

Civil Rights Compliance Requirements and the Uniform Complaint Process

For Child and Adult Nutrition Programs Administered by the
California Department of Education
Nutrition Services Division
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This Civil Rights compliance guidance applies to sponsors of the following programs:

- National School Lunch Program
- School Breakfast Program
- Special Milk Program
- Child and Adult Care Food Program (this program includes both the child care and adult day care components)
- Summer Food Service Program
- Food Distribution Program
- State Meal Program

Sponsors agree to administer these programs in accordance with Civil Rights laws. There are a number of classes that are protected by either the federal or state government. In the federal child and adult nutrition programs the protected classes are race, color, national origin, sex, age, or disability. Civil Rights complaints for these protected classes are filed with the federal government. In state government, the protected classes are ancestry, marital status, medical condition (HIV or cancer), pregnancy, political affiliation, religion, sexual orientation, retaliation, and Vietnam veterans. Civil Rights complaints for these protected classes are handled by the school district for public schools and are referred to the State for all other agencies. Public schools must follow Title 5 of the California *Code of Regulations*, sections 4600 through 4671 (see pages 6 through 9) to resolve Civil Rights complaints. See page 10 for information on where to file a complaint.

What constitutes Civil Rights compliance?

First, appoint a Civil Rights Coordinator whose duties will include:

- Providing training and implementing procedures to determine and process Civil Rights complaints.
- Making available to the public, and upon request to participants and potential participants, information about program requirements and the procedures for filing a complaint in English and/or in the appropriate language of non-English speaking persons.
- Developing a method to collect racial and ethnic data. It may be permissible to use visual identification, personal knowledge, or voluntary self-identification by an applicant to obtain racial and ethnic data.
- Ensuring that special meals are made available to disabled participants who have a medical statement on file documenting that their disability restricts their diet.

- Ensuring that the most current version of the federal nondiscrimination statement is placed in a prominent location on all informational releases, publications, and posters concerning nutrition program activities. The current nondiscrimination statement is:

In accordance with federal law and U.S. Department of Agriculture (USDA) 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 Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

- If the document is no more than one sheet of paper **and** there is no room to print the full nondiscrimination statement, agencies may use the following short version that must be the same print size as the rest of the text:

This institution is an equal opportunity provider.

Second, ensure that you have documentation proving implementation of the following steps:

- Civil Rights posters are displayed in areas visible to program recipients such as the food service area and sponsor's office (except in day care homes).
- The nondiscrimination statement is included on all program materials that are made available to the public. Menus are excluded from this requirement.
- A public release announcing the availability of the nutrition program was sent to public media and community/grass roots organizations.
- An appropriate language translation is available when a significant number of persons in the population speak only a non-English language.
- A system is in place to handle complaints alleging discrimination.
- Admission procedures do not restrict enrollment of minority persons or persons with disabilities.
- A system is in place that prevents staff from incorrectly denying applications of minority and disabled persons.
- Disabled participants have equal access to all programs.

What do we mean by grass roots effort and/or public notification?

Sponsors are required to promote their nutrition program in their respective communities. This form of promotion is known as a "grass roots effort." The grass roots effort is accomplished by implementing a **public notification system** that encourages participation by potentially eligible sponsors and sites and informs potential beneficiaries, particularly minorities, of the availability of the child and adult nutrition programs. The **public notification system** can be a system that involves newspaper articles, radio/TV announcements, flyers, or any other vehicle of communication deemed necessary to reach the intended recipients.

What is a Grass Roots Organization?

A grass roots organization is any organization at the local level that interacts directly with potential participants or beneficiaries, such as:

- Community action programs
- Civic organizations
- Migrant groups
- Churches
- Neighborhood councils
- Local chapter of the National Association for the Advancement of Colored People (NAACP)
- League of United Latin American Citizens (LULAC)
- Other similar groups, clubs, or organizations

How do we define a Minority Organization?

A minority organization is one that supports or assists a person or group of persons belonging to one or more of the protected classes covered by Title VI of the Civil Rights Act.

What racial and ethnic categories are protected in child and adult nutrition programs?

Under the new Civil Rights policy for child and adult nutrition programs, there are now only five racial categories. Sponsors must offer households the option of selecting one or more of the following five racial categories:

- **American Indian or Alaska 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.
- **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.
- **Black or African American** - A person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" can be used in addition to "Black or African American."
- **Native Hawaiian or Other Pacific Islander** - A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- **White** - A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

These five categories are the minimum set of race categories to be reported for federal statistics, program administration, and Civil Rights compliance. However, the United States Office of Management and Budget expects agencies to **attempt** to obtain all races with which an individual identifies.

Hispanic is now an ethnic category. All forms must include a space for indicating within any of the five racial categories, whether the recipient is also included in either the Hispanic or Latino ethnic category. A multiple response that indicates ethnic heritage that is both "Hispanic or Latino" and "Not Hispanic nor Latino" is not permitted. This category is defined as follows:

- **Hispanic or Latino** - A person of Cuban, Mexican, Puerto Rican, South or Central America, or other Spanish culture or origin, regardless of race. The term, "Spanish origin" can be used in addition to "Hispanic or Latino."

Sponsors are not required to re-send their forms to incorporate these new categories; however, they must be included in the next regularly scheduled printing of the forms.

What is considered discriminatory behavior?

The following are examples of discriminatory behavior and is prohibited if based on one of the protected classes.

- Denying an individual any service, financial aid, or other benefit provided under the program.
- Providing any service, financial aid, or other benefit, to an individual that is different, or is provided in a different manner from that provided to others under the program.
- Subjecting an individual to segregation or separate treatment in any matter related to his or her receipt of any service, financial aid, or other benefit under the program.
- Restricting an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program.
- Treating an individual differently from others in determining whether he or she satisfies any admission, enrollment, quota, eligible status, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other program benefit.
- Denying an individual an opportunity to participate in a program through the provisions of services or otherwise affording him or her an opportunity to participate that is different from services afforded others under the program.
- Denying a person the opportunity to participate as a member of a planning or advisory body that is an integral part of the program.

UNIFORM COMPLAINT PROCEDURES

TITLE 5, CALIFORNIA CODE OF REGULATIONS

SECTIONS 4600 THROUGH 4671

Title 5 of the California *Code of Regulations* (5 CCR), sections 4600 through 4671 provides the guidelines for establishing internal complaint procedures that comply with the Uniform Complaint Procedures (UCP).

All child and adult nutrition program sponsors are required to appoint a complaint coordinator who will establish complaint procedures that comply with 5 CCR. Each year, sponsors must make these procedures available to parents and guardians. The complaint coordinator is responsible for responding to complaints.

The UCP require child and adult nutrition program sponsors to attempt resolution of all complaints submitted to them. Complaints may be filed directly with the California Department of Education (CDE), Nutrition Services Division (NSD). However, the NSD does not have jurisdiction over complaints that do not involve a violation of state or federal laws or regulations and will refer these back to the sponsor.

How does a Program Complaint Differ From a Civil Rights Complaint?

Civil Rights complaints allege discrimination on one of the protected classes. A **program complaint** is defined as a written or verbal statement alleging a violation of a federal or state law or regulation. Program complaints may include an allegation of unlawful discrimination. Refer to the previous section for information on how to process Civil Rights complaints. In the case of verbal complaints, the person receiving the information from the complainant is responsible for obtaining all pertinent information and developing the written complaint.

Any individual, including a person's duly authorized representative or an interested third party, public agency, or organization, may file a complaint. The person(s) filing the complaint is known as the complainant(s). Anonymous complaints are also acceptable as long as sufficient information is provided to proceed with an investigation.

What are the UCP requirements?

Sponsors have the primary responsibility to insure compliance with applicable state and federal laws and regulations. Sponsors must investigate and seek resolution of complaints in accordance with the procedures set out in 5 CCR sections 4600 through 4631(d). Following are the procedures specific to the resolution of a complaint:

5 CCR Section 4621(a): Requires sponsors to adopt policies and procedures consistent with 5 CCR for the investigation and resolution of complaints. Local policies shall ensure that complainants are protected from retaliation and that the identity of the complainant alleging discrimination remains confidential as appropriate. School districts and county offices of education shall submit their policies and procedures to the local governing board for adoption.

5 CCR Section 4621(b): Sponsors shall include in their policies and procedures the person(s), employee(s), agency position(s), or unit(s) responsible for receiving complaints, investigating complaints, and ensuring compliance. The sponsor's policies shall ensure that the person(s), employee(s), position(s), or unit(s) responsible for compliance and investigation of complaints shall be knowledgeable about the laws and programs that they are assigned to investigate.

5 CCR Section 4622: Sponsors shall annually notify in writing, their students, employees, parents or guardians of its students, the district advisory committee, school advisory committees, and other interested parties of their complaint procedures, as applicable. The annual notification must include appeal rights to the CDE and a copy of 5 CCR sections 4600 through 4671. The notice must include the identity (identities) of the person(s) responsible for processing complaints. The notice shall also advise the recipient of the notice of any civil law remedies that may be available. This notice shall be in English, and when necessary in the primary language, pursuant to Section 48985 of the California *Education Code*, or mode of communication of the recipient of the notice.

5 CCR Section 4630(a): For other than discrimination complaints, any individual, public agency, or organization may file a written complaint with the agency administrator, superintendent, or designee alleging a matter which, if true, constitutes a violation by that agency of federal or state laws or regulations governing child nutrition programs.

5 CCR Section 4631(a): Within 60 days from receipt of the complaint, the administrator, superintendent, or designee shall complete the investigation of the complaint in accordance with the local procedures developed pursuant to Section 4621 and prepare a written Agency Decision. This time period may be extended by written agreement of the complainant.

5 CCR Section 4631(b): The investigation shall provide an opportunity for the complainant, or the complainant's representative, or both, and the agency representative to present information relevant to the complaint. The investigation may include an opportunity for the parties to the dispute to meet to discuss the complaint or to question each other or each other's witnesses.

5 CCR Section 4631(c): The agency decision shall be in writing and sent to the complainant within 60 days from receipt of the complaint by the agency. The agency decision shall contain the findings and disposition of the complaint, including corrective actions if any, the rationale for such disposition, notice of the complainant's right to appeal the agency decision to the CDE, and the procedures to be followed for initiating an appeal.

5 CCR Section 4631(d): Agencies may establish procedures for attempting to resolve complaints through mediation prior to the initiation of a formal investigation. Conducting local mediation shall not extend the local timelines for investigating and resolving complaints at the local level unless the complainant agrees, in writing, to the extension of the timeline. In no event shall mediation be mandatory in resolving complaints.

The complaint coordinator should collect the following information:

- Name, address, and telephone number or other means of contacting the complainant.
- Specific location and name of the entity delivering benefits.
- Nature of the complaint or action that led to the charges being filed.

If the nature of the complaint appears discriminatory, the following information should be collected:

- Basis on which the complainant feels that discrimination occurred. In order to be considered a discrimination complaint, the complainant must feel discriminated against based on one or more of the protected classes.
- Names, titles, and if known, addresses of persons who may have knowledge of the discriminatory action or situation.
- Date(s) that the alleged discrimination occurred, or the duration of such action.

The complaint coordinator is required to maintain a **Complaint Log** and work with the appropriate people to close the complaint. The complaint log must contain all pertinent complaint information, while organizing and facilitating complaint-tracking functions.

All program complaints filed with the NSD will be resolved at the State level. The NSD Complaint Coordinator will log your complaint, refer it to the appropriate Field Services Representative, and track it through resolution. The NSD reserves the right to conduct unannounced site visits to determine the validity of the allegations.

WHERE TO FILE A COMPLAINT

To file a complaint of discrimination on the basis of race, color, national origin, sex, age, or disability, write:

USDA, Director, Office of Civil Rights
Room 326-W, Whitten Building
1400 Independence Avenue, SW
Washington, D.C. 20250-9410
(202) 720-5964 (voice and TDD)

In lieu of submitting discrimination complaints to the Office of Civil Rights in Washington, D.C., complaints may be submitted to:

Office of Civil Rights
USDA, Western Region
550 Kearny Street, Room 400
San Francisco, CA 94108-2518
(415) 705-1322 **or** FAX (415) 705-1364
or *tony_copeland@fns.usda.gov*

Refer complaints alleging discrimination on the basis of any of the classes protected under state law or all discrimination issues in the State Meal Program to:

California Department of Education
Office of Equal Opportunity
1430 N Street, Suite 6019
Sacramento, CA 95814
(916) 324-6183

If a complainant does not want to file their program complaint with the sponsor, they may file with:

NSD Civil Rights and Program Complaint Coordinator
California Department of Education
Nutrition Services Division
1430 N Street, Room 1500
Sacramento, CA 95814-2342
(916) 445-0850 **or** (800) 952-5609

COMPLAINT TERMINOLOGY

<i>Complainant</i>	Any individual, including a person's duly authorized representative or an interested third party, public agency, or organization who files a complaint.
<i>Complaint</i>	A written or verbal statement alleging a violation of a federal or state law or regulation, which may include an allegation of unlawful discrimination.
<i>Complaint Coordinator</i>	A staff member who is responsible for tracking all program complaints until resolution. The Complaint Coordinator also refers discrimination complaints to the Western Region Office, USDA. The NSD Complaint Coordinator can be reached at (916) 445-0850 or toll free at (800) 952-5609.
<i>Discrimination</i>	The act of making a distinction in favor or against a person intentionally or unintentionally with policies, procedures, attitudes, and practices that denies equal access, or limits services and benefits to those who are eligible.
<i>Discrimination Complaint</i>	A complaint alleging discrimination based on race, color, national origin, sex, age, or disability.
<i>Program Complaint</i>	A complaint alleging violation of federal or state laws or regulations concerning the programs.