEP and equal opportunity and equally effective communication for persons with disabilities.
- State agencies are required to verify that LEAs, SFAs, and CACFP sponsors have procedures for processing Civil Rights Complaints.

# Pre-Award Compliance Reviews:

- A description of membership requirements as a prerequisite for admission to the applicant's institution (if applicable).
- The names of other federal agencies providing assistance to the applicant organization and whether the applicant has ever been found to be in noncompliance by those federal agencies.

# Routine/Post-Award Compliance Reviews

- FNS and state agencies must conduct routine compliance reviews as identified by FNS Instruction 113-1 and program-specific regulations and policies.
- The reviews assess all civil rights compliance areas and may result in significant findings.
- Sample post-award review questions:
  - Do printed materials contain the nondiscrimination statement?

# Routine/Post-Award Compliance Reviews

- Is the *And Justice For All* poster displayed appropriately?
- Are program informational materials available to all?
- Are \ data on race and ethnicity collected appropriately?
- How are applicants and participants advised of their right to file a civil rights complaint of discrimination?
- Are reasonable modifications, including auxiliary aids and services, appropriately made for people with disabilities?

# Routine/Post-Award Compliance Reviews

- Are appropriate language assistance services provided?
- How are applicants and participants notified of the availability of free language assistance services for individuals with LEP and reasonable modifications and auxiliary aids and services for individuals with disabilities?
- Does the entity under review have an appropriate complaints processing procedure?

# Special Compliance Reviews

- Are conducted by USDA's Office of the Assistant Secretary for Civil Rights independently or in conjunction with FNS program or civil rights staff.
- May be scheduled or unscheduled.
- Purposes:
  - To follow-up on previous findings of noncompliance
  - To investigate reports of noncompliance by other agencies, media, or grassroots organizations

# Special Compliance Reviews

- Purposes:
  - To follow-up on previous findings of noncompliance
  - To investigate reports of noncompliance by other agencies, media, or grassroots organizations
  - May be specific to an incident or policy
  - History of statistical underrepresentation of particular group(s)
  - Pattern of complaints of discrimination



# Resolution of Noncompliance

- A factual finding that any civil rights requirement, as provided by law, regulation, policy, instruction, or guidelines, is not being adhered to by a state agency, local agency or sub-recipient agency.
- Steps must be taken immediately to obtain voluntary compliance.
- A finding's effective date is the date of notice to the reviewed entity – notifying FNS CRD when corrective actions are outstanding in accordance with FNS Instruction 113-1.

# Verification of Citizenship or Immigration Status

- **This issue should never give rise to discrimination.**
- Under Federal law, States, SFAs, and educational agencies are obligated to provide all children – regardless of immigration status – with equal access to public education at the elementary and secondary level.
- This includes children such as unaccompanied children who may be involved in immigration proceedings.
- FNS programs supporting eligible non-citizens include NSLP, SBM, Summer Meals Programs, CACFP, and SFSP.
- The U.S. Departments of Education and Justice published a joint guidance letter [**PDF, 171KB**] at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf>), a fact sheet [**PDF, 568KB**] at <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201405.pdf>, and a set of Questions and Answers [**PDF, 311KB**] at <https://www2.ed.gov/policy/rights/guid/unaccompanied-children-2.pdf> on this topic.

