

**CALIFORNIA DEPARTMENT OF
EDUCATION
NUTRITION SERVICES DIVISION**

**Civil Rights
and
Complaint Procedures
for Child Nutrition Programs**

This document intends to relay the requirements for Federal Civil Rights compliance in the nutrition programs as provided in the Food and Nutrition Services (FNS) *Instruction* 113-1, issued by the U.S. Department of Agriculture (USDA).

Applicability

The requirements contained in this document are applicable to all programs and activities of a recipient of federal financial assistance for the Child Nutrition Programs (CNP), whether those programs and activities are federally funded in whole or in part (*FNS Instruction* 113-1, Page 3).

Assurance

A contractual agreement (i.e., Federal/State Agency Agreement or a State Agency/Local Agency Agreement) in which a state agency, local agency, or other sub-recipient legally agrees to administer FNS program services and benefits in accordance with all laws, regulations, instructions, policies, and guidance related to nondiscrimination in program delivery (*FNS Instruction* 113-1, Page 4(C))

Policy

Sponsors shall administer the CNPs in accordance with civil rights laws. The USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because of or because all or part of an individual's income is derived from any public assistance program. Information on how to file a complaint is on page seven of this document.

(Not all prohibited basis apply to all programs.) (*FNS Instruction* 113-1, Page 2)

What constitutes Civil Rights compliance in the child nutrition programs?

I. Appointment of a Civil Rights Coordinator whose duties include:

- Providing training and implementing procedures to determine and process Civil Rights complaints *FNS Instruction* 113-1, Page 16(XI)
- Notifying the public, participants, and potential participants, upon request, of information about program requirements and the procedures for filing a complaint in English and/or in the appropriate language of non-English speaking persons.
FNS Instruction 113-1, Page 13(IX)
- 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. However, self-identification or self-reporting is the preferred method of obtaining characteristic data. *FNS Instruction* 113-1, Page 17(XII)(A)
- Ensuring that special meals are made available to participants with disabilities who have a medical statement on file documenting that their disability restricts their diet.
Accommodating Children With Special Dietary Needs in the School Nutrition Programs, Page 5(II)(A)

- 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. *FNS Instruction 113-1, Page 14(d)* The current nondiscrimination statement is:

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, S.W., Washington, DC 20250-9410 or call (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.

FNS Instruction 113-1, Page 15(1)

If the document is no more than one page **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.”** *FNS Instruction 113-1, Page 15(IX)(d)(2)*

II. Ensuring that the Civil Rights Coordinator has documentation that the following steps have been implemented:

- “And Justice For All” posters are displayed in areas visible to program recipients such as the food service area and sponsor's office (except in family day care homes). *FNS Instruction 113-1, Page 15(B)(1)*
- The federal nondiscrimination statement described above is included on all program materials that are made available to the public. Menus are excluded from this requirement. *FNS Instruction 113-1, pages 13(IX)(A)(3) and 15(IX)(B)(4)*
- A public release announcing the availability of the nutrition programs and/or changes in the programs is sent to public media and community/grass roots organizations. *FNS Instruction 113-1, Page 15(IX)(B)(2)*
- An appropriate language translation is available when a significant number of persons in the population speak only a non-English language. *FNS Instruction 113-1, pages 9 and 10(VII)*
- A system is in place to handle and process complaints alleging discrimination. *FNS Instruction 113-1, Page 32(XVII)(B)*
- Admission [enrollment] procedures do not restrict enrollment of minority persons or persons with disabilities. *FNS Instruction 113-1, page 1(II)(B) and (D), Americans with Disabilities Act 28, CFR, Part 35, Title II, Subtitle A, and FNS Instruction 113-1, Page 1(II)(A)*

- A system is in place that prevents staff from incorrectly denying applications of minority and persons with disabilities. *FNS Instruction 113-1, Page 1(II)(B) and (D), Americans with Disabilities Act 28, CFR, Part 35, Title II, Subtitle D, and FNS Instruction 113-1, Page 1(I)(A)*
- Participants with disabilities have equal access to all programs. *FNS Instruction 113-1, Page 1(II)(B) and (D), Americans with Disabilities Act 28, CFR, Part 35, Title II, Subtitle A*

Public Notification

All FNS assistance programs must include a public notification system. The purpose of this system is to inform applicants, participants, and potentially eligible persons of the program's availability, program rights and responsibilities, the policy of nondiscrimination, and the procedure for filing a complaint. *FNS Instruction 113-1, Page 13(IX)*

What is a grass root effort and/or public notification?

Sponsors are required to notify their local community that they offer a nutrition program. 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 those in underserved populations), of the availability of the child nutrition programs. The **public notification system** can be a system that involves Internet, newspaper articles, radio/TV announcements, flyers, or any other vehicle of communication deemed necessary to reach the intended recipients. *FNS Instruction 113-1, Page 15(IX)(B)(2)*

What is a Grass Roots Organization?

A grass roots organization is any organization at the local level that interacts directly with eligible or potentially eligible participants or beneficiaries, such as an advocacy organization, community action program, civic organization, migrant group, religious organization, neighborhood council, or other similar group. *FNS Instruction 113-1, Page 5(V)(P)*

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

Under the 2009–10, Civil Rights policy for child nutrition programs, there is now a Two-Question format for collecting racial and ethnic data from all program applicants and participants.

Separate categories shall be used when collecting and reporting ethnicity and race. Ethnicity shall be collected first, and then respondents shall be offered the option of selecting one or more racial designations. Recommended instructions accompanying the multiple responses for race should specify, "Mark one or more" or "Select one or more." FNS

Instruction 113-1, Page 18 (XII)(A)(4)

The minimum designations for ethnic and racial data collection are as follows:

Ethnicity: *FNS Instruction 113-1, Page 18(XII)(A)(4)(a)*

- **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."
- **Not Hispanic or Latino.**

Race: *FNS Instruction 113-1, Page 18(XII)(A)(4)(b)*

- **American Indian or Alaskan 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.

What constitutes discriminatory behavior?

The following are general examples of prohibited discriminatory behavior:

FNS Instruction 113-1, Page 24(XIV)(A)(1-4)

- Denying an individual or household the opportunity to apply for FNS program benefits or services on the basis of race, color, national origin, sex, age, or disability. CalWORKs and the Food Distribution Program on Indian Reservations (FDPIR) also prohibit discrimination on the basis of religion and political beliefs.
- Providing FNS program services or benefits in a different manner on the basis of race, color, national origin, sex, age, or disability, unless the difference is necessary to comply with nondiscrimination requirements, such as disability accommodations. CalWORKs and the FDPIR also prohibit discrimination on the basis of religion and political beliefs.
- Selecting members for planning and advisory bodies in such a way as to exclude persons from membership on the basis of race, color, national origin, sex, age, or disability. CalWORKs and the FDPIR also prohibit discrimination on the basis of religion and political beliefs.
- Selecting FNS program sites or facilities in a manner that denies an individual access to FNS program benefits, assistance, or services on the basis of race, color, national origin, sex, age, or disability. CalWORKs and the FDPIR also prohibit discrimination on the basis of religion and political beliefs.

In order to meet federal civil rights requirements for child nutrition programs, the Nutrition Services Division (NSD) recommends that the Civil Rights Coordinator maintain a Complaint Log and work with the appropriate people to resolve the complaint.

The complaint log should include (at a minimum) the following information:

- The name, address, and telephone number or other means of contacting the complainant
- The specific location and name of the entity delivering benefits
- The nature of the complaint or action that led to the charges being filed

If the nature of the complaint appears discriminatory, the NSD recommends that the Civil Rights Coordinator collect the following information:

- The 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
- The names, titles, and if known, addresses of persons who may have knowledge of the discriminatory action or situation
- The date(s) that the alleged discrimination occurred, or the duration of such action

WHERE TO FILE A COMPLAINT

To file a program or civil rights complaint, contact one of the following agencies listed below:

Child Nutrition Program
Civil Rights and Program Complaint Coordinator
California Department of Education
Nutrition Services Division
1430 N Street, Room 1500
Sacramento, CA 95814-2342
916-323-8521 **or** 800-952-5609

Or

Office of Civil Rights
USDA, Western Region
90 Seventh Street, STE. 10-100
San Francisco, CA 94103
415-705-1336 **or** FAX 415-705-1364
or *Joe.Torres@fns.usda.gov*

Or

USDA, Director, Office of Adjudication
1400 Independence Avenue, SW
Washington, D.C. 20250-9410
866-632-9992
Federal Relay Service 800-877-8339 (English) or 800-845-6136 (Spanish)

Note: All complaints of discrimination will be investigated and processed by the USDA. 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 program or Field Services Unit, and track it through resolution. The NSD reserves the right to conduct unannounced site visits to determine the validity of all allegations.

KEY OF 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 NSD Complaint Coordinator can be reached at 916-323-8521 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.