

Appendix A

UNITED STATE DEPARTMENT OF AGRICULTURE

FNS INSTRUCTION 783-2

Food and Nutrition Service
3101 Park Center Drive
Alexandria, VA 22302

Rev. 2

Action by: Regional Directors
 Special Nutrition Programs

SOURCE CITATION: Rehabilitation Act of 1973, Section 504; 7 CFR Part 15b; 7 CFR Sections 210.10 (i) (1), 210.23 (b), 215.14, 220.8 (f), 225.16(g) (4), and 226.20(h)

Meal Substitutions for Medical
or Other Special Dietary Reasons

Child Nutrition Program regulations require participating school food authorities, institutions and sponsors to offer to all participants breakfasts, lunches, suppers, supplements and milk which meet the meal patterns identified in the Program regulations. Departmental regulations further require substitutions to the standard meal patterns for participants who are considered handicapped under 7 CFR Part 15b and whose handicap restricts their diet; and permit substitutions for other participants who are not handicapped but are unable to consume regular Program meals because of medical or other special dietary needs. The provisions requiring substitutions for handicapped participants respond to the requirements of Section 504 of the Rehabilitation Act of 1973 and to the U.S. Department of Agriculture's implementing regulations, 7 CFR Part 15b, which provide that no otherwise qualified handicapped individuals shall, solely on the basis of handicap, be excluded from participation in, be denied benefit of, or subjected to discrimination under any program or activity receiving Federal financial assistance.

This Instruction outlines the policy for food substitutions and other modifications in the meal patterns necessary to meet the dietary requirements of Program participants with handicaps and with other special dietary needs. School food authorities, institutions and sponsors are required to offer Program meals to participants with handicaps whenever Program meals are offered to the general populations served by the Programs. School food authorities, institutions and sponsors should be aware that the Individuals with Disabilities Education Act (IDEA) imposes requirements on States which may affect them, including the service of meals even when such service is not required by the Child Nutrition Programs.

For example, the individualized education program developed for a child under the IDEA may require a meal to be served outside of the regular meal schedule for Program meals or may require a breakfast to be served in a school food authority which does not participate in the School Breakfast Program. While the school food authority, institution or sponsor may not claim these meals as Program meals, it may use the same food service facilities or food service management company to provide these meals as it uses to provide Program meals, and Program funds may be used to pay for the costs associated with the IDEA-required meals. Inquiries regarding the IDEA's requirements should be directed to the U.S. Department of Education, the Agency responsible for the IDEA's administration and enforcement.

School food authorities, institutions and sponsors may also have responsibilities under the Americans with Disabilities Act (ADA). Inquiries regarding a school food authority's, institution's or sponsor's responsibilities under the ADA should be directed to the U.S. Department of Education, the agency responsible for the enforcement of the ADA's requirements in elementary and secondary education systems.

I. HANDICAPPED PARTICIPANTS

"Handicapped person" is defined in 7 CFR 15b.3(i) as any person who has "a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment." (See Exhibit A, 7 CFR 15b.3.) "Major life activities" are defined in 7 CFR 15b.3(k) as "functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." School food authorities, institutions and sponsors participating in the Child Nutrition Programs are required to make substitutions or modifications to the meal patterns for those participants with handicaps who are unable to consume the meals offered to nonhandicapped participants.

Determinations of whether or not a participant has a handicap which restricts his or her diet are to be made on an individual basis by a licensed physician. (Licensed physicians include Doctors of Osteopathy in many states.) The physician's medical statement of the participant's handicap must be based on the regulatory criteria for "handicapped person" defined in 7 CFR Part 15b.3(i) and contain a finding that the handicap restricts the participant's diet. In those cases in which the school food authority, institution or sponsor has consulted with the physician issuing the statement and is still unclear whether the medical statement meets the regulatory criteria, the school food authority, institution or sponsor may consult the State agency.

A participant whose handicap restricts his or her diet shall be provided substitutions in foods only when supported by a statement signed by a licensed physician. The medical statement shall identify:

A The participant's handicap and an explanation of why the handicap restricts the participant's diet;

B The major life activity affected by the handicap; and

C The food or foods to be omitted from the participant's diet, and the food or choice of foods that must be substituted. If the handicap would require caloric modifications or the substitution of a liquid nutritive formula, for example, this information must be included in the statement. If the handicapped participant requires only textural modification(s) to the regular Program meal, as opposed to a meal pattern modification, the medical statement is recommended, but not required. In such cases, the purpose of the statement is to assist the school food authority, institution or sponsor in providing the appropriate textural modification(s). Unless otherwise specified by the physician, the meals modified for texture will consist only of food items and quantities specified in the regular menus.

The State agency should make 7 CFR 15b.3 (Exhibit A) available to school food authorities, institutions and sponsors. The school food authority, institution or sponsor should also provide parents or guardians with 7 CFR Part 15b.3, so that their physicians may correctly assess whether an individual's handicap meets the regulatory criteria. School food authorities, institutions and sponsors should use the services of a Registered Dietitian to assist in implementing the medical statement, as appropriate.

Generally, participants with food allergies or intolerances, or obese participants are not "handicapped persons", as defined in 7 CFR 15b.3(i), and school food authorities, institutions and sponsors are not required to make substitutions for them. However, when in the physician's assessment food allergies may result in severe, life-threatening reactions (anaphylactic reactions) or the obesity is severe enough to substantially limit a major life activity, the participant then meets the definition of "handicapped person", and the food service personnel must make the substitutions prescribed by the physician.

II PARTICIPANTS WITH OTHER SPECIAL DIETARY NEEDS

School food authorities, institutions or sponsors may, at their discretion, make substitutions for individual participants who are not "handicapped persons", as defined in 7 CFR 15b.3(i), but who are unable to consume a food item because of medical or other special dietary needs. Such substitutions may only be made on a case-by-case basis when supported by a statement signed by a recognized medical authority. In these cases, recognized medical authorities may include physicians, physician assistants, nurse practitioners, or other professionals specified by the State agency.

For these nonhandicapped participants, the supporting statement shall include:

A An identification of the medical or other special dietary need which restricts the participant's diet; and

B The food or foods to be omitted from the participant's diet, and the food or choice of foods that may be substituted.

School food authorities, institutions and sponsors are not required to make substitutions for participants whose conditions do not meet the definition of "handicapped person" set forth in 7 CFR 15b.3(i). For example, individuals who are overweight or have elevated blood cholesterol generally do not meet the definition of handicapped person, and thus school food authorities, institutions, and sponsors are not required to make meal substitutions for them. In fact, in most cases, the special dietary needs of nonhandicapped participants may be managed within the normal Program meal service when a well-planned variety of nutritious foods is available to children, and/or "offer versus serve" is available and implemented.

III REIMBURSEMENT AND AVAILABILITY OF SUBSTITUTIONS

Reimbursement for meals served with an authorized substitute food to handicapped participants or to participants with other special dietary needs shall be claimed at the same reimbursement rate as meals which meet the meal pattern. Furthermore, there shall not be a supplementary charge for the substituted food item(s) to either a handicapped participant or to a participant with other special dietary needs. 7 CFR 15b.26(d) (1) specifies that, in providing food services, recipients of Federal financial assistance "may not discriminate on the basis of handicap" and "shall serve special meals, at no extra charge, to students whose handicap 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 individualized education program); the general account of the school food authority, institution or sponsor; or, for school food authorities, the nonprofit school food service account.

IV ACCESSIBILITY

7 CFR 15b.26(d) (2) provides: "Where existing food service facilities are not completely accessible and usable, recipients may provide aides or use other equally effective methods to serve food to handicapped persons." The school food authority, institution or sponsor is responsible for the accessibility of food service sites and for ensuring the provision of aides, where needed. As with additional costs for substituted foods, any additional costs for adaptive feeding equipment or for aides are considered allowable costs. However, no additional Child Nutrition Program reimbursement is available. Sources of supplemental funding may include special education funds (if specified in the child's

individualized education program); the general account of the school food authority, institution or sponsor; or, for school food authorities, the nonprofit school food service account.

7 CFR 15b.26(d) (2) further provides that recipients provide all food services in the most integrated setting appropriate to the needs of the handicapped persons as required by 7 CFR 15b.23(b).

That section requires Program recipients to ensure that handicapped persons participate with nonhandicapped persons to the maximum extent appropriate to the needs of the handicapped person in question.

V COOPERATION

When implementing the guidelines of this Instruction, food service personnel should work closely with the parent(s) or responsible family member(s) and with all other school, child care, medical and community personnel who are responsible for the health, well-being and education of participants with handicaps or with other special dietary needs to ensure that reasonable accommodations are made to allow such individuals' participation in the meal service. This cooperation is particularly important when accommodating children or elderly adults whose handicapping conditions require significant modifications or person assistance.

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