

Section 6000

Civil Rights

Log of Section Updates

This table will reflect updates to the handbook implemented during the current Program Year. All substantive updates made since the last release will be highlighted in yellow within this section.

| Date of Edit | Content/Purpose | Subsection(s) |
|--------------|--|-------------------|
| 11-28-2022 | Revised to reflect that discrimination based on sex also includes discrimination based on gender identity and sexual orientation. | Introductory text |
| 11-28-2022 | Updated the Non-discrimination statement per USDA Food and Nutrition Service updates | 6120 |
| 11-28-2022 | Removed content allowing visual observation to report racial/ethnic data. Added best practices for racial/ethnic data and reference to new Data Collection form. | 6130 |
| 11-28-2022 | Added that Civil Rights training is now provided by the Institute for Child Nutrition and provided the SquareMeals.org link to that training. | 6150 |

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6000 Civil Rights

A contracting entity (CE) is responsible for ensuring that all persons have equal access to the program. The CE and sponsored sites cannot discriminate in employment or program participation based on:

- Race;
- Color;
- National Origin;
- Sex (including sexual orientation and gender identity);
- Age; or
- Disability.

A CE must strictly adhere to and enforce the provisions of the Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA), both within the CE's administrative office and if a sponsor, within the sites it sponsors.

Civil rights laws do allow CEs and sponsored sites to restrict Program participation based on age or sex commensurate with the objectives of the Program, for example, child care centers can deny the participation of elderly persons, shelters for battered women can deny the participation of men.

See handbook section 4000, *Managing the Program*, Item 4140, *Prohibition of Separation by Gender*, for guidance and waiver information.

Refer to USDA Food and Nutrition Service (FNS) Instruction 113-1, *Civil Rights Compliance and Enforcement – Nutrition Programs and Activities* for additional information.

6100 Title VI of the Civil Rights Act of 1964

6110 Limited English Proficiency

CEs and sites that fail to provide services to Limited English Proficiency (LEP) potentially eligible persons, applicants, and participants, or deny them access to the Program and activities, may be discriminating on the basis of national origin. Title VI of the Civil Rights Act requires CEs and sites to take reasonable steps to assure “meaningful” access to the information and services they provide.

Reasonable steps to ensure meaningful access is contingent on a number of factors, including:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered by the CE or site;
2. The frequency with which LEP individuals come into contact with the Program;
3. The nature and importance of the program, activity, or service provided by the Program to people's lives (will the denial or delay of access to the services or information have serious or even life-threatening implications for the LEP individual); and
4. The resources available to the CE or site and costs.

6120 Non-discrimination Statement

CEs and sponsored sites must provide the following non-discrimination statement and complaint-filing procedures in all applications and Program-related information intended for the parents of current and potential participants (see next page):

In English the non-discrimination statement and complaint-filing procedure is:

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, audiotope, 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: <https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf>, 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: (833) 256-1665 or (202) 690-7442; or
- (3) email: Program.Intake@usda.gov.

This institution is an equal opportunity provider.

In Spanish the non-discrimination statement and complaint-filing procedure is:

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.fns.usda.gov/sites/default/files/resource-files/usdaprogram-discrimination-complaint-form-spanish.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; o
- (2) fax: (833) 256-1665 o (202) 690-7442; o
- (3) correo electrónico: program.intake@usda.gov.

Esta institución es un proveedor que ofrece igualdad de oportunidades.

The non-discrimination statement **must be printed in its entirety** on all Program-related documents that are produced for public information, public education, or public distribution.

Program-related written materials must be provided to all current and potential program participants with the non-discrimination statement and complaint-filing procedures included.

EXCEPTIONS:

- When material is too small to permit the full non-discrimination statement, the material must include, in font size no smaller than the other text, the following statement: “This institution is an equal opportunity provider.” For example, a recipe given to a household as part of nutrition education.
- The non-discrimination statement is not required to be printed on items such as cups, buttons, magnets, and pens that identify the Program when the size or configuration make it impractical.
- When advertising the Program through radio or television announcements, the entire non-discrimination statement does not have to be read; rather, a statement such as “The (name of the CE or site) is an equal opportunity provider” is sufficient.
- The entire non-discrimination statement does not have to be included on every page of a CE’s Program information website; at minimum, the non-discrimination statement or a link to the statement must be included on the CE’s home page.

NOTE: When human likenesses are used in program materials, reasonable efforts must be made to depict an ethnic balance.

6130 Data Collection and Maintenance

A CE and sponsored sites must determine the number of actual and potentially eligible beneficiaries by both racial and ethnic category currently participating in the program, annually.

To determine the number of *potentially* eligible beneficiaries, CEs and sponsored sites can obtain information from many different resources such as comparative enrollment in other sites, schools, census data, local Chamber of Commerce, and local minority and grass roots organizations.

To determine number of actual beneficiaries, CEs operating an enrolled site typically gather this information within enrollment forms. For sites that do not have enrollment, such as many At-risk sites, the preferred method for obtaining this information is participant self-identification or self-reporting. As of May 17, 2021, federal policy prohibits visual observation as an allowable practice for gathering this data.

While requesting data verbally is allowable, TDA understands that requesting information verbally may be uncomfortable for staff and for participants. Respect for individual dignity should guide the processes and methods of collecting data on race and ethnicity.

Additionally, TDA discourages asking a child to self-identify their race and ethnicity, as this practice may confuse young children. Obtaining data from parents or guardians is the preferred method of data collection, as parents or guardians can provide accurate information. If a parent or guardian is not present at the time of meal pick-up, or if the parent chooses not to identify, their response may be marked “unknown.” For that reason, TDA does not expect that the number of respondents will equal the number of children at a meal service site. However, TDA expects CEs to continue to capture the data.

The *Collection of Child Nutrition Program Participant Racial/Ethnic Data Prototypes* form, located on the SquareMeals.org CACFP Administration/Forms page, can assist program operators in capturing racial and ethnic data to the best extent possible.

Racial/ethnic categories include the following:

Ethnicity

- (1) *Hispanic or Latino*. A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term “Spanish origin” can be used in addition to “Hispanic or Latino.”
- (2) *Not Hispanic or Latino*.

Race

- (1) *American Indian or Alaskan Native*. A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.
- (2) *Asian*. A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
- (3) *Black or African American*. A person having origins in any of the black racial group of Africa. Terms such as “Haitian” can be used in addition to “Black or African American.”
- (4) *Native Hawaiian or Other Pacific Islander*. A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- (5) *White*. A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Children of multiple racial categories may be categorized in more than one racial group.

Parents and guardians may be asked to identify the racial or ethnic group of the participating child/student only after the following has been explained:

- Providing the information is to ensure compliance with USDA nondiscrimination requirements only
- Failure to report the information will not affect the participant's eligibility for meals.

Program operators of sites that do not require enrollment should choose data collection methods that are easy for adult participants or parents and guardians to use. For this requirement, parents and guardians of children attending non-enrolled sites are not required to provide the participant's name. Parents and guardians must not be required to fill out a free or reduced-price meal application for a non-enrolled program.

After collecting this data, a CE and sponsored sites must:

- Maintain the original data by individual site with documentation of the sources and methods by which it was obtained; and
- Maintain the data and relevant documentation according to the record keeping requirements described in Section 4000, Program Documentation; and
- Establish safeguards to protect the confidentiality of the data.

6140 Administrative and Site Reviews

Reviews help to ensure that civil rights requirements are fulfilled at each level of Program administration, including the application approval process and the federal and state monitoring efforts.

F&N will determine whether a CE and sponsored sites comply with civil rights requirements before approving an application to participate. Compliance is determined by examining the *Pre-Award Civil Rights Compliance Review* form submitted with the initial application, as well as by observation during the visit prior to approval. During administrative and site reviews, F&N will also evaluate compliance with civil rights requirements.

A sponsor must determine a site's compliance with civil rights during its pre-approval visit and during each of its required reviews of its sites.

6150 Training

A CE must complete Civil Rights training prior to Program participation and annually thereafter. In addition, CEs must ensure that all staff that perform key CACFP activities and all sponsored sites, if applicable, are trained in civil rights requirements prior to Program participation and annually thereafter.

Civil rights training for CACFP CEs is accessed through the Institute for Child Nutrition (ICN). Links to the training are available on SquareMeals.org at: <https://squaremeals.org/FandNResources/Training/CivilRights.aspx>

6160 Complaints

CEs and sponsored sites must have procedures for processing complaints. Staff at all locations must be able to provide documentation of the procedures and an explanation of the complaint process.

Any person or representative alleging discrimination based on a prohibited basis has the right to file a complaint within 180 days of the alleged discriminatory action. Complaints can be written or verbal. If the complainant makes a verbal complaint, the person to whom the allegation is made must write up the elements of the complaint and should make every effort to obtain the following information:

- a. Name, address, and telephone number or other means of contacting the complainant,
- b. The specific location and name of the organization participating in the CACFP,
- c. The nature of the incident or action that led to the complaint of discrimination,
- d. The basis on which the complainant believes discrimination exists (race, color, national origin, age, disability or sex.),
- e. The names, telephone numbers, titles, and business or personal address of persons that may have knowledge of the alleged discriminatory action, and
- f. The date(s) during which the alleged discriminatory action(s) occurred or, if continuing, the duration of such action(s).

If a civil rights complaint is filed, the CE must forward it to USDA immediately. Sponsors are also responsible for forwarding civil rights complaints filed with a site to USDA.

The complaints should be sent to:

USDA Food and Nutrition Service
Attn: Regional Civil Rights Director
1100 Commerce St.
Dallas, Texas 75242

A courtesy copy should be sent to Community.Ops@TexasAgriculture.gov.

6200 Section 504 of the Rehabilitation Act of 1973

6210 Program Accessibility

The Program, when viewed in its entirety, must be accessible to and usable by disabled persons, including persons with impaired vision or hearing. A CE is not required to make every part of existing facilities physically accessible to disabled persons but must ensure that the Program(s) are accessible.

CEs and sponsored sites must offer the most integrated setting possible to enable persons with disabilities to fully benefit from the Program.

CEs and sponsored sites can make the Program accessible to persons with disabilities by:

- Moving to accessible buildings;
- Assigning aides to assist children;
- Delivering services at alternate accessible sites (for sites with 15 or fewer employees);
- Redesigning their equipment;
- Changing the schedule of service hours;
- Altering existing facilities; and/or
- Constructing new, accessible facilities.

A CE, and sponsored sites, should develop a transition plan to ensure Program accessibility when structural changes to buildings are necessary.

If a CE or sponsored site cannot provide services to a person with disabilities because a part of a center, day care home, or facility where services are provided is not accessible, it must:

- Inform the person with the disability of alternate sites where they can receive services; and
- Pay all or part of any additional cost the person with disabilities incurs as a result of being transported to the alternate site. (There are some circumstances when a CE or sponsored site is not required to pay these costs. Contact your Education Service Center for additional information.)

6220 Public Notification

CEs and sponsored sites must:

- Display the official USDA non-discrimination poster ("...And Justice For All") in a prominent place;
- Make Program information available to the public upon request;

- Provide information materials related to the Program in languages other than English, if the need exists; and
- Provide the non-discrimination statement and complaint-filing procedures in all applications and Program-related information intended for the parents of current and potential participants.

CEs and sponsored sites must have a public notification system to inform applicants, participants, and potential participants of the Program availability, Program rights and responsibilities, the policy of non-discrimination, and the procedure for filing a complaint.

The public notification system must include the following three basic elements:

1. Program Availability. CEs and sites must take specific action to inform applicants, participants, and potential participants of their Program rights and responsibilities.
2. Complaint Information. CEs and sites must advise applicants and participants of the right to file a complaint, how to file a complaint, and the complaint procedures.
3. Non-discrimination Statement. CEs and sites must ensure all information materials and sources, including websites, used to inform the public about the Program contain the non-discrimination statement located in Item 6120, *Non-discrimination Statement*.

6230 Employment

CEs and sponsored sites are prohibited from discriminating against any qualified person based on a disability. Reasonable accommodations must be made for the known physical or mental limitations of an otherwise qualified applicant or employee with disabilities. A CE or sponsored site is not expected to make accommodations that impose an undue hardship on the operation of the Program.

6240 Food Services

Each participating site must serve special meals without additional charge to children with disabilities that restrict their diet. Refer to Section 4000, *Managing the Program* for additional information related to meals for children with disabilities or special dietary needs.

6250 Designation of Section 504 Coordinator

CEs and sponsored sites that employ 15 or more people must designate one or more persons to coordinate compliance with Section 504 regulations. An existing employee may be designated to perform this function.

6260 Complaint/Grievance Procedures

CEs and sponsored sites that employ 15 or more people must maintain procedures to process complaints and grievances. Procedures that are required by a program other than the CACFP may satisfy this requirement if they comply with due process standards and provide for prompt and equitable resolution of complaints and grievances. Refer to Item 6160, *Complaints*, for minimum information to obtain.

6270 Self-Evaluation of Services

CEs must evaluate the quality and availability of their services to people with disabilities and correct any inequitable policies or practices. The evaluation should be made with the assistance of people with disabilities or organizations that advocate for people with disabilities.

CEs must maintain a list of interested persons with whom it consulted, a description of the areas examined, the problems that were identified, and descriptions of modifications that were made.

CEs must retain the results of a self-evaluation study in accordance with CACFP recordkeeping requirements. Refer to Section 4000 for additional guidance on program documentation.

CEs that are sponsors must ensure their sites are in compliance with all civil rights requirements.

6300 Americans With Disabilities Act

6310 Introduction

The Americans With Disabilities Act (ADA) became effective January 26, 1992. This act and Section 504 of The Rehabilitation Act of 1973 combine to prevent a wide range of discriminatory actions against disabled persons. The ADA, however, does not replace Section 504. The ADA applies to all persons and is not limited solely to persons who receive federal financial participation.

The ADA comprises the following subjects:

- Non-discriminatory practices
- Reasonable accommodation

The ADA applies to the following areas:

- Services; and
- Employment.

6320 Services

When evaluating the services offered, including at sponsored sites, the CE should consider the following questions:

- Can the person with disabilities get to the facility with reasonable ease?
- If the person can reach the location, can they enter the facility and access the specific location where services are provided?
- If they can access the location where services are provided, is there an accessible bathroom?
- If they can access the location where services are provided, are necessary accommodations made for their particular disability?

6330 Employment

In accordance with the ADA, CEs and sponsored sites:

- Cannot discriminate against a person with a disability when hiring or promoting staff if the person is otherwise qualified for the job.
- Can inquire about a person's ability to perform a job but cannot ask whether a person has a disability or subject a person to tests that screen out people with disabilities.
- Must provide "reasonable accommodation" to persons with disabilities (for example, job restructuring and modification of equipment).

NOTE: A CE or sponsored site is not required to provide accommodations that impose an undue hardship on their business.