

Accommodating Students with Medical Disabilities and Special Dietary Needs

Section 13 Update Guide

| | |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| January 22, 2018 | <p>Updated <i>Section 13, Accommodating Students with Medical Disabilities and Special Dietary Needs</i> to incorporate the following United States Department of Agriculture guidance:</p> <ul style="list-style-type: none">– <i>USDA Memo SP 40-2017, Accommodating Children with Disabilities in the School Meal Program, Guidance for School Food Service Professionals</i> (July 25, 2017) <p>Clarified information on the following topics:</p> <ul style="list-style-type: none">– Allergen free zone– Confidentiality– Definition for disability– Location of meal service– Medical statement requirements– Methods to address modifications– Reasonable accommodation– Record retention– Unreasonable accommodation |
| October 10, 2017 | <p>Updated <i>Section 13, Accommodating Students with Medical Disabilities and Special Dietary Needs</i> to incorporate the following United States Department of Agriculture guidance:</p> <ul style="list-style-type: none">– <i>USDA Memo SP 26-2017, Accommodating Disabilities in the School Meal programs: Guidance and Questions and Answers</i> (April 25, 2017) <p>Clarified information on the following topics:</p> <ul style="list-style-type: none">– Additional meals |
| May 1, 2017 | <p>Updated <i>Section 13, Accommodating Students with Medical Disabilities and Special Dietary Needs</i> to incorporate the following United States Department of Agriculture guidance:</p> <ul style="list-style-type: none">– <i>USDA Memo SP 59-2016, Modifications to Accommodate Disabilities in the School Meal Program</i> (September 27, 2016)– <i>USDA Memo SP 36-2013, Guidance Related to the ADA Amendments Act</i> (April 26, 2013)– <i>USDA Memo SP 32-2015, Statements Supporting Accommodations for Children with Disabilities in the Child Nutrition Programs</i> (March 30, 2015) <p>Clarified information on the following topics:</p> <ul style="list-style-type: none">– CE policy on accommodations– Compliance with disability requirements– Definitions related to medical disability and special dietary needs– Medical statement– Milk substitutions– Records retention– Resources to assist with providing accommodations for students with disabilities– Types of accommodations |

Table of Contents

| | |
|---------------------------------------------------------------------------------------|--------------|
| Definitions for This Section | 13.6 |
| Process for Implementing Accommodations..... | 13.8 |
| Accommodations for a Medical Disability | 13.9 |
| Medical Statement..... | 13.10 |
| Additional Meals..... | 13.10 |
| Duration of Medical Statement | 13.11 |
| Incomplete or Unclear Medical Statement | 13.11 |
| Modification or Revision of Medical Statement | 13.12 |
| Reasonable Accommodation | 13.12 |
| <i>Age of Student</i> | 13.12 |
| <i>Allergen Free Site</i> | 13.12 |
| <i>Intent of the Program</i> | 13.12 |
| <i>Offsite Meal Accommodation</i> | 13.13 |
| <i>Specific Brand Names</i> | 13.13 |
| <i>Separation of Students with Disabilities</i> | 13.13 |
| Determination That an Accommodation Is Unreasonable..... | 13.13 |
| A La Carte Sales | 13.14 |
| Offer Versus Serve (OVS)..... | 13.14 |
| Accommodations Specific to Severe Allergies Classified As a Medical Disability | 13.15 |
| Additional Meals..... | 13.15 |
| Special Guidance, Accommodations for Students with Medical Disabilities | 13.16 |
| Cost of the Meal..... | 13.16 |
| Reimbursable Meal | 13.16 |
| Segregation of Students Based on a Medical Disability | 13.16 |
| Students Who Need to Track Dietary Intake | 13.17 |
| Staff Issues..... | 13.17 |
| Texture Modifications for Students with Disabilities | 13.18 |
| <i>Administering Assisted Feedings</i> | 13.18 |
| Accommodations for Special Dietary Needs, Not Medical Disability Related | 13.19 |
| CE Policy on Non-Disability Meal Accommodations | 13.19 |
| Religious or Cultural Practices..... | 13.19 |
| Fluid Milk Substitutions..... | 13.20 |
| Specifications | 13.20 |

| | |
|---------------------------------------------------------------------------------------|--------------|
| Milk Component | 13.20 |
| Lactose Free Milk | 13.20 |
| Cost for Student..... | 13.20 |
| TDA Notification..... | 13.20 |
| Resources | 13.21 |
| TDA..... | 13.21 |
| Texas Department of State Health Services..... | 13.21 |
| Centers for Disease Control and Prevention (CDC)..... | 13.21 |
| United States Department of Agriculture (USDA)..... | 13.21 |
| Legal Concerns and Liability in Working with Students with Disabilities..... | 13.21 |
| Privacy Regulations That Apply to Accommodations for Medical Disabilities..... | 13.22 |
| Records Retention..... | 13.22 |
| Compliance..... | 13.23 |

Chart and Information Box Table of Contents

| | |
|-------------------------------------------------------------------|-------|
| Information Box 1, Strategies to Prevent Allergic Reactions | 13.15 |
| Fluid Milk Substitution Specifications Chart | 13.20 |
| Information Box 2, Records Retention | 13.23 |

Contact Information for the

Texas Department of Agriculture (TDA), Food and Nutrition

When contacting TDA by phone, Contracting Entities (CEs) need to have their CE Identification Number (CE ID) (and site ID, if applicable). CEs should include their name and CE ID (and site name and ID if applicable) in all communication or documentation.

| General Contact Information | |
|-----------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|
| <i>Physical Address:</i> | 1700 N. Congress, 11th Floor, Austin, TX 78701 |
| <i>Mailing Address:</i> | PO Box 12847, Austin, TX 78711-2847 |
| <i>Phone:</i> | 877-TEXMEAL, (877) 839 -6985 |
| <i>Fax:</i> | (888) 203-6593 |
| <i>Email Contact:</i> | squaremeals@TexasAgriculture.gov |
| <i>Website:</i> | www.squaremeals.org |
| Email Contact for Issues Related to Applications | |
| <i>Child & Adult Care Food Program:</i> | CACFP.BOps@TexasAgriculture.gov |
| <i>National School Lunch Program, School Breakfast Program, & Special Milk Program:</i> | NSLP-SBP.BOps@TexasAgriculture.gov |
| <i>Seamless Summer Option:</i> | SSO.BOps@TexasAgriculture.gov |
| <i>Summer Food Service Program:</i> | SFSP.BOps@TexasAgriculture.gov |
| Email Contact for Issues Related to Program Operation | |
| <i>Commodity Operations:</i> | CommodityOperations@TexasAgriculture.gov |
| <i>Community Operations (Child & Adult Care Food Program & Summer Food Service Program):</i> | Commuinty.Ops@TexasAgriculture.gov |
| <i>Local Products:</i> | LocalProducts.SquareMeals@TexasAgriculture.gov |
| <i>Procurement, Including Sole Source:</i> | CE.ProcurementReviews.BOps@TexasAgriculture.gov |
| <i>School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program):</i> | School.Operations@TexasAgriculture.gov |
| <i>TX-UNPS Direct Certification Direct Verification System</i> | DirectCertification@TexasAgriculture.gov |
| Email Contact for CE Flexibility Options | |
| <i>Breakfast Waiver:</i> | SNPWaivers@TexasAgriculture.gov |
| <i>Excessive Balance Plan:</i> | School.Operations@TexasAgriculture.gov |
| <i>Gender Exception:</i> | SNPWaivers@TexasAgriculture.gov |
| <i>Grains Exemption:</i> | Nutrition@TexasAgriculture.gov |
| <i>Milk Exemption:</i> | Nutrition@TexasAgriculture.gov |
| <i>Milk Substitute Notification:</i> | Nutrition@TexasAgriculture.gov |
| <i>Paid Lunch Equity (PLE) Exemption:</i> | SNPWaivers@TexasAgriculture.gov |
| <i>RCCI Age/Grade Group Meal Pattern Flexibility</i> | School.Operations@TexasAgriculture.gov |
| <i>Seamless Summer Operation (SSO) Age/Grade: Flexibility:</i> | SNPWaivers@TexasAgriculture.gov |
| <i>Summer Mandate:</i> | SNPWaivers@TexasAgriculture.gov |

Accommodating Students with Medical Disabilities and Special Dietary Needs

The Rehabilitation Act of 1973, Section 504 (Section 504) and the American Disabilities Act (ADA) of 1990 provide regulatory guidance which defines a disability as any physiological disorder or conditions, cosmetic disfigurement, or anatomical loss affecting the body's systems or any mental or psychological disorder¹ which affects one of the major life activities.² Individuals who take mitigating measures to improve or control any of the conditions recognized as a disability are still considered to have a disability and require an accommodation.

The school nutrition program (SNP) must³ provide reasonable accommodations for reimbursable meals at no additional charge, snacks, and a la carte sales⁴ when (1) a student's disability restricts his/her diet and (2) the disability is supported by a medical statement signed by a medical authority that is licensed by the State to write medical prescriptions.

[NOTE: For this section, State is defined as the State of Texas. Any medical authority whose prescription is allowed to be filled by a pharmacy located in Texas under Texas law or regulation may provide a medical statement for a meal accommodation.]

In cases where a meal accommodation is requested by a parent or guardian and when the student does not have a medical disability, the SNP may provide the accommodation as long as the accommodation does not prevent the student from being served a reimbursable meal, snack, or an a la carte choice. The SNP is encouraged to work with families to make reasonable accommodations for students with special dietary needs.

¹ Physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine. Mental or psychological disorders include the following: intellectual disability, organic brain syndrome, emotional or mental illness, or specific learning disability. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, drug addiction, and alcoholism.

² Major life activities include the following: bending, breathing, caring for oneself, communicating, concentrating, eating, hearing, learning, lifting, major bodily functions, performing manual tasks, reading, seeing, sleeping, speaking, standing, thinking, walking, and working. Major bodily functions include, but are not limited to, the following: functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, and reproductive functions.

³ *Individuals with Disabilities Education Act (IDEA); Provisions Related to Children with Disabilities Enrolled by Their Parents in Private Schools, IDEA ; Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) of 1990*

⁴ For additional information on a reimbursable meal or snack, see *Administrator's Reference Manual, Section 8, Breakfast; Section 9, Lunch; and Section 10, Afterschool Meal Programs*. For additional information on counting and claiming reimbursable meals, see *Administrator's Reference Manual, Section 7, Counting and Claiming*.

This regulation applies to the following school nutrition programs (SNPs):⁵

- National School Lunch Program (NSLP)
 - Afterschool Care Program (ASCP)
 - Seamless Summer Operation (SSO)
 - Fresh Fruit and Vegetable Program (FFVP)
- School Breakfast Program (SBP)
- Special Milk Program (SMP)

The guidance in this section is intended to be used with the meal pattern guidance provided in the *Administrator’s Reference Manual, Section 8, Breakfast; Section 9, Lunch; Section 10, Afterschool Meal Programs; and Section 11, Infant Feeding.*

Definitions for This Section

For this section, the following definitions provide information that may assist CEs in providing meal accommodations to students with a disability:

| | |
|----------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Americans with Disabilities Act (ADA)</i> | Comprehensive legislation, signed into law on July 26, 1990, that creates new rights and extends existing rights for Americans with disabilities. Title II of the Act is especially significant for the school nutrition programs, as it requires equal availability and accessibility in state and local government programs and services, including public schools. |
| <i>Anaphylaxis/Anaphylactic Reaction</i> | Rare but potentially fatal condition in which several different parts of the body experience food-allergic reactions at the same time. Symptoms may progress rapidly and include severe itching, hives, sweating, swelling of the throat, breathing difficulties, lowered blood pressure, unconsciousness, and even death. |
| <i>Food Allergy</i> | Hypersensitivity from an abnormal response of the body’s immune system to food or food additives that would otherwise be considered harmless. Many of the true food allergy symptoms often resemble allergic reactions to other substances, such as penicillin, drugs, bee stings, hives, and itching. |
| <i>Food Intolerance</i> | Adverse food-induced reaction that does not involve the body’s immune system. Lactose intolerance is one example of food intolerance. |
| <i>Identified Disability Category</i> | Recognized disability category according to the Individuals with Disabilities Education Act (IDEA) which includes the following: autism; deaf-blindness; deafness or other hearing impairments; emotional disturbance; hearing impairment; intellectual disability; orthopedic impairments; other health impairments; specific learning disabilities; speech or language impairment; traumatic brain injury; and visual impairment, including blindness which adversely affects a student’s educational performance; and multiple disabilities. |

⁵ This regulation also applies to the Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP).

Individuals with Disabilities Education Act (IDEA) Legislation that provides federal funds to assist states and school districts in making a free appropriate public education available to eligible students with specified disabilities. IDEA was previously called the *Education of the Handicapped Act* and was originally enacted in 1975.

Individualized Education Program (IEP) Written statement for a student with a disability that is developed, reviewed, and revised in accordance with IDEA regulations. The IEP is the cornerstone of the student’s educational program that contains the program of special education and related services to be provided to a student with a disability covered under the IDEA. When nutrition services are required under a student’s IEP, school officials must ensure that child nutrition department staff are involved early in decisions regarding special meals.

Lactose Intolerance Difficulty digesting the sugar found in milk, milk products, and milk foods.

Person with a Disability A person (1) with a physical or mental impairment that substantially limits one or more major life activities and (2) that has a record or is regarded as having a physical or mental impairment. This includes, but is not limited to, a disability that is episodic or in remission.
[NOTE: A physical or mental impairment need not be life threatening to constitute a disability. It is enough that it limits a major life activity.
For Example: Digestion is an example of a bodily function that is a major life activity. A student whose digestion is impaired by lactose intolerance may be a person with a disability regardless of whether or not consuming milk causes the student severe distress.

For the SNP, this is called a medical disability. 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 student may be able to control an allergic reaction by taking medication should not be considered in determining whether the allergy is a disability.
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.]

For the SNP, a student with medical disability must receive meal accommodations when an appropriate medical statement has been provided

Major Life Activities Characteristics that warrant the CE making an accommodation for a disability: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working as well as major bodily functions which include, but are not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, and reproductive functions. Individuals who take mitigating measures to improve or control any of the conditions recognized as a disability are still considered to have a disability and require an accommodation.

| | |
|--------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Medical Statement (Physician's Statement)</i> | Formal statement or prescription written by a medical authority licensed to write prescriptions by the State. A medical statement provides a description of (1) the student's disability; (2) why the disability restricts the student's diet and the major life activity affected by the disability; and (3) the meal accommodation the CE is to implement. Accommodations include, but are not limited to, food items or ingredients to be omitted, special dietary supplements, food items ingredients to be substituted, and/or other accommodation. |
| <i>Physical or Mental Impairment</i> | <p>One of two types of impairment defined by <i>Rehabilitation Act of 1973, Section 504</i> and the <i>Americans with Disabilities Act (ADA) of 1990</i>:</p> <ul style="list-style-type: none"> – Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine. – Any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis, cancer; heart disease; diabetes; intellectual disability; emotional illness; and drug addiction and alcoholism. |
| <i>Recognized Medical Authority</i> | Health care professional licensed by the State who is authorized to write medical prescriptions under State law that are allowed to be filled by pharmacies located in Texas. |
| <i>Special Dietary Need</i> | Medical condition that does not meet the standard of a medical disability or a religious or cultural practice that prevents a student from eating a specific food or ingredient. Special dietary need requests for accommodations include requests from parents or guardians. |

Process for Implementing Accommodations

The CE must develop procedures that establish a process for implementing accommodations that includes the following elements:

1. Procedures for how CE staff will handle accommodation requests.
2. Notification to households about each of the following elements of the accommodation procedure:
 - Method to request an accommodation.
 - Decisions that have been made by the CE about accommodation requests.
 - Right of the household to examine all relevant records and to appeal the decision.⁶

⁶ The right to examine records and appeal the decision may be conducted in the same manner as an appeal for a Section 504 decision. A parent or guardian may have legal representation for this process.

3. Training for staff on the procedures and legal requirements for accommodations.
4. An assigned coordinator who is designated to ensure that procedures are developed and followed, training is provided, and accommodations are monitored. This can be a SNP staff member or another CE staff member, including, but not limited to, a registered dietician, school nurse, or Section 504 coordinator)

USDA recommends that CEs use a team to implement the accommodation process. It can be the same type of team or the same team that is used for special education or Section 504 Individualized Education Plans. If the existing special education or Section 504 team is used, the CE should ensure that the SNP is represented on the team.

Accommodations for a Medical Disability

In most cases, students with medical disabilities can be accommodated with little extra expense or effort. Medical accommodations may require, but are not limited to, a modification to the meal pattern, food texture, or method of meal service.

There is a possibility that a medical modification can be made by offering students a choice of food items within an existing cycle menu, i.e., no change to the meal pattern.

For Example: A student is allergic to strawberries. The CE always offers two types of fruit at every meal service. So, if strawberries are on the menu, there is always another fruit for the student to choose.

If the CE has a method to accommodate a medical disability without making a change to the meal pattern, the CE is not required to have a medical statement on file. However, the CE may require that parents or guardians provide a medical statement when a medical accommodation is necessary.

In all cases, a request to make an accommodation for a medical disability must be in writing—i.e., a medical statement from a medical authority licensed to write prescriptions by the State⁷ or a request from parent or guardian for the CE to ensure that there is a medical accommodation made available within an existing cycle menu.

[NOTE: When an accommodation is made for a student without a medical statement, the same accommodation must be available to all students. See the Accommodations for Special Dietary Needs, Not Medical Disability Related subsection in this section for additional information on this topic.]

In situations that require a meal accommodation that does not meet the meal pattern, or additional equipment, specific technical training, or expertise is required, it is important that food service staff and parent(s) or guardian(s) be involved at the outset in preparations for the student's entrance into the school.

⁷ See the *Definitions for This Section* subsection in this section for additional information on this topic.

Medical Statement

For a CE to make a meal accommodation for a student with a medical disability that is not addressed by a choice of food items within an existing cycle menu, the household must provide a written medical statement. For a medical statement to be valid, it must be written by a medical authority licensed to write prescriptions by the State.⁸

A medical statement must include the following information in order for the CE to make a meal accommodation:

1. Explanation of the student's disability which includes a description that is sufficient to allow the CE to understand how this condition restricts the student's diet and what major life activity is affected by the disability.

[NOTE: The medical statement does not have to include the word disability or name the student's disability. Instead, it must provide sufficient information for the CE to determine that there is medical condition that is a disability and how that medical condition affects the student's participation in the meal program.]

2. Description of the accommodation to be made: food items or ingredients to be omitted, special dietary supplements, food items or ingredients to be substituted and other accommodation information as appropriate.

[NOTE: A CE is not required to provide name brand products as a substitute for a food item if another product with the same specifications is available. If the medical statement requires a name brand product, the CE should contact the household, and the medical authority as appropriate, in order to identify the ingredients that must be included or excluded from the student's meal to ensure that the an alternate substitution will meet the same need.]

When a meal meets the specifications described in the medical statement, even if the meal does not meet the meal pattern, the meal is reimbursable.

Additional Meals

If a medical statement includes a specification that the student must have breakfast each morning and the site does not operate the SBP, the CE is not required to provide breakfast unless the specification is also included in a student's individualized education program (IEP).

It is important for the CE to remember that it is not the CE's responsibility to verify that a disability exists or establish standards for what is a disability. A CE cannot request medical records or medical charts related to the disability as part of the medical statement. That is the responsibility of medical authority. If a medical authority provides adequate information in the medical statement, the CE must accept the medical statement as describing a valid medical disability.

⁸ See the *Definitions for This Section* subsection in this section for additional information on this topic.

The CE also has a duty to engage the parents or guardians in the implementation of the accommodation. There are situations in which the parents or guardians will have information that may assist the CE in implementing the accommodation. When there is a difference in how the parent or guardian interprets the medical statement or what the CE is required to do, engaging the parents or guardians in the process will help to build shared understanding about how the CE will accommodate the student's needs.

For Example: A CE is provided a medical statement that says that foods high in vitamin K counteract a medication a student takes for a circulatory disorder and says that the student must not be served foods high in vitamin K. A discussion with the parent about what types of other vegetables have proven to work well with the medication will help identify a range or type of food that can be served to the student.

Duration of Medical Statement

When a medical authority provides a written medical statement, the household is not required to provide an annual updated statement from the medical authority.

The CE, therefore, cannot require the household to provide a new medical statement each year. However, CEs may contact the household to ask if the student's medical condition has changed and may also ask for the parent or guardian to sign a statement indicating that the student no longer needs a meal accommodation before ending the accommodation.

Incomplete or Unclear Medical Statement

The medical statement must include all required information in order for the CE to make a meal accommodation. The CE cannot implement the accommodation affectively if the CE is not given sufficient information to make an appropriate accommodation.

For Example: If the medical statement says do not serve the student green vegetables, but does not say that vitamin K is to be removed from the student's diet, the CE may make an accommodation that does not sufficiently address the medical issue. Potatoes, and tomatoes, and some dairy products are also high in vitamin K. The CE would not know that these foods are also problematic.

Therefore, if the medical statement does not clearly describe what the student needs to avoid or be eliminated from the student's diet, the CE may not make an affective accommodation.

When a CE believes the medical statement is unclear or lacks sufficient detail, the CE must request appropriate clarification so that a proper and safe meal can be provided.

However, CEs may begin implementation of the accommodation if there is adequate information to make an accommodation.

For Example: If the accommodation states that the student must not be served eggs because of an allergy but does not provide a suggested substitution, the CE may begin serving the student a meal that does not include eggs

and, at the same time, ask for additional information on what food items the student can be served in place of eggs that will have the same nutritional value. In this situation, the CE would naturally assume this is a food allergy to eggs; however, that may not be the case. The CE will not know unless the medical authority provides additional information.

CEs may use the services of a Registered Dietitian Nutritionist (also called Registered Dietitian), when available, to assist in implementing meal accommodations, as appropriate. If clarification is provided by a medical authority, any changes to the medical statement must be provided in writing before the CE implements the changes.

Modification or Revision of Medical Statement

The CE must not modify, revise, or make changes to a medical statement provided by a medical practitioner.

Reasonable Accommodation

In all cases, the CE is expected to provide reasonable meal accommodations in response to a medical statement. The question of whether an accommodation for a medical disability is reasonable or not reasonable must be made on a case-by-case basis. The CE may consider expense and efficiency in choosing an appropriate approach to accommodate the student's disability. However, the CE must keep in mind that when an accommodation is made, the objective is for the student to have access to the same benefits as all other students.

In determining how to address an accommodation, the CE needs to keep the following in mind:

Age of Student

Younger students may need more assistance in making sure the accommodation is made than older students.

Allergen Free Site

When the CE has banned a specified food item or food group to create an allergen free site, student(s) and parent(s) or guardian(s) will assume the site is a safe place. This may cause student(s), parent(s), or guardian(s) to assume normal precautionary safety measures are not needed to avoid a specific food or food group. Therefore, when a CE chooses to universally exclude specific foods or food groups from sites, the specific food or food group must never be present in the site.

Intent of the Program

The accommodation cannot fundamentally alter the intent of the program.

Offsite Meal Accommodation

The CE cannot claim a meal that is served to a student at home. NSLP and SBP meals are intended to be served and consumed on the school premises, with the exception of occasional school-sponsored field trips or special events.

Specific Brand Names

Unless there is only one product that meets the requirements of the accommodation described by the medical authority, the CE is not required to provide brand name products or to provide a product that is a one-for-one match (such as pizza for pizza) for the replaced item.

When the cost of an accommodation is significant, the CE has a duty to work with the household and the authorized medical authority, if appropriate, to identify a suitable accommodation that addresses the medical issue.

Separation of Students with Disabilities

When an accommodation is made, students cannot be separated from other students because of a disability. Just as the least restrictive environment applies to classroom instruction, it also applies for meal accommodations.

It is not uncommon for CEs to create allergen free zones or allergen free campuses. When CEs uses these strategies, they must be careful not to stigmatize a student with a disability. CEs that use allergen free zones may also be inadvertently segregating students with disabilities.

To prevent segregating students because of a disability, the CE should designate a zone where foods with allergens can be eaten—that is, creating an allergen zone rather than an allergen free zone. With this strategy, the students with the disability are not being segregated to a defined space based in their disability.

Determination That an Accommodation Is Unreasonable

When the CE determines that the accommodation described in the medical statement is not reasonable, the CE should work with the household and the medical authority, as appropriate, to identify a reasonable solution. In these cases, the CE cannot simply deny the accommodation request; the CE has a duty to work with the household and the medical authority, as appropriate, to find a solution.

When notifying the household that an accommodation is not reasonable, the CE must ensure that the student's parent or guardian understands that he or she has the right and understands the process to take any of the following actions:

- File a grievance if the parent or guardian believes 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 legal counsel at the hearing
- Examine the record
- Receive notice of the final decision and a procedure for review, i.e., right to appeal the hearing's decision

A La Carte Sales

Section 504 applies to every program, activity, and service provided by the school or associated with school activities in which the student participates. Therefore, meal accommodations for students with medical disabilities apply to all SNP food services, including a la carte sales.

When the CE develops its a la carte menu, the CE needs to include items which accommodate medical disabilities for each type (i.e., entrees, sides, and beverages) of item sold. The most effective strategy for this process will be for the CE to offer more than one entrée item, side item, and beverage.

For Example: After reviewing the types of meal accommodations the CE must provide, the CE determines that it will serve the following entrées: regular hamburger, bean and cheese burrito, and chef salad; the following sides: French fries, rice, and small salad; and the following beverages: one percent milk, fat free chocolate milk, lactose free milk, juice, and water. By offering different items under each type, there is at least once choice for each type that is suitable for the range of accommodations the CE is making. The CE may offer the same a la carte items every day or may have a rotating menu.

Offer Versus Serve (OVS)

Sites operating OVS must ensure students with medical disabilities have the same opportunity to select items from all required food components. The CE cannot eliminate a specific food component for a meal served under OVS as an accommodation for student with a medical disability.

For Example: A student with a gluten intolerance must have a choice of a bread/grain item that is gluten-free.

Accommodations Specific to Severe Allergies Classified As a Medical Disability

When a student has a severe allergy that is classified as a medical disability, the CE has the responsibility to provide a safe, non-allergic meal to the student.⁹ To do so, CE must make sure that all food items offered to the student meet prescribed guidelines included in the medical statement and are free of foods or ingredients associated with the allergic reaction. While there is no best method for doing this, the resources described in *Information Box 1, Strategies to Prevent Allergic Reactions* will assist the CE in this process.

Additional Meals

The CE must provide special meals even when the CE normally does not provide meal service if the student's individualized education program (IEP) includes a nutrition component that states that additional meal service is required. The additional meal service must be provided at no additional cost to the student. In these cases, the CE must ensure that the SNP is involved early in decisions regarding special meals and modifications.

All meal service recommendations and meal accommodations included in the IEP must be provided to the SNP in writing to minimize misunderstandings. This documentation must be retained by the CE.

These accommodations are provided to the student at no cost and are allowable costs to the program.

For Example: As part of the therapy for a student with a disability, the medical practitioner has provided a medical statement that the student must consume six cans of cranberry juice a day. The juice is to be served at regular intervals and some of these servings would occur outside of the normal school meal periods. If this requirement is not written in the IEP, the SNP would only be required to pay for the servings that are provided during meal service. The SNP may cover the cost of the additional servings, but is not required to do so. However, if the

Information Box 1

Strategies to Prevent Allergic Reactions

- Include the method staff will use in response to life-threatening food allergy reactions in the school's emergency plan, including quick access to epinephrine auto-injectors.
- Establish a communication system to be used when responding to food allergy reactions and emergencies.
- Communicate the school's responsibilities, expectations, and practices for managing food allergies to all parents or guardians through newsletters, student handbook, announcements, and other methods.
- Establish food allergy policies and practices that apply to field trips, extracurricular activities, sale of competitive foods, fundraiser events, athletic events, class parties, or after-school programs.
- Develop staff training specific to how to respond to severe allergic reactions.

⁹ There are food allergies that do not affect a major life activity. If this is the case, the allergy is not a medical disability. For an allergic reaction to be a medical disability, a medical statement describing the medical disability must be provided by the parent or guardian.

requirement is written into the student's IEP, the SNP must cover the cost of all 6 servings.

or

A Residential Child Care Institution (RCCI) may be required to provide additional foods or servings since the student does not have a means of obtaining meal service except through the RCCI.

Special Guidance, Accommodations for Students with Medical Disabilities

CEs must use the following guidance when implementing accommodations for a student with a medical disability.

Cost of the Meal

When a CE makes a dietary accommodation for a medical disability for a reimbursable meal, the meal must be offered at no additional cost to the student. The cost of the meal is an allowable cost to the program.

Reimbursable Meal

An accommodation may include substituting a different food, beverage item, or ingredient; modifying the texture of a food item; serving a specified portion size; or other appropriate accommodation. A modified meal that meets the specifications as prescribed in a medical statement is not required to meet the meal pattern—the meal is reimbursable. The cost of the meal is an allowable cost.

Segregation of Students Based on a Medical Disability

Federal civil rights legislation, including Section 504 of the *Rehabilitation Act of 1973*, IDEA and Title II of the ADA, requires that in providing for or arranging for the provision of nonacademic services and extracurricular activities, including meals, CEs must ensure that students with medical disabilities participate along with students without medical disabilities to the maximum extent appropriate to the needs of students with medical disabilities. The CE must keep in mind that when an accommodation is made the objective is for the student to have access to the same benefits as all other students.

Students with medical disabilities must be allowed to participate with other students to the maximum extent appropriate. In this way, the student has the opportunity to interact with and learn from students without medical disabilities. The school must not segregate students with disabilities on the basis of convenience to the school or to other students.

[NOTE: When it is determined that a student's severe allergic reaction to a food item makes the risk of exposure too high, the CE commonly establish a free zone for a designated food item where any student may sit if the student is not eating the food item. CEs that use allergen free zones CEs must ensure that use of this strategy does not foster segregation or the isolation of students with disabilities. To prevent segregating students because of a disability, the CE should consider creating an allergen zone rather than an allergen free zone. With this strategy, the students with the disability are not being segregated to a defined space based in their disability.]

In rare instances, it may be to a student's benefit to be served separately from other students. For instance, a student with severe motor disabilities may be able to receive individualized attention in handling eating utensils if a special education specialist is able to work with them outside the cafeteria.

Nevertheless, it must be emphasized that in all cases, the decision to feed students with medical disabilities separately must always be based on what is appropriate to meet the needs of the students.

Students Who Need to Track Dietary Intake

When a medical statement describes the need for a student to track dietary intake, a CE is not required to provide nutrition information for all food items and all program meals as it would be very burdensome to provide this information. Instead, the CE may develop a cycle menu with input from the student's parent or guardian, medical professionals, school nutritionist and/or nurse, and staff who work with students with disabilities as appropriate. The CE would only have to provide nutrition information for the foods on the planned cycle menu for the student with a disability, as opposed to all foods offered through all meal programs.

Staff Issues

In some cases, it may be advisable for specially trained personnel, such as a registered dietitian nutritionist (also called registered dietitian), to provide guidance to the CE on how to modify a student's meals to comply with requirements as provided in the medical statement.

Moreover, for certain students with medical disabilities, it may be necessary to have a nurse or trained health aide feed the student or have a specially trained professional, such as a special education teacher, occupational therapist, or speech therapist, assist the student to develop and improve his or her eating skills.

Texture Modifications for Students with Disabilities

For students with medical disabilities who require modifications in the texture of food items served¹⁰ (such as chopped, ground, or pureed foods), instructions in the form of a medical statement indicating the appropriate food texture is recommended but not required. For students receiving special education, the texture modification should be included in the student's individualized education program (IEP) and/or in the student's file.

The CE may apply stricter guidelines and require that a written medical statement for texture modifications be provided and kept on file or may require written instructions from the household if a medical statement is not required.

Administering Assisted Feedings

For students requiring assistance in eating, the determination of who will feed the student is a local school decision. While the SNP is specifically responsible for providing the necessary foods needed by a student with a disability, it is not the responsibility of the SNP staff to physically feed the student. Moreover, in the case of more delicate operations, such as tube feeding, it is advisable that commercial nutritive formulas, prescribed by a licensed physician and specially designed for tube feedings, be used rather than a school blenderized formula, which may be subject to spoilage and may not always have the correct consistency or nutritive content. Proper administration of this type of feeding generally requires the skills of specially trained personnel, such as nurses or the special trained aides who regularly work with the students.

Furthermore, CEs should be aware that they could be held liable if persons without sufficient training are performing tasks or activities, such as developing or modifying a diet order prescribed by a licensed physician or administering tube feedings. For specific guidance concerning personal liability, school officials should contact their own legal counsel.

Special labor costs may be covered through special education funds if the student has an IEP. If the student does not have an IEP, these costs may be charged, as appropriate, to the SNP nonprofit food service account, may be assigned to the CE's general fund, or may be assigned to other funding sources. When the SNP funds the cost of staff to provide assisted feedings, the cost must only include the actual time for the feeding.

¹⁰ If the texture modification also includes nutrient supplements, a medical statement is needed.

Accommodations for Special Dietary Needs, Not Medical Disability Related

CEs may make meal accommodations or substitutions for individual students who do not have a medical disability but who have a special dietary need as long as the meal served meets the meal pattern. Such determinations are made only on a case-by-case basis. This provision covers those students who have food intolerances or allergies that do not affect a major life activity.

If CEs provide these types of non-disability accommodations, they must establish local policy which describes the types of accommodations the CE will make, establish a method for parents or guardians to request these accommodations, and provide notification about the accommodations the CE will provide to students and households.

CE Policy on Non-Disability Meal Accommodations

A non-disability meal accommodation policy must adhere to the following guidance:

- The policy must be applied equitably to all students.
- The CE must require a written request from a parent or guardian or an authorized medical authority that describes the student's special dietary need.
- The CE must retain documentation for all requests.
- They CE may only submit claims for meals if the meal served meets the meal pattern.

Religious or Cultural Practices

CEs may also provide reimbursable meals that conform to the practices of religious or cultural groups as long as the meal served meets the meal pattern. As a general practice, the offer versus serve (OVS) strategy allows students to select among food items and select a meal that meets their religions or cultural practices.

In cases where the OVS strategy is not available, the CE may prepare different plated reimbursable meals from which students may choose. CEs are encouraged to reach out to community religious or cultural groups to identify appropriate meal options.

Fluid Milk Substitutions

CEs may also make substitutions for fluid milk for non-disabled students who cannot drink fluid milk based on a special dietary need, including, but not limited to, dairy allergies, and/or cultural dietary restrictions.

The fluid milk substitution may be offered to students as a milk choice for milk component for a reimbursable meal as long as the following requirements are met:

Specifications

The fluid milk substitute meets the specifications for an acceptable milk substitute. The *Fluid Milk Substitution Specifications Chart* provides detailed information on the required specifications for these products.

Milk Component

The fluid milk substitute is served as a component for a reimbursable meal.

Lactose Free Milk

The CE may provide lactose-reduced/lactose-free milk as a creditable serving for the milk component for a reimbursable meal without additional documentation.

Cost for Student

Students cannot be required to pay extra for the fluid milk substitute.¹²

TDA Notification

The CE must inform TDA if any of its schools offer a fluid milk substitute (with the exception of lactose free milk) for non-disabled students before offering the fluid milk substitute as the milk component for a reimbursable meal.

TDA has developed a worksheet to assist CEs in ensuring that the chosen fluid milk substitute meets required specifications. CEs notifying the Texas Department of Agriculture (TDA) of their intention to serve a milk substitute must complete this worksheet and email it as an attachment to squaremeals@TexasAgriculture.gov. This worksheet is available on the *Publications* page on www.squaremeals.org.

| Fluid Milk Substitution Specifications Chart | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|--------------------------|
| Minimum Amount Per 8 Fluid Ounces | | |
| Nutrient | Weight | Percentage ¹¹ |
| Calcium | 276 mg | 30% |
| Protein | 8 g | — |
| Vitamin A | 500 IU | 10% |
| Vitamin D | 100 IU | 25% |
| Magnesium | 24 mg | 6% |
| Phosphorus | 222 mg | 20% |
| Potassium | 349 mg | 10% |
| Riboflavin | 0.44 mg | 25% |
| Vitamin B-12 | 1.1 mcg | 20% |
| Fat content of fluid milk substitutions, such as soy milk are not subject to the regulations regarding fat content that apply to regular fluid milk. Therefore, fluid milk substitutions can have a higher fat content than fat free or 1%. | | |

¹¹ Labeling regulations require that amounts be reported to the nearest 5%, i.e., the actual percentage of calcium is 27.6%, but regulations require that this amount be reported as 30%.

¹² Additional costs for milk substitutes are an allowable cost to the SNP.

Resources

The following resources may be helpful to CEs as they implement meal accommodations:

TDA

Resources available at www.squaremeals.org

- *Meal Accommodation Tracking Form*, sample form for tracking student meal accommodations
[NOTE: Some POS systems have an electronic method to maintain this information, so that the cashier can ensure that a student does not take a food item where an accommodation has been made.]
- *Medical Statement Form*, sample form for CEs to provide to parents or guardians requesting a medical statement from a licensed medical authority
- *Milk Substitute Worksheet*, worksheet used to submit notification to TDA about the use of a milk substitute

Texas Department of State Health Services

Resource available at

<https://www.dshs.texas.gov/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=8589969921>

- *Guidelines for the Care of Students With Food Allergies At-Risk for Anaphylaxis*

Centers for Disease Control and Prevention (CDC)

Resource available at www.cdc.gov/healthyschools/foodallergies/index.htm

- *Food Allergies in Schools*

United States Department of Agriculture (USDA)

Resources available at <http://www.fns.usda.gov/school-meals/guidance-and-resources>

- *Accommodating Children with Disabilities in the School Meal Programs, Guidance for School Food Service Professionals*
- *Resource List on Food Allergies and Intolerance for Consumers 2010*

Legal Concerns and Liability in Working with Students with Disabilities

A growing body of federal law clearly intends that students with medical disabilities have the same rights and privileges and the same access to benefits, such as school meals, as students without medical disabilities. Consequently, schools that do not make appropriate program accommodations for students with medical disabilities may be found in violation of federal civil rights laws.

School administrators and SNP staff should be aware of two issues involving liability: (1) the school's responsibility for providing program accommodations for students with disabilities and (2) the question of personal responsibility in cases of negligence. In order to accommodate a student with a disability, the school must ensure that both facilities and personnel are adequate to provide necessary services.

Privacy Regulations That Apply to Accommodations for Medical Disabilities

In addition to the USDA regulations that limit the disclosure of confidential information related to eligibility status, information on a student's disability is also subject to privacy laws. SNP staff cannot share information about a student's disability with any staff member who does not have a need to know and cannot release medical information to anyone outside of the site¹³ without written permission of the parent or guardian.

[NOTE: In most cases, sharing private information of any type with anyone outside of the SNP staff is inappropriate. However, because there is often a coordination of services for special needs students, SNP staff may legitimately share and receive information from non-SNP school staff. Need to know is the primary consideration in sharing private information for the coordination of services.]

The applicable privacy laws include the following:

- Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule
- Family Education Rights and Privacy Act (FERPA)
- Individuals with Disabilities Education Act (IDEA)
- Americans with Disabilities Act (ADA), Section 504

TDA recommends that CEs establish policy and/or procedures for handling, sharing, and storing private information.

Records Retention

When a CE makes a menu accommodation, the CE must retain appropriate documentation, including, but not limited to, the following types of documentation:

- CE policy and procedure related to accommodations, including any policy related to non-disability accommodations and how that policy is shared with households
- Medical statements, records of contact with households about medical statements, and records of contact with the medical authority, if appropriate
- Written requests from parents or guardians for non-disability accommodations, if applicable

¹³ Exceptions: Court ordered or law enforcement request

- Notes about communications and/or interactions with the household concerning the student’s accommodation.
- Food production records or meal preparation records that demonstrate modifications that were made
- Product labels and other ingredient statements

Compliance

TDA will assess compliance with the CE’s practices to provide accommodations for students with disabilities and other types of accommodations, if applicable.

TDA will take fiscal action, as appropriate, for the following violations:

- Not meeting the meal pattern requirements when making accommodations for a student with special dietary needs that are not a disability unless the student’s IEP requires an accommodation that results in a non-reimbursable meal being served.
- Inadequate or incorrect response to accommodations as described on a medical statement.
- Inadequate or unavailable documentation related to accommodations.

CEs with findings will be required to submit an approvable Corrective Action Document (CAD). TDA may also terminate the Food and Nutrition (FND) Agreement for any CE that is not in compliance with accounting and financial requirements, including corrective action related to audits.

Information Box 2

Records Retention

State Board of Education policies require public and charter schools to maintain records for a period of five years after the SNP has ceased to provide the meal accommodation.

Private schools, other nonprofit organizations, and RCCIs maintain records for three years after the SNP has ceased to provide the meal accommodation.