

Civil Rights and Complaint Procedures

United States Department of Agriculture
Child Nutrition Programs



West Virginia Department of Education
Office of Child Nutrition
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Introduction

The West Virginia Department of Education (WVDE) Office of Child Nutrition (OCN) provides the Civil Rights and Complaint Procedures to help agencies comply with the U.S. Department of Agriculture (USDA) child nutrition program (CNP) regulations, as required by the Food and Nutrition Service (FNS) Instruction 113-1.

The requirements contained in the procedures apply to all programs and activities receiving federal financial assistance for the CNPs, whether those programs and activities are federally funded in whole or in part (FNS Instruction 113-1, Page 3). Thus, when a state agency, local agency, or any other subrecipient agrees to administer FNS program services and benefits, they enter into a contractual agreement (i.e., federal/state agency agreement or a state agency/local agency agreement) to adhere to all laws, regulations, instructions, policies, and guidance related to nondiscrimination in program delivery (FNS Instruction 113-1, Page 4[C]).

Civil Rights Compliance in the Child Nutrition Programs

Each state agency, local agency, or any other subrecipient must ensure that it performs certain duties to both prevent and resolve all complaints related to programs and civil rights. Agencies must appoint a Civil Rights Coordinator to perform these duties. These duties include:

- Providing the name of the Civil Rights Coordinator, 504 Coordinator, and Title IX Coordinator (if different from the Civil Rights Coordinator)
- Providing mandatory civil rights training to all staff annually (FNS Instruction 113-1, Page 16[XI])
- Implementing procedures to determine and process civil rights complaints (FNS Instruction 113-1, Page 32[XVII][B])
- Implementing procedures to determine and process program related complaints
- 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 for persons with limited English proficiency (FNS Instruction 113-1, Page 13[IX])
- Ensuring that the public, participants, and potential participants are notified that a complaint can be filed anonymously or by a third party
- Developing a method to collect racial and ethnic data. The agency can use an applicant's voluntary self-identification to obtain racial and ethnic data.

Self-identification or self-reporting is the preferred method of obtaining characteristic data (FNS Instruction 113-1, Page 17[XII][A])

- Ensuring that the agency makes special meals 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 participants with disabilities are not excluded from enjoying the benefits or services due to inaccessibility of facilities. Every part of a facility must be accessible to and usable by persons with disabilities (Rehabilitation Act of 1973, Section 504). Subrecipients must also notify persons with disabilities about their right to free accommodations in a language or alternative format that they can understand (e.g., auxiliary aids and services and reasonable modifications).
- The most current version of the federal nondiscrimination statement in a prominent location in all public information releases, publications, and on posters concerning nutrition program activities, except menus (FNS Instruction 113-1, pages 13[IX][A][3], 14[d], and 15[IX][B][4])
- Displaying And Justice For All posters 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])
- Sending a public release announcing the availability of the CNPs and/or changes in the programs to public media and community/grassroots organizations (FNS Instruction 113-1, Page 15[IX][B][2])
- Providing appropriate translation services when a significant number of persons in the surrounding population have limited English proficiency (FNS Instruction 113-1, pages 9 and 10[VII])
- Establishing admission and enrollment procedures that do not restrict enrollment of minority persons or persons with disabilities. This includes preventing staff from incorrectly denying applications of minority persons and persons with disabilities, and ultimately ensuring that minority persons and participants with disabilities have equal access to all programs (FNS Instruction 113-1, Page 1[II][B] and [D], Americans with Disabilities Act 28, Title 2, Code of Federal Regulations, Part 35, Subtitle A and D, and FNS Instruction 113-1, Page 1[I][A] and [II][A])

Additionally, in order to meet federal civil rights requirements for CNPs, the WVDE recommends that the Civil Rights Coordinator maintain a complaint log and work with the appropriate people to resolve the complaint.

The complaint as well as the complaint log must include, at a minimum, the following information:

- The name, address, and phone number or other means of contacting the complainant, such as an e-mail address (if not anonymous)

- 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 alleges discrimination, the WVDE recommends that the Civil Rights Coordinator collect the following information and forward to the WVDE OCN and/or USDA:

- 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
- Forward all allegations of discrimination to the USDA National Office in Washington, D.C., at the address provided on page 8 of this document

Try to be as detailed as possible when logging information about the complaint. This will help resolve the situation in a more efficient manner.

Nondiscrimination Statement

As mentioned, agencies must include the most current version of the federal nondiscrimination statement in a prominent location in all public information releases, publications, and on posters concerning nutrition program activities, except menus. The current nondiscrimination statement can be found at the USDA's Civil Rights web page: <https://www.fns.usda.gov/cr/fns-nondiscrimination-statement> (FNS Instruction 113-1, Page 15[IX][d][2]).

The USDA prohibits discrimination in all its programs and activities. However, CNP regulations do not cover all types of discrimination. The only protected classes covered under the CNPs are race, color, national origin, sex (including gender identity and sexual orientation), age, or disability.

Public Notification and Grassroots Efforts

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

Particularly, the focus of the grassroots effort should be to target underserved populations and inform them of the availability of the CNPs. Certain organizations can help. A grassroots 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]).

Agencies should consider the following methods of communication when informing the public of available CNPs: the Internet, newspaper articles, radio or television announcements, flyers, or any other vehicle of communication deemed necessary to reach the intended recipients (FNS Instruction 113-1, Page 15[IX][B][2]).

Protected Racial and Ethnic Categories in the CNPs

The 2009–10 Civil Rights policy for CNPs established a two-question format for collecting racial and ethnic data from all program applicants and participants. Agencies must use separate categories when collecting and reporting ethnicity and race (FNS Instruction 113-1, Page 18[XII][A][4][a],[b]). Agencies must collect ethnicity first, and then offer respondents the option of selecting one or more racial designations. Recommended instructions accompanying the multiple responses for race should include one of the following: Mark One or More, or Select One or More, to encourage accurate information (FNS Instruction 113-1, Page 18 [XII][A][4]).

Data may be collected on the participant's enrollment form, meal benefit form, or through other means. If a parent, guardian, or participant elects not to disclose racial/ethnic data to the agency, the agency must report the participant's racial/ethnic category based on visual observation.

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

Ethnicity

- Hispanic or Latino—A person of Cuban, Mexican, Puerto Rican, South or Central American, 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

- American Indian or Alaskan Native—A person having origins in any of the original peoples of North and South America, including Central America, 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

Discriminatory Behavior

Discriminatory behavior can sometimes be difficult to determine; therefore, it is important to keep in mind the protected classes for the CNPs when addressing potential discrimination. The following are general examples of prohibited discriminatory behavior to help agencies and Complaint Coordinators have a clearer understanding (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 (including gender identity and sexual orientation), age, or disability.
- Providing FNS program services or benefits in a different manner on the basis of race, color, national origin, sex (including gender identity and sexual orientation), age, or disability, unless the difference is necessary to comply with nondiscrimination requirements, such as disability accommodations (this includes providing disability accommodations which includes dietary accommodation or physical assistance).
- 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 (including gender identity and sexual orientation), age, or disability.
- 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 (including gender identity and sexual orientation), age, or disability.

Where to File a Complaint

To file a program or Civil Rights complaint, please contact one of the following agencies listed below:

West Virginia Department of Education
Office of Child Nutrition
Civil Rights and Program Complaint Coordinator
Building 6, Room 750
1900 Kanawha Boulevard, East
Charleston, WV 25305-0330
304-558-3396

Or

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

Note: All Civil Rights complaints citing any Federally-protected basis(es) received at the State level will be forwarded to USDA within 5 days of receipt of complaint.

Terminology Key

Complainant – Any individual, including a person’s duly authorized representative or an interested third party, public agency, or organization who files a complaint

Complaint – A written or verbal statement alleging a violation of a federal or state law or regulation, which may include an allegation of unlawful discrimination

Complaint Coordinator – A staff member who is responsible for tracking all program complaints until resolution

Discrimination – The act of making a distinction in favor of, 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

Discrimination Complaint – A complaint alleging discrimination based on race, color, national origin, sex (including gender identity and sexual orientation), age, or disability

Program Complaint – A complaint alleging violation of federal or state laws or regulations concerning the program(s)