

## **MODIFICATIONS TO ACCOMMODATE DISABILITIES IN THE SCHOOL MEALS PROGRAM**

### **GOVERNING STATUTES**

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 the Child Nutrition Programs. Title II of the Americans with 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. The ADA applies regardless of whether or not a school receives Federal financial assistance. Section 504, Title II, and Title III require recipients of Federal financial assistance, such as SFAs and LEAs, to make reasonable modifications to accommodate children with disabilities, including reasonable modifications to meals and the meal service.

SFAs and LEAs should also be aware that the Individuals with Disabilities Education Act of 1990, as amended (IDEA) imposes requirements on States which may affect them, including the service of meals, even when such service is not required by the School Meal Programs. For example, the individualized education program (IEP) developed for a child under the IDEA may require a breakfast to be served in a school that does not participate in the School Breakfast Program. While these meals may not be claimed for Federal reimbursement because the school does not participate in the program, funds from the non-profit school food service account may be used to cover the cost associated with providing a meal required by the IDEA.

Additionally, the SFA may use the same food service facilities or food service management company to provide the meals required under an IEP as it uses to provide Program meals. Inquiries regarding the IDEA's requirements should be directed to the U.S. Department of Education, which is the agency responsible for the IDEA's administration and enforcement.

### **PROGRAM REGULATIONS**

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 recipients of Federal financial assistance, such as SFAs, 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 SFAs to make substitutions to meals to accommodate children with disabilities that restrict their diet.

## **I. Children with Disabilities**

The question of whether a child has a disability for purposes of this memorandum has been simplified by the ADA Amendments Act, and should no longer require extensive analysis. SFAs and LEAs should not be engaged in weighing medical evidence against the legal standard to determine whether a particular physical or mental impairment is severe enough to qualify as a disability. After the passage of the ADA Amendments Act, most physical and mental impairments will constitute a disability. The central concern for SFAs should be ensuring equal opportunity to participate in or benefit from the program

Section 504, the ADA, and Departmental Regulations at 7 CFR part 15b define a person with disability 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 impairment.” (*See* 29 USC § 705(9)(b); 42 USC § 12101; and 7 CFR 15b.3.) “Major life activities” are broadly defined and include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. “Major life activities” also include the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. (*See* 29 USC § 705(9)(b) and 42 USC § 12101.)

A physical or mental impairment need not be life threatening to constitute a disability. It is enough that it limit a major life activity. For example, digestion is an example of a bodily function that is a major life activity. A child whose digestion is impaired by lactose intolerance may be a person with a disability regardless of whether or not consuming milk causes the child severe distress. Further, an impairment may be covered as a disability, even if medication, or another mitigating measure may reduce the impact on the impairment. For example, the fact that a child may be able to control an allergic reaction by taking medication should not be considered in determining whether the allergy is a disability. General health concerns, such as a preference that a child eat a gluten-free diet because a parent believes it is better for the child, are not disabilities and do not require accommodation.

Whether a physical or mental impairment constitutes a disability must be determined on a case-by-case basis. The determination must be made without regard for whether mitigating measures may reduce the impact of the impairment.

## **II. Substitutions and other Reasonable Modifications**

SFAs must make reasonable modifications to the meal, including providing special meals at no extra charge, to accommodate disabilities which restrict a child’s diet. Some disabilities may require modifications to the service provided at meal time. For example, a child with diabetes may require help tracking what he or she eats at each meal. SFAs may consider taking steps to design a meal plan within the Program meal pattern to accommodate common disabilities. In many cases, disabilities can be managed within the Program meal pattern requirements when a well-planned variety of nutritious foods is available to children. In other

cases, however, the needs of a Program participant with a disability may involve requests for accommodations that result in the service of meals that do not meet the Program meal pattern.

### **A. Requiring a Medical Statement**

Program regulations require SFAs to provide modifications for children with disabilities on a case-by-case basis only when requests are supported by a written statement from a State licensed healthcare professional, such as a physician or nurse practitioner (medical statement). *See* 7 CFR 210.10(m), and 220.8(m). In addition, meals that do not meet the Program meal pattern are not eligible for reimbursement unless supported by a medical statement. However, SFAs may choose to accommodate requests related to a disability that are not supported by a medical statement if the requested modifications can be accomplished within the Program meal pattern.

The medical statement should include a description of the child's physical or mental impairment that is sufficient to allow the SFA to understand how it restricts the child's diet. It should also include an explanation of what must be done to accommodate the disability. In the case of food allergies, this means identifying the food or foods to be omitted and recommending alternatives. In other cases, more information may be required. For example, if the child would require caloric modifications or the substitution of a liquid nutritive formula to accommodate a disability, this information must be included in the statement.

When SFAs believe the medical statement is unclear, or lacks sufficient detail, they must obtain appropriate clarification so that a proper and safe meal can be provided. SFAs may consider using the services of a Registered Dietitian, when available, to assist in implementing meal modifications, as appropriate. SFAs may also contact their State administering agency for guidance.

### **B. Assessing Requests for Substitutions and other Modifications**

SFAs may consider expense and efficiency in choosing an appropriate approach to accommodate a child's disability. SFAs are not required to provide the specific substitution or other modification requested, but must offer a reasonable modification that effectively accommodates the child's disability and provides equal opportunity to participate in or benefit from the program

For example, a child with an allergy to a specific ingredient found in a menu item may request that the SFA provide a particular brand name version as a substitute. Generally, the SFA is not required to provide the brand name item identified, but must offer to provide a substitute which does not contain the specific allergen that affects the child.

When determining what is appropriate, the age and maturity of the child should factor into all decisions. For instance, younger children may need greater assistance with selecting and eating their meals, whereas older children may be able to take a greater level of responsibility for some of their dietary decisions.

SFAs are not required to provide modifications that would fundamentally alter the nature of the program; however, this should very rarely be the case. SFAs concerned that a requested modification would fundamentally alter the nature of the program should contact their State agency for assistance. Instead, generally, the emphasis should be on working with parents and guardians to develop an approach that will be effective for the child.

### **C. Serving Meals in an Integrated Setting**

SFAs must provide all meal services in the most integrated setting appropriate to the needs of the disabled child. *See* 7 CFR part 15b.26(d). Exclusion of any child from the Program environment is not considered an appropriate or reasonable modification. For example, a child may not be excluded from the classroom and required to sit in the hallway during the service of “breakfast in the classroom” as this is not an appropriate or reasonable modification. Similarly, while it may be appropriate to require children with very severe food allergies to sit at a separate table to control exposure, it is not appropriate to simultaneously use this table to segregate children as punishment for misconduct.

### **III. Reimbursement**

Reimbursement for modified meals served to children with disabilities that restrict their diet is at the appropriate rate based on the child’s eligibility for free, reduced price, or paid meals for the applicable Program, regardless of the meal modification. As noted above, these meal modifications do not have to meet the Program meal pattern requirements in order to be claimed for reimbursement if they are supported by a medical statement. However, SFAs should ensure that meal modifications meet the nutritional needs of the child.

Any instruction or services included in a child’s IEP related to a child’s nutritional needs that are deemed necessary for the child to receive a “free appropriate public education” must be provided at public expense and at no cost to the parents or guardians. Part B of IDEA funds may be used for this purpose. Inquiries regarding the IDEA’s requirements should be directed to the U.S. Department of Education, <http://idea.ed.gov>.

### **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.” SFAs and LEAs are responsible for the accessibility of food service areas and for ensuring the provision of food service aides, where needed, to assist in preparing and serving meal accommodations.

No additional School Meal Program reimbursement is available for these types of accommodations. However, any additional costs for adaptive feeding equipment or for aides are considered allowable costs for the nonprofit school food service account. Sources of supplemental funding may include special education funds if specified in the child’s IEP or the LEA’s general account.

## **V. Procedural Safeguards**

LEAs must work with the school food service staff to implement procedures for parents or guardians to request modifications to meal service for children with disabilities and to resolve grievances. *See* 7 CFR 15b.25 and 15b.6(b). Procedures in place to address requests to accommodate students with disabilities in the classroom in compliance with Section 504 or the IDEA may be used to fulfill this requirement.

At a minimum, the LEA must notify parents and guardians of the process for requesting meal modifications to accommodate a child's disability and arrange for an impartial hearing process to resolve grievances related to requests for modifications based on a disability. The hearing process must include the opportunity for the child's parent or guardian to participate, be represented by counsel, and examine the record. It must also include notice of the final decision, and a procedure for review.

LEAs that employ 15 or more individuals must designate at least one person to coordinate compliance with disability requirements. *See* 7 CFR part 15b.6. This position is often referred to as the Section 504 Coordinator. The Section 504 Coordinator who is responsible for addressing requests for accommodations in the classroom may also be responsible for ensuring compliance with disability requirements related to meals and the meal service. A separate 504 Coordinator responsible only for meal modifications is not required. However, LEAs should ensure that school food service staff understand the procedures for handling requests for meal modifications and know how to contact the Section 504 Coordinator.

## **VI. Team Approach**

When implementing the guidelines in this memorandum, a team approach to providing modifications for children with disabilities is strongly encouraged. Developing a team that includes the Section 504 Coordinator, representation from schools and school medical personnel, such as a school nurse, as well as school food service staff will help ensure consistent decisions and implementation and tracking of meal modifications. The most effective team will include school food service staff, a principal or Program Director, a school nurse, and others with training in this area, such as a school nutritionist. Any request for a modification related to the meal or meal service should be forwarded to the Section 504 Coordinator, and reviewed by the 504 team.

The 504 team will work with the child's parents or guardian to review the request and develop a solution as quickly as possible. The 504 team is encouraged to develop policies and practices that allow for the disabilities they most commonly encounter to be quickly and consistently addressed. The team should be advised that any medical information obtained must be kept confidential.

State agencies are reminded to distribute this memorandum to Program operators immediately. LEAs, SFAs, and other Program operators should direct any questions concerning this guidance to their State agency. State agencies with questions should contact the appropriate FNS Regional Office.

## Questions and Answers

<b>General Information</b>
----------------------------

**1. How has the Americans with Disabilities Act (ADA) changed since the Food and Nutrition Service (FNS) last issued guidance on meal modifications?**

The ADA Amendments Act of 2008 made important changes to the meaning and interpretation of the term “disability” under the ADA and under Section 504 of the Rehabilitation Act of 1973. The ADA Amendments Act simplified the question of whether a child has a disability by requiring a broad interpretation of what constitutes a disability. Under the ADA, anything that substantially limits a major life activity (most physical and mental impairments) constitutes a disability. This includes conditions that impair immune, digestive, neurological, and bowel functions, as well as many others.

School food authorities (SFAs) and local educational agencies (LEAs) should not be engaged in weighing medical evidence against legal requirements in order to determine if a medical or physical condition is severe enough to meet the definition of a disability. Rather, the focus should be on what can be done to ensure equal opportunity to participate in or benefit from the Programs. A discussion of the legal definition of disability can be found on page 5 of SP 59-2016: *Policy Memorandum on Modifications to Accommodate Disabilities in the School Meal Programs*, <http://www.fns.usda.gov/policy-memorandum-modifications-accommodate-disabilities-school-meal-programs>.

The process of providing modified meals for children with disabilities should be as inclusive as possible. It is essential that SFAs work collaboratively with parents and guardians to ensure children receive a safe meal and have an equal opportunity to participate in the School Meal Programs. FNS recommends using a team approach that includes parents and guardians and (as age-appropriate) the child, when providing modified meals. If a team (Individualized Education Plan (IEP) or 504) already exists, the SFA may use this team to address a child’s nutritional needs.

**2. How does an SFA know if a child’s condition meets the definition of a disability and requires a meal modification?**

According to the ADA, most physical and mental impairments will constitute a disability. This includes conditions that impair immune, digestive, neurological, and bowel functions, as well as many others. General health concerns, such as a parent’s preference that a child eat a gluten-free diet because the parent believes it is healthier for the child, are not disabilities and do not require a modification. All disability considerations must be viewed on a case-by-case basis. A more comprehensive discussion can be found on page 5 of SP 59-2016.

SFAs must require a written medical statement in order to receive reimbursement for meals served to children with disabilities that do not meet Program meal pattern requirements. SFAs will be reimbursed for a modified meal that is within the meal pattern, regardless of

whether they have obtained a written medical statement. SFAs may, however, choose to request a written medical statement from a State licensed healthcare professional in support of a request for a modification in all cases. For more information, please see “Reimbursement for Modified Meals,” questions 30 through 32.

<b>What is a Disability?</b>
------------------------------

**3. Is a food allergy considered a disability?**

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.).

**4. Is a food intolerance recognized as a disability?**

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.

**5. Is autism considered a disability?**

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.

**6. Is obesity considered a disability?**

Obesity is recognized by the American Medical Association as a disease and may be considered a disability if the condition of obesity substantially limits a major life activity.

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

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

## **8. How is a temporary or episodic disability addressed?**

If a disability is episodic, and when active substantially limits a major life activity, the child must be provided a reasonable modification.

The question of whether a temporary impairment is a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual. Even if the condition is temporary, but severe and lasts for a significant duration, SFAs must provide a reasonable modification for the duration of the condition. For example, if a child was involved in a serious accident and is unable to consume food for a significant period of time unless the texture is modified, the school must make an accommodation for the child, even though the child is not “permanently” disabled. On the other hand, a cold, the flu, or a minor broken bone are generally not considered conditions that require a reasonable modification to Program meals.

## **9. Can a school food service professional assume a child’s condition is not a disability because it is not listed under “categories of disease and conditions” in the ADA?**

No. As noted in the law, the “categories of diseases and conditions” are not all inclusive. Therefore, there are more conditions that meet the definition of disability than are listed in the law. In addition, when a modification request is supported by a medical statement, the written medical statement does not need to provide a specific diagnosis by name or use the term “disabled” or “disability” (though statements that use these terms are sufficient). If an SFA has questions regarding the information provided in the medical statement, the SFA should request the parent or guardian seek clarification from a State licensed healthcare professional.

<b>Procedural Safeguards</b>
------------------------------

## **10. What are Procedural Safeguards?**

The Procedural Safeguards process, codified at 7 CFR 15b, requires LEAs to provide notice and information to parents and guardians regarding how to request a reasonable modification and their 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, "Procedural Safeguards," at 7 CFR 15b.6(b), "Adoption of Grievance Procedures," and in SP 59-2016.

**11. Can LEAs use procedures already in place to address the educational needs of children with disabilities to comply with the Procedural Safeguards process for meal modifications?**

Yes. 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 the Individuals with Disabilities Education Act (IDEA), may be used to fulfill the requirement to maintain a Procedural Safeguards process for meal modifications. (IDEA was enacted by Congress in 1975 to ensure children with disabilities have the opportunity to receive a free appropriate public education, just like other children.)

LEAs 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. This individual is often referred to as the Section 504 Coordinator (see: 7 CFR 15b.6). In many cases, the 504 Coordinator is responsible for addressing requests for accommodations in the school in general. As part of their general responsibilities, this individual may also be responsible for ensuring compliance with disability requirements related to meal modifications and the meal service. Regardless of whether the coordinator is a school food service employee, the coordinator must ensure school food service professionals understand the procedures for handling meal accommodation requests.

**12. Who should work with the Section 504 Coordinator to manage accommodations to the meal and meal service?**

The process of providing modified meals for children with disabilities should be as inclusive as possible. It is essential that school food service professionals work together with the child's parent or guardian to ensure their child receives a safe meal and has an equal opportunity to participate in the School Meal Programs. LEAs are strongly encouraged to develop a Section 504 Team to discuss best practices and develop a more holistic plan to create a safe learning environment for all children.

The most effective team will include school food service staff, school administrators, school medical personnel, parents or guardians, children (when age-appropriate), and other school officials with relevant experience, such as school nutritionists. Using a "team approach" ensures information is shared consistently throughout the school environment and will help to protect children in situations where food is served outside the cafeteria, such as during classroom parties. Additionally, involving parents and guardians early in the process allows school employees to develop rapport with the family, and this prevents any miscommunication or misunderstanding about their child's needs.

<b>Requesting a Modification</b>
----------------------------------

**13. What is considered a “reasonable modification”?**

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.

**14. What are examples of modification requests an SFA might receive?**

A household may request a modification to the meal or the meal service to accommodate a disability. For example, if a child has a food allergy, a meal accommodation may require the SFA to ensure no food item offered to the child contains substances that may trigger an allergic reaction, and also to ensure adherence to proper food safety protocol to prevent cross-contamination with other allergen-containing foods. For example, if a child has a peanut allergy, the SFA must ensure no foods served to the child contain peanuts or include peanuts as an ingredient.

If a modification request indicates a brand name item, in most instances, a generic brand is sufficient, unless the brand name item is medically necessary. This can be determined through the inclusive process with the parent(s) or guardian(s).

Modifications to the meal service may involve ensuring facilities and personnel are adequate to provide necessary services. In certain situations, disability accommodations may require additional equipment; separate or designated storage/preparation areas, surfaces, or utensils; and specific staff training and/or expertise. For example, some children may require the physical assistance of a food service aide to consume their meal, while other children may need assistance tracking their dietary intake (e.g., carbohydrate intake for children with diabetes).

**15. When is a medical statement required?**

SFAs 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). In most States, a nurse practitioner or physician’s assistant may write medical prescriptions and therefore could write the medical statement. In some cases, it may be appropriate and helpful for the State licensed health care professional to provide a written referral to a registered dietitian or other qualified professional. The dietitian could provide recommendations for substitutions and additional assistance with meal modifications.

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. FNS encourages schools to use flexibilities whenever possible. In situations where the SFA does not obtain a medical statement, FNS encourages SFAs 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.

**16. Who is authorized to sign a medical statement?**

A State licensed healthcare professional authorized to write medical prescriptions can sign the medical statement. This may include a doctor, a nurse practitioner, or a physician’s assistant. FNS guidance refers to individuals authorized to sign the medical statement as “State licensed healthcare professionals.” For more information, see: SP 32 CACFP 13 SFSP 15-2015: *Statements Supporting Accommodations for Children with Disabilities in the Child Nutrition Programs*, March 30, 2015, <https://www.fns.usda.gov/statements-supporting-accommodations-children-disabilities-cnp>.

**17. In situations where a medical statement is necessary, what must be included in the medical statement?**

The medical statement must include the following:

- Information about the child's physical or mental impairment that is sufficient to allow the SFA to understand how it restricts the child’s diet;
- An explanation of what must be done to accommodate the child; and
- The food or foods to be omitted and recommended alternatives, if appropriate.

In some 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.

SFAs should not deny or delay a requested modification because the medical statement does not provide recommended alternatives. When necessary, SFAs should work with the child’s parent or guardian to obtain a supplemental medical statement.

**18. How did the medical statement change in the revised guidance?**

The written medical statement is no longer required to identify the specific disability, or to use the terms “disability” or “disabled” (though statements that use these terms are sufficient). Instead, the medical statement need only include a description of the child’s physical or mental impairment that is sufficient to allow the SFA to understand how it restricts the child’s diet. The medical statement should also include a description of what must be done to accommodate the child’s impairment.

When SFAs believe the medical statement is unclear, or lacks sufficient detail, they must obtain appropriate clarification so that safe meals can be provided. However, SFAs should not allow requests for additional information to delay meal modifications. Further discussion of the written medical statement can be found on page 6 of SP 59-2016.

**19. If a child has an IEP that includes information about a necessary meal modification due to a disability, must the SFA also obtain a medical statement for the child before making the modification?**

If the child’s IEP or 504 Plan includes the same information required in the medical statement, as described in question 17, or if the required information is obtained by the school during the development or review of the IEP or 504 Plan, it is not necessary for the SFA to obtain a separate medical statement. Using a team approach can help LEAs ensure the IEP or 504 Plan will include the information needed to fulfill FNS requirements for the medical statement. Clear communication about the requirements for the medical statement can help reduce the burden for families, school food service professionals, and LEA officials working to accommodate children in the school setting.

**20. Can an SFA decline to provide a requested meal modification?**

It is almost never appropriate for an SFA 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 an SFA has concerns about a request, the SFA is responsible for working with the parent or guardian to develop an appropriate modification and, as applicable, suitable alternatives for the child.

If an SFA declines a request, the SFA must ensure that the child’s parent or guardian understands their rights under the Procedural Safeguards process. Please see “Procedural Safeguards,” questions 10 through 12, for more information on these requirements.

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

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 SFA may not use OVS to eliminate a specific food component for a child with a disability; in this case, the SFA must offer a grain substitute for a child who cannot consume gluten.

**22. In situations where a medical statement is necessary, how often must the medical statement be updated?**

FNS does not require SFAs to obtain updated medical statements on a regular basis. When SFAs receive updated medical information, they must ensure that medical statements on file reflect the current dietary needs of participating children. SFAs may require updates as necessary to meet their responsibilities, but should carefully consider the burden obtaining additional medical statements could create for parents and guardians when establishing such requirements.

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

When an SFA receives a medical statement signed by a State licensed healthcare professional requesting a meal modification to accommodate a child's impairment, the SFA must provide a reasonable modification to Program meals. If a medical statement is provided and does not fully explain the modification needed, the SFA 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 SFA from providing a meal modification. SFAs should follow the portion of the medical statement that is clear and unambiguous to the greatest extent possible, while obtaining additional information. For more information, see question 31.

**24. If a child no longer needs a meal modification, can the SFA stop providing meal modifications without the State licensed healthcare professional's approval?**

FNS does not require SFAs to obtain written documentation from a State licensed healthcare professional rescinding the original medical order prior to ending a meal modification. FNS recommends, however, that SFAs maintain documentation when ending a meal accommodation. For example, an SFA could ask the child's parent or guardian to sign a statement indicating their child no longer needs a meal accommodation before ending the accommodation.

<b>Making a Meal Modification</b>
-----------------------------------

**25. Does a meal modification request due to an allergy extend only to the specific allergen (e.g., peanuts), or does the request also extend to food products including a derivative of the allergen as an ingredient?**

The SFA must provide the child with a safe meal and a safe environment to consume the meal. School food service professionals must ensure all meals and snacks they provide meet the prescribed guidelines and are free of all ingredients suspected of causing an allergic reaction. The SFA must ensure proper storage, preparation, and cleaning techniques are used to prevent exposure to allergens through cross contamination. The Section 504 Team should develop a strategy or a food allergy management plan for the daily management of food allergies for individual children. The FNS Office of Food Safety links to a number of food allergy resources to help SFAs in this effort: <https://www.fns.usda.gov/ofs/food-safety-resources>.

Sometimes, it may be advisable to prepare a separate meal "from scratch" using ingredients allowed on the special diet rather than serving a meal using processed foods. The general rule in these situations is to exercise caution at all times. SFAs must not serve foods to children at risk for allergic reactions if the food's ingredients are unknown.

**26. What if the information needed to provide a child with a safe meal is not available on a food label?**

If a food label does not provide adequate information, it is the responsibility of the SFA to obtain the information necessary to ensure a safe meal. This can be accomplished by contacting the supplier or manufacturer or checking with the State agency. Private organizations may also be consulted for information and advice.

**27. If a child with a disability must have a breakfast each morning, is the SFA required to provide a breakfast for this child when the school does not operate the School Breakfast Program (SBP)?**

FNS guidance does not require the SFA to provide meals to children with disabilities beyond the meals provided to other children. For instance, if the school does not have a breakfast program, FNS guidance does not require the SFA to begin participating in the SBP or to initiate a program exclusively for children with disabilities. However, schools may have additional obligations to students with disabilities under the ADA, IDEA, and Section 504 beyond the scope of FNS guidance. For instance, an IEP may require a school to provide a breakfast meal, and the school may choose to have the SFA handle this responsibility. Please see page 4 of SP 59-2016 for more information.

**28. If a State licensed healthcare professional prescribes portion sizes exceeding the minimum quantity requirements set forth in Program regulations, is the SFA required to provide these additional quantities?**

Yes. The SFA must provide the child food portions exceeding the minimum quantity requirements, if specifically prescribed in the medical statement. In other situations, a medical statement may prescribe portion sizes below the minimum quantity requirements set forth in Program regulations. In this situation, the SFA is also required to follow the direction of the medical statement, and provide smaller quantities.

**29. If a child has a disability and a specific brand name substitute is requested, does the SFA have to provide the brand name requested?**

Generally, SFAs are not required to provide the specific brand requested, unless the brand name item is medically necessary. Instead, the SFA must provide a reasonable modification that accommodates the child's disability and provides equal opportunity for the child to participate in and benefit from the Program. In situations where the requested substitute is very expensive or difficult to procure or obtain, it would be reasonable for the SFAs to follow up with the family to see if a different substitute would be safe and appropriate for the child. For example, if the medical statement lists a specific brand of lactose-free milk, the SFA could check with the family to see if it would be safe and appropriate for the SFA to provide a different brand. In this instance, the family could then affirm the brand-name change.

<b>Reimbursement for Modified Meals</b>
---

**30. Can SFAs receive Federal reimbursement for modified meals that do not meet the Program meal pattern requirements?**

Modified meals that do not meet the Program meal pattern requirements served to a child due to a disability are eligible for reimbursement. However, in order to receive reimbursement for such meals, the school must obtain and keep on file written documentation of the medical statement that supports the meal modification. The documentation must be signed by a State licensed healthcare professional.

Modified meals that meet the Program meal pattern requirements are eligible for reimbursement regardless of whether the school obtains a medical statement. FNS does not require a medical statement for meal modifications within the Program meal pattern.

**31. May schools claim a meal outside the regular meal pattern for reimbursement while waiting for the child's parent or guardian to submit a medical statement?**

Yes. Schools should not unduly delay a child's meal modification while waiting for the family to submit a medical statement. In this situation, school officials must document the initial conversation with the family where school officials first learned of the child's need for an accommodation. School officials should follow up with the family if the school does not receive the requested medical statement as anticipated and maintain a record of this contact. School officials should diligently continue to follow up with the family until a medical statement is obtained or the request is rescinded.

**32. Will SFAs receive additional reimbursement to cover the costs of providing modified meals or accommodations to the meal service?**

No. SFAs will not receive additional reimbursement to cover the extra costs sometimes associated with providing a reasonable modification; however, SFAs may use funds from the non-profit school food service account, the general fund, or special education funds (if specified in the child's IEP) to cover the additional food or food service costs.

<b>Accommodations to the Meal Service</b>
---

**33. Must an SFA provide nutrition information for all food available each day for children who need to track their dietary intake?**

The SFA is not necessarily required to provide all of the nutrition information for all Program meals, as it would be very burdensome to provide this information. For example, if a child with diabetes must track their carbohydrate intake, the SFA would not be required to provide nutrition information for all food choices available during the lunch and/or breakfast meal service. The SFA could instead develop a cycle menu with input from the child's parent or guardian, medical professionals, the school nutritionist and nurse, and other members of the Section 504 Team as appropriate. The SFA would only have to provide nutrition information for the foods on the planned cycle menu for the child with a disability, as opposed to all foods offered through the Programs.

**34. May an SFA serve meals to children with disabilities in an area separate from the cafeteria where the majority of the school children eat?**

Federal civil rights legislation, including Section 504 of the Rehabilitation Act of 1973, IDEA, and Titles II and III of the ADA, requires that in providing nonacademic services, including meals, school districts must ensure children with disabilities participate along with children without disabilities to the maximum extent appropriate. This allows children to interact with and learn from other children with backgrounds different from their own.

However, under some circumstances it may be appropriate to require children with certain special needs to sit at a separate table. For example, if a child requires a large amount of



assistance from an aide in order to consume their meals, it may be necessary for the child and the aide to have more space during the meal service.

Additionally, SFAs may determine a separate, more isolated eating area would be best for children with severe food allergies. Prior to developing a special seating arrangement, the SFA should determine, with input from the child's family and physician, if this type of seating arrangement would truly be helpful for the child. If the SFA does develop a special seating arrangement, other children should be permitted to join the child with the food allergy, provided they do not bring any foods that would be harmful to the child.

SFAs may not, however, segregate children from the regular meal service due to their disability simply as a matter of convenience, and it is not appropriate to simultaneously use a separate table to segregate children who are being punished for misconduct.

<b>Non-Disability Situations</b>
----------------------------------

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

No. However, SFAs 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, SFAs are not required to obtain a medical statement.

**36. If an SFA 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?**

FNS 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)).

<b>Miscellaneous</b>
----------------------

**37. Is a Food Service Management Company (FSMC) that contracts with an SFA to operate the school's food service obligated to accommodate children with disabilities?**

Yes. SFAs must make reasonable modifications for children with disabilities, regardless of whether the school district operates the food service or contracts with a FSMC. As applicable, modifications for children with disabilities should be included in the FSMC contract. SFAs that do not need dietary accommodations at the time a FSMC bid is prepared

should still include sufficient information in the bid to ensure the FSMC is aware that dietary accommodations may be required during the term of the contract.