

Food Service Facts Table of Contents

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19. Students with Special Dietary Needs

Sponsor's Responsibility for Meal Modifications

Federal Child Nutrition Program regulations require Sponsors to provide reasonable modifications to Program meals or the meal service to accommodate participants with disabilities that restrict a child's diet on a case-by-case basis and only when supported by a written statement from a State licensed healthcare professional who is authorized to write medical prescriptions under State law. The American with Disabilities Act Amendments Act of 2008, P.L. 110-235, clarified that Congress intends the term disability to be broad and inclusive.

Sponsors have the option to accommodate special dietary needs that do not constitute a disability, including those related to religious or moral convictions or personal preference.

Statutory and Regulatory Requirements

Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) prohibits discrimination on the basis of disability in programs and activities that receive Federal financial assistance, such as Child Nutrition Programs. Title II of the American Disabilities Act of 1990, as amended (ADA) prohibits discrimination based on disability in the provision of State and local government services, such as public schools. Title III of the ADA prohibits discrimination based on disability by private entities that provide public accommodations, including private schools. Section 504, Title II and Title III require Sponsors to make reasonable modifications to accommodate children with disabilities, including reasonable modifications to meals and meal service.

Sponsors are required to offer program meals to students with disabilities whenever program meals are offered to the general populations served by the programs. Sponsors should be aware that the Individual with Disabilities Education Act (IDEA) imposed requirements on states that may affect the service of meals even when such service is not required by the Child Nutrition Programs.

For example, the Individualized Education Program (IEP) developed for a child under IDEA may require a meal to be served outside of the regular meal schedule or may require a breakfast to be served in a school that does not participate in the School Breakfast Program. While the school may not claim these meals for reimbursement, it may use the same food service facilities and funds to provide these meals.

USDA regulations at 7 CFR 15b, "Nondiscrimination on the Basis of Handicap in Programs and Activities receiving Federal Financial Assistance" implements Section 504's nondiscrimination requirements. 7 CFR 15b.26(d) requires Sponsors to serve special

meals at no extra charge to children with disabilities. In addition, Program regulations at 7 CFR 210.10(m) and 220.8(m) require Sponsors to make substitutions in lunches and afterschool snacks for students who are considered to have a disability under 7 CFR 15b.3 and whose disability restricts their diet. Sometimes, children require meal modifications that diverge from the Program meal pattern. In order to receive Federal reimbursement for modified meals that do not meet the Program meal pattern requirements, Sponsors must require a written medical statement signed by a State licensed healthcare professional. Although it is not required by USDA, Sponsors may choose to request a written medical statement from a State licensed healthcare professional in support for a modified meal that is within the Program meal pattern. Sponsors will be reimbursed for a modified meal that is within the meal pattern, regardless of whether they have obtained a written medical statement.

Definition of Disability

Under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA), a “person with a disability” means “any person who has a physical or mental impairment which substantially limits one or more major life activity, has a record of such impairment, or is regarded as having such an impairment.”

Major life activities covered by this definition include caring for one’s self, eating, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working and major bodily functions. The term “physical or mental impairment” includes, but is not limited to, such diseases, conditions, and functions as:

- ◆ Orthopedic, visual, speech and hearing impairments
- ◆ Cerebral Palsy, Epilepsy, Muscular Dystrophy and Multiple Sclerosis
- ◆ Digestive, bowel and bladder
- ◆ Neurological and brain
- ◆ Respiratory
- ◆ Cancer
- ◆ Cardiovascular, circulatory and heart
- ◆ Metabolic and endocrine
- ◆ Food anaphylaxis (severe food allergy)
- ◆ Intellectual disability
- ◆ Emotional illness
- ◆ Drug addiction and alcoholism

Individuals who take mitigating measures to improve or control any of the conditions recognized as a disability are still considered to have a disability and require an accommodation.

Sponsors participating in the Child Nutrition Programs are required to make substitutions or modifications to the meal requirements for those students with disabilities who are unable to consume the meals offered to non-disabled students.

Documentation of Disability

Notify households to provide diet instructions for a student with a disability using Form 19-A, Letter to Parent/Guardian Explaining Requirements for School Meal Modification Requests. Annual updates to diet instructions are recommended, but not required. The sponsor should also provide parents/guardians with Form 19-B, Medical Statement to Request School Meals Modification.

A “medical authority” that is authorized by Kansas state law to write medical prescriptions: licensed physician (MD or DO) OR a physician’s assistant (PA) or an **advanced practice registered nurse (APRN)** authorized by their responsible licensed physician determines whether a student has a disability that restricts his or her diet on an individual basis. The medical authority’s medical statement of the student’s disability must be based on the regulatory criteria for disability and contain a finding that the disability restricts the participant’s diet. These forms provide information to enable the medical authority to correctly assess whether an individual’s disability meets the regulatory criteria.

The medical statement, Form 19-B, should be updated whenever the medical authority changes the student’s diet and it is best practice to update at the beginning of each school year.

Guidelines for special diets must be completely and clearly written because few sponsors have staff trained in special diet management. Certain situations may require the services of a Registered Dietitian Nutritionist (RDN) to assist in implementing the medical statement for some therapeutic diets.

Requirements of Medical Statement from Medical Authority

On a case-by-case basis, a student with disabilities shall have his/her school meals modified **ONLY** when supported by a statement signed by a “medical authority” that is authorized by Kansas state law to write medical prescriptions: licensed physician (MD or DO) OR a physician’s assistant (PA) or an **advanced practice registered nurse (APRN)** authorized by their responsible licensed physician.

When the medical statement is required (i.e., when the modification does not meet the meal pattern requirements) the medical statement must include:

- ◆ Information about the child’s physical or mental impairment that is sufficient to allow the Sponsor 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 of foods to be omitted and recommended alternatives, in the case of a modified meal.

In other cases, more information may be required. For example, if the child requires caloric modifications or the substitution of a liquid nutritive formula to accommodate a disability, this information must be included in the statement.

Note: It is not required that the written medical statement provides a specific diagnosis by name or use the term disabled or disability, though the State licensed healthcare professional may use these terms when submitting the medical statement. For further discussion of the written medical statement, see page 6 of SP 59-2016.

For example, if the disability would require caloric modifications or the substitution of a liquid nutritive formula, this information must be included in the statement. If the disabled student requires only textural modification(s) to the regular meal, this information must be included in the statement. The purpose of the statement is to assist the sponsor in providing the appropriate textural modifications(s). Unless otherwise specified by the medical authority, the meals modified for texture will consist only of food items and quantities specified in the regular menus.

When the food service personnel receive the Medical Statement to Request School Meal Modification from the medical authority or any written signed statement listing foods that are to be omitted and foods that are to be substituted, they are required to:

- ◆ Abide by the determination of the medical authority.
- ◆ Make meal modifications only as directed by the medical authority's written instructions.

Non-Disability Situations

Sponsors are encouraged to consider children's cultural, religious, and ethnic preferences when planning and preparing meals. Accommodating children's preferences helps to maintain participation in the NSLP and SBP. Variations, whether on an experimental or continuing basis, must be consistent with the food and nutrition requirements specified in Program regulations in order for children's meals to be eligible for reimbursement (7CFR 210.10 and 7 CFR 220.8).

Fluid Milk Substitutions

Fluid milks substitutions are among the most common menu variations for Sponsors. Sponsors must inform the State Agency of any schools opting to provide a milk substitute or milk substitutes (7 CFR 210.10(m)(2)(ii)) and must ensure milk substitutions meet USDA nutrient requirements. For example, low-fat or fat free lactose-free milk, or reduced-lactose milk, would meet the nutrient requirements. Sponsors will not receive Federal reimbursement for a meal that substitutes juice or water for milk for a non-disability reason. If a child's medical statement indicates the child cannot consume milk due to a disability, and requests the child receive a substitute, the Sponsor must provide the requested substitute regardless of whether it meets the nutrient requirements. In a disability situation, the Sponsor will continue to receive reimbursement for the meal based on the signed medical statement. Meeting the nutrient requirements helps to ensure participating children continue to have access to important nutrients found in cow's milk. The nutrient requirements for fluid milk substitutions are outlined at 7 CFR 210.10(d)(3) and shown in the chart.

Nutrient	Per cup
Calcium	276 mg.
Protein	8 g.
Vitamin A	500 IU.
Vitamin D	100 IU.
Magnesium	24 mg.
Phosphorus	222 mg.
Potassium	349 mg.
Riboflavin	0.44 mg.
Vitamin B-12	1.1 mcg.

Because the Nutrition Facts Label on food products may not list all of the nutrients included in the chart, the Sponsor may need to request documentation from the product manufacturer to confirm the presence of all required nutrients at the proper levels.

As noted, some children cannot consume cow's milk due to a recognized disability. Consistent with other meal modifications, Sponsors are required to provide a substitute for these children when a written medical statement indicates the milk substitution is necessary. The nutrient requirements listed in the chart do not apply to cases of disability. If a child cannot consume cow's milk due to a disability, the Sponsor must substitute fluid milk based on the written medical statement.

Reimbursement and Availability of Food Substitutions

Meals served to students with a disability and/or special dietary needs shall be claimed in the category for which the students are eligible. Sponsors "may not discriminate on the basis of disability" and "shall serve special meals at no extra charge to students whose disability restricts their diet." While any additional costs for substituted foods are considered allowable program costs, no additional Child Nutrition Program reimbursement is available. Sources of supplemental funding may include special education funds (if the substituted food is specified in the child's IEP), the sponsor's general fund, or the nonprofit school Food Service Fund.

For students with a disability requiring substitutions, every effort should be made to obtain the food substitutes prescribed by the medical authority.

Accessibility for Disabled Participants

Where existing food service facilities are not completely accessible and usable to the disabled student, assistance should be provided. The sponsor is responsible for the accessibility of food service sites and to provide aides where needed. Any additional costs for adaptive feeding equipment or for aides are considered allowable food service costs; although no additional Child Nutrition Program reimbursement is available. Sponsors must provide food service in the most integrated setting appropriate to the needs of all students. The sponsor must ensure students with disabilities participate with students who are not disabled to the maximum extent appropriate.

When implementing these guidelines, food service personnel should work closely with the parent(s)/guardian(s) and with all other school, child care, medical and community personnel who are responsible for the health, well-being and education of students with disabilities or other special dietary needs.

Parents or guardians are encouraged to take some of the responsibility by participating in the planning of special meals for their child. Their involvement should be based on food substitutions prescribed by the child's physician, availability of the special foods and the reasonableness of the preparation.

Menu Documentation

Sponsors are not required to document the special meals to accommodate a disability on menu production records. The special menu does not have to meet the component requirements.

Procedural Safeguards and Training

Sponsors must have a procedure in place to ensure parents and guardians know how to request a modification for their child and understand their right to examine the record and file a grievance in situations where a requested modification is not granted.

Procedural Safeguards

Under the Procedural Safeguards requirement, Sponsors must provide a process for the prompt resolution of grievances that includes the option for an impartial hearing (&CFR 15b). Specifically, the Procedural Safeguards process requires the Sponsor to provide notice and information to parents and guardians regarding how to request a reasonable modification. The notice also must explain the parent or guardian's procedural rights, which include the right to:

- ◆ File a grievance if they believe a violation has occurred regarding the request for a reasonable modification;
- ◆ Receive a prompt and equitable resolution of the grievance;
- ◆ Request and participate in an impartial hearing to resolve their grievances;
- ◆ Be represented by counsel at the hearing;
- ◆ Examine the record; and
- ◆ Receive notice of the final decision and a procedure for review, i.e., right to appeal the hearing's decision.

Information on this requirement can be found in USDA's regulation, Non Discrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance at 7 CFR 15b.25 and at 7 CFR 15b.6(b). An overview of this requirement is also included in USDA Policy Memo SP 59-2016.

Procedures in place to address requests to accommodate children with disabilities in the school, in compliance with Section 504 of the Rehabilitation Act of 1973 or IDEA, may be used to fulfill the requirement to maintain Procedural Safeguards for meal modifications.

Section 504/ADA Coordinator and Team

Sponsors employing 15 or more individuals must ensure their Procedural Safeguards process provides for a prompt and equitable resolution of grievances, and must designate at least one person to coordinate compliance with disability requirements (7 CFR 15b.6). This individual is often referred to as the Section 504/ADA Coordinator. Sponsors are strongly encouraged to develop a Section 504/ADA Team to discuss best practices and develop a holistic plan to create a safe learning environment for children. Using a team approach encourages information sharing throughout the school, and may help protect children in situations where food is served outside the cafeteria, such as during classroom parties.

USDA Guidance

For additional information, refer to the USDA guidance, *Accommodating Children with Special Dietary Needs in School Nutrition Programs: Guidance for School Food Service Staff* at www.usda.gov and policy memos SP 59-2016 and SP 26-2017. For guidance on accommodating disabilities in the Child and Adult Care Food Program and the Summer Food Service program, please see CACFP 14-2017, SFSP 10-2017: Modifications to Accommodate Disabilities in the Child and Adult Care Food Program and Summer Food Service Program.

Questions & Answers

See SP 26-2017: Accommodating Disabilities in the School Meal Programs: Guidance and Questions and Answers (Q&As) for answers to frequently asked questions.

Q *After the special meal has been provided, who is responsible for assisting with feeding if the child cannot feed himself/herself?*

A Providing assistance with feeding is the school's responsibility. Many schools and institutions will already have aides available to provide this service as part of the child's total care plan.



Q *When a medical authority orders a snack outside of the meal period for a student with a disability, must the food service program bear the cost of the snack?*

A The cost of providing the snack for the student is an allowable cost to the food service program. The cost of the snack could also be paid from special education funds or other school funds.



Q *Is a food allergy considered a disability?*

A A food allergy will generally be considered a disability. Under the definition of disability in the ADA, a food allergy does not need to be life-threatening or cause anaphylaxis in order to be considered a disability. A non-life-threatening allergy may be considered a disability and require a meal modification, if it impacts a major bodily function or other major life activity (such as digestion, respiration, immune response, skin rash, etc.).



Q *Is a food intolerance recognized as a disability?*

A A food intolerance may be considered a disability if it substantially limits a major life activity. For example, if a child’s digestion (a major bodily function) is impaired by gluten intolerance, their condition may be considered a disability regardless of whether or not consuming wheat causes severe distress.



Q *Is autism considered a disability?*

A Autism is considered a disability, and may require a reasonable modification if it substantially limits a major life activity, such as the activity of eating. For example, some children with autism will eat only certain foods due to their repetitive and ritualistic behavior patterns. Any physical or mental impairment preventing a child from consuming a meal is considered a disability.



Q *Are phenylketonuria (PKU), diabetes, and celiac disease considered conditions that require modifications to Program meals?*

A Yes. All three conditions are considered disabilities and may require reasonable modifications.



Q *When is a medical statement required?*

A Sponsors must obtain a written medical statement from a State licensed health care professional in order to receive reimbursement for meal modifications when the modified meal does not meet the Program meal pattern requirements (7 CFR 210.10).

The State agency may not require that the written medical statement provide a specific diagnosis by name or use the term “disabled” or “disability” (though statements that use these terms are sufficient). For further discussion of the written medical statement, please see page 6 of SP 59-2016.

Schools may receive reimbursement for a meal modification request without a medical statement when the accommodation can be made within the Program meal pattern. For example, if a child has a common allergy to one fruit or vegetable, the school food service can simply substitute another fruit or vegetable. USDA encourages schools to use flexibilities whenever possible. In situations where the Sponsor does not obtain a medical statement, USDA encourages Sponsors to make note of the actions taken in acknowledging children’s accommodations. Doing so helps to safeguard children in all areas of the school environment.



Q *What is considered a “reasonable modification”?*

A A reasonable modification is a change or alteration in policies, practices, and/or procedures to accommodate a disability that ensures children with disabilities have equal opportunity to participate in, or benefit from, a program. A request for a reasonable modification must be related to a child’s disabling condition. Federal law and USDA regulations at 7 CFR 15b.13 require that schools make reasonable modifications to accommodate children with disabilities. Reasonable modifications to effectively accommodate children with disabilities must be made on a case-by-case basis. A meal modification must be related to the disability or limitations caused by the disability. Further discussion of “reasonable modifications” can be found on pages 5-7 of SP 59-2016.



Q *Can a Sponsor decline to provide a requested meal modification?*

A It is almost never appropriate for a Sponsor to decline to provide an effective meal modification to accommodate a child’s disability, if the modification request is related to the child’s disabling condition. The exception would be a modification request that would fundamentally alter the nature of the Program (see page 7 of SP 59-2016). If a Sponsor has concerns about a request, the Sponsor is responsible for working with the parent or guardian to develop an appropriate modification and, as applicable, suitable alternatives for the child.

If a Sponsor declines a request, the Sponsor must ensure that the child’s parent or guardian understands their rights under the Procedural Safeguards process.



Q *Can the Offer versus Serve (OVS) provision be used to accommodate a meal modification?*

A No. Schools operating OVS must ensure children with disabilities have the opportunity to select all required food components for the meal. For example, a child who has Celiac disease or a gluten intolerance must have a choice of a bread/grain item that is gluten-free. The Sponsor may not use OVS to eliminate a specific food component for a child with a disability; in this case, the Sponsor must offer a grain substitute for a child who cannot consume gluten.



Q *If the medical statement does not provide sufficient information for the Sponsor to accommodate the child's disability, what should the Sponsor do?*

A When a Sponsor receives a medical statement signed by a State licensed healthcare professional requesting a meal modification to accommodate a child's impairment, the Sponsor must provide a reasonable modification to Program meals. If a medical statement is provided and does not fully explain the modification needed, the Sponsor should immediately contact the child's parent or guardian for guidance and ask the family to provide an amended medical statement as soon as possible. However, clarification of the medical statement should not delay the Sponsor from providing a meal modification. Sponsors should follow the portion of the medical statement that is clear and unambiguous to the greatest extent possible, while obtaining additional information.



Q *Are Sponsors required to accommodate a meal modification request for a child who does not have a disability but has a food preference?*

A No. However, Sponsors may make meal modifications for children who do not have disabilities. When providing a substitution for a child without a disability, the substitution must be consistent with the meal pattern requirements specified in Program regulations in order for the meal to be reimbursable (see: 7 CFR 210.10 (m)(3)). When a modification is made within the meal pattern, Sponsors are not required to obtain a medical statement.



Q *If a Sponsor provides meal modifications for non-disability reasons (e.g., food preferences for religious reasons or a child's vegetarianism) are the modified meals eligible for Federal reimbursement?*

A USDA encourages schools to provide a variety of foods for children to select from in order to accommodate food preferences. Meal modifications to accommodate a food preference or for religious, ethnic, moral, or other reasons may be reimbursed, provided these meals adhere to the standards found in Program regulations (see 7 CFR 210.10 (m)(3)).

