

WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION
Community Nutrition Programs
Child and Adult Care Food Program

Guidance Memorandum 8C: For Child and Adult Care Food Program Sponsoring Organizations and Independent Centers (Child Care Component)

Topic: Civil Rights Compliance and Enforcement in the Child and Adult Care Food Program

Date: June 2011

I. Authority

Under federal law, no person in the United States shall, on the grounds of race, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity of an applicant or recipient of Federal financial assistance from the U.S. Department of Agriculture (USDA) or any agency thereof.

The pertinent laws and regulations include:

- A. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-6, which prohibits discrimination based on race, color, and national origin in programs and activities receiving Federal financial assistance; and USDA Implementing Regulation, 7 CFR Part 15, Subpart A and Subpart C.
- B. Americans with Disabilities Act (28 CFR Part 35, Title II, Subtitle A), which prohibits discrimination on the basis of disability in all services, programs, and activities provided to the public by State and local governments, except public transportation services.
- C. Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et. seq.), which prohibits discrimination based on sex under any education program or activity receiving Federal financial assistance; and USDA Implementing Regulation, 7 CFR Part 15 a.
- D. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination based on disability; and USDA Implementing Regulation, 7 CFR Part 15 b.
- E. Age Discrimination Act of 1975 (45 CFR Part 91), which prohibits discrimination based on age in programs or activities receiving Federal financial assistance.
- F. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), and Department of Justice (DOJ) Memorandum dated January 28, 1999, entitled, "Policy Guidance Document -- Enforcement of Title VI of the Civil Rights Act of 1964 and Related Statutes in Block Grant Type Programs."
- G. Civil Rights Restoration Act of 1987, which clarifies the intent of Congress as it relates to the scope of Title VI of the Civil Rights Act of 1964 and related nondiscrimination statutes to ensure nondiscrimination in all programs and activities of a recipient, whether those programs and activities are federally funded or not.
- H. The Food Stamp Act of 1977, as amended.
- I. Enforcement of Title VI of the Civil Rights Act of 1964 -- National Origin Discrimination Against Persons With Limited English Proficiency, 65 F.R. 50123, August 16, 2000. This is the Federal Register cite for Department of Justice guidance for Executive Order 13166, Improving Access To Services For Persons With Limited English Proficiency, signed on August 11, 2000.
- J. USDA Departmental Regulation 4330-2, Activities Receiving USDA Financial Assistance, ensures compliance with and enforcement of the prohibition against discrimination in programs and activities funded in whole or in part by the U.S. Department of Agriculture.
- K. USDA Regulation 7 CFR Part 16, Equal Opportunity for Religious Organizations, implements executive branch policy that, within the framework of constitutional church-State guidelines, religiously affiliated (or "faith-based") organizations should be able to compete on an equal footing with other organizations for USDA assistance.
- L. Richard B. Russell National School Lunch Act (NSLA) 42 USC 1751 et seq., Child Nutrition Act of 1966 (42 U.S.C. § 1771 et seq.)
- M. 7 CFR Part 226

II. Sponsor Civil Rights Requirements

- A. Prior to approval for the Child and Adult Care Food Program (CACFP):
1. Indicate what action will be taken to assure that underserved populations have an equal opportunity to participate in the CACFP.
 2. Describe efforts to contact minority and grass roots organizations about the opportunity to participate in the CACFP.
 3. List all federal agencies which are providing support to your organization.
- B. Prominently display the 11" X 17" size nondiscrimination poster ". . . And Justice For All", provided by DPI. *You may download the 8 ½" X 11" size poster for temporary use at the website listed below in the footer.*
- C. Inform parents or guardians about the program and its benefits when they consider enrollment of their children as well as when their children are enrolled in CACFP facilities. The "Building for the Future" flier included in this guidance memorandum must serve as the Parental Notification document. The center must complete this flier by printing the center's contact information (name of person at center to contact with questions about the program, name of center, address, telephone number of center or sponsoring organization) to the left of the State Agency contact information. Each agency then must distribute copies of this flier to the parents or guardians of all enrolled children. Agencies should also have a mechanism in place to ensure that newly enrolled families are given copies of this flier, such as including a copy within the agency's new enrollment packets.
- D. Provide informational materials in the appropriate translation concerning the availability and nutritional benefits of the CACFP. DPI has translations including Cambodian, Hmong, Laotian, Spanish and Vietnamese available upon request.
- E. Make CACFP information available to the public upon request.
- F. Distribute the required current year News Media Release annually to the local news media outlet. Camera copies of the current News Media Release for the Child Care component, the Emergency Shelter component, and the At Risk After School Care Center component are attached to this guidance memorandum. A media release is not required for domestic abuse shelters. If the location of the shelter is kept secret to ensure the safety of its residents, it is not necessary to apply this requirement. A copy of the News Media Release must be kept on file for three years plus the current year. Include the date the release was sent to the media outlet and which local media received the release.
- G. All information materials and sources, including Web sites, used by local agencies or other subrecipients to inform the public about Food and Nutrition Service (FNS) programs must contain a nondiscrimination statement. It is not required that the nondiscrimination statement be included on every page of the program information Web site. At a minimum, the nondiscrimination statement, or a link to it, must be included on the home page of the program information.

Local agencies, and their subrecipients, must post the following nondiscrimination statement (or current applicable revision). This statement must be posted in all local agency, or subrecipient offices and be included, in full, on all materials regarding such recipients' programs that are produced by the recipients for public information, public education, or public distribution. The authorized statements below or current applicable revisions cannot be modified.

The authorized statements read as follows:

"In accordance with Federal Law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability."

"To file a complaint of discrimination, write USDA, Director, Office of Adjudication, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call toll free (866) 632-9992 (Voice). Individuals who are hearing impaired or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (Spanish). USDA is an equal opportunity provider and employer."

If the material is too small to permit the full statement to be included, the material will at a minimum include the statement, in print size no smaller than the text, that "This institution is an equal opportunity provider."

In Spanish:

"De acuerdo con la ley federal y las políticas del Departamento de Agricultura de los EE.UU. (USDA, sigla en inglés), se le prohíbe a esta institución que discrimine por razón de raza, color, origen, sexo, edad, o discapacidad."

"Para presentar una queja sobre discriminación, escriba a USDA, Director, Office of Adjudication, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410, o llame gratis al (866) 632-9992 (voz). Personas con discapacidad auditiva o del habla pueden contactar con USDA por medio del Servicio Federal de Relevé (Federal Relay Service) al (800) 845-6136 (español) o (800) 877-8339 (inglés). USDA es un proveedor y empleador que ofrece oportunidad igual para todos."

H. Data collection:

1. Maintain a file on the potential eligible beneficiaries by race and ethnic category.
 2. Annually, collect actual racial and ethnic data of participants (sample form attached) for each child care center, outside school hours center, and Title XX center. Visual identification may be used to determine race and ethnicity, or one may ask the parents to identify the racial/ethnic category of their child. For collecting purposes, a child may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging to. Parents may be asked to identify their child's racial/ethnic group only after it has been explained, and they understand, that the collection is strictly for statistical reporting and will have no effect on determination of eligibility for benefits.
 3. Race and ethnicity must be documented as two separate categories.
 4. Maintain all records on file for the required three years from the end of the current fiscal year.
 5. The data shall be maintained on file using safeguards which prevent its use for discriminatory purposes. Such safeguards include allowing access to Program records containing this data only to authorized personnel.
- I. Allow all children equal access to the food service without regard for race, color, national origin, sex, age, or disability.
- J. Allow all children access to child care services and facilities regardless of race, color, national origin, sex, age, or disability.

III. Review

The state agency will review institutions for compliance with the civil rights requirements as a part of their routine review system.

IV. Civil Rights Training

Training will be provided by the state agency to local agencies at the annual administrative training sessions. Local agencies are then responsible for training members of their staff. Staff who interact with program applicants or participants, and those persons who supervise them, must be provided civil rights training on an annual basis. Specific subject matter must include, but not be limited to: collection and use of data, effective public notification systems, complaint procedures, requirements for reasonable accommodation of persons with disabilities, requirements for language assistance, conflict resolution, and customer service. Records indicating the agency staff who received the civil rights training, the civil rights topics covered, and the date that the civil rights training was completed must be retained on file. Refer to website <http://dpi.wi.gov/fns/training.html> to access the *Civil Rights Requirements* Power Point presentation that may be used to complete the required civil rights training with the agency's staff.

V. Complaints

All written or verbal complaints alleging discrimination on the basis of race, color, national origin, sex, age, or disability shall be processed within 90 days of receipt. The Director, Office of Adjudication, under the Secretary of Agriculture, is responsible for handling of complaints.

A. Procedure for Filing Complaints of Discrimination

Any person alleging discrimination has a right to file a complaint within 180 days of the alleged discriminatory action. Under special circumstances, this time limit may be extended by the Office of Adjudication. Agencies should give complainants a *Civil Rights Complaint Form* to complete for collecting needed information to process the complaint. (Please contact your assigned consultant to obtain a sample *Civil Rights Complaint Form*.) Agencies are required to develop and implement a written procedure to handle any discrimination complaints that may be received. A *Civil Rights Complaint Log* should be maintained to document all potential complaints. The *Civil Rights Complaint Forms* and *Civil Rights Complaint Log* should be kept in a central location to be accessed by authorized staff.

B. Acceptance of Complaints

If someone comes to you, as the sponsor, with a civil rights complaint, written or verbal, you shall accept and forward it to USDA, Director, Office of Adjudication, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call toll free (866) 632-9992 (Voice). Individuals who are hearing impaired or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (Spanish). It is necessary that the information be sufficient to determine the identity of the agency or individual toward which the complaint is directed, and to indicate the possibility of a violation. Anonymous complaints should be handled as any other complaint.

C. Verbal Complaints

In the event a complaint is made verbally or through a telephone conversation, and the complainant does not desire to place the allegations in writing, the person to whom the allegations are made shall document the complaint. They should try to obtain the following information:

1. Name, address, and telephone number or means of contacting the complainant.
2. The specific location of the CACFP involved.
3. The nature of the incident that led to the discrimination complaint, or an example of the method of administration which is having a disparate effect on the public, potential participants, or participants.
4. The basis on which the complainant feels discrimination exists (race, color, national origin, sex, age, or disability).
5. The names, titles, and addresses of persons who may have knowledge of the discriminatory action.
6. The date(s) during which the alleged discriminatory actions occurred, or if continuing, the duration of such actions.

D. Investigation

The Office of Adjudication has the responsibility to determine if an investigation or a preliminary inquiry will be conducted.

E. Closure

The Director of the Office of Adjudication is responsible for closure of all Title VI complaint files.

VI. Assurance

It is required that assurances of compliance with the Civil Rights Act of 1964 be given by agencies and entities administering the CACFP. It is in the agreement between DPI and sponsoring organizations of the CACFP.

VII. Resolution of Noncompliance

Once probable noncompliance is found, steps shall immediately be taken to obtain voluntary compliance. If corrective action has not been completed within 60 days of the findings, a report shall be sent to the Office of Adjudication for transmittal to the Department of Justice.