ACCOMMODATING CHILDREN WITH SPECIAL DIETARY NEEDS IN THE SCHOOL NUTRITION PROGRAMS

Confused about when food substitutions have to be made for a student? The federal regulations state that "schools shall make substitutions in foods . . . for students who are considered handicapped . . . and whose handicap restricts their diet. Schools may also make substitutions for non-handicapped students who are unable to consume the regular lunch (breakfast) because of medical or other special dietary needs."

In simple terms, this means that if a student has a documented disability that restricts their diet, the school foodservice department ***MUST*** make the substitutions as listed by a licensed physician on a medical statement form.

If, however, a request for food substitutions is made for a student without a documented disability, the school foodservice department ***MAY*** make the substitutions listed on the medical statement form signed by a recognized medical authority.

It is the responsibility of the parent/guardian making the request to submit a properly filled out and documented medical statement form.

Two Medical Statement Forms are available for use on the MDE website when special food substitutions are requested for a student. Directions for using the Medical Statement Forms and a definition of a handicapped person are also included along with the forms.

Definition of Handicapped Person
7 CFR Subtitle A, Section 15b.3 Definitions

(i) "Handicapped person" means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

(j) "Physical or mental impairment" means (1) 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; or (2) any mental or psychological disorder, such as mental retardation, 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 impairment; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; mental retardation; emotional illness; and drug addiction and alcoholism.

(k) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;

(l) "Has a record of such impairments' means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits on or more major life activities.

(m) "Is regarded as having an impairment" means (1) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (2) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others towards such impairments, or (3) has none of the impairments defined in paragraph (j) of this section but is treated by a recipient as having such impairment.

Office of the Secretary, USDA

Please contact a School Meals Consultant at 517-373-3347 if any additional information is needed.

Grants Coordination and School Support
School Nutrition Training and Programs

ACCOMMODATING CHILDREN WITH SPECIAL DIETARY NEEDS

The following text is taken from the USDA Guidance Manual "*Accommodating Children with Special* Dietary *Needs in the School Nutrition Programs*". It explains the school food service role in providing meals to students with special dietary needs. A complete copy of this USDA manual can be downloaded and printed from the following website:

http://www.fns.usda.gov/cnd/Guidance/acccommodating_children.doc

Some highlights from the Guidance Manual:

GUIDANCE FOR ACCOMMODATING CHILDREN WITH SPECIAL DIETARY NEEDS IN THE SCHOOL NUTRITION PROGRAMS

I. INTRODUCTION

In recent years, we have seen increasing emphasis on the importance of ensuring that children with disabilities have the same opportunities as other children to receive an education and education-related benefits, such as school meals.

Congress first addressed this concern in *The Rehabilitation Act of 1973,* which prohibits discrimination against qualified persons with disabilities in the programs or activities of any agency of the federal government's executive branch or any organization receiving federal financial assistance.

Subsequently, Congress passed the *Education of the Handicapped Act,* (now, the *Individuals with Disabilities Education Act),* which requires that a free and appropriate public education be provided for children with disabilities, who are aged 3 through 21, and the *Americans with Disabilities Act,* a comprehensive law which broadens and extends civil rights protections for Americans with disabilities.

One effect of these laws has been an increase in the number of children with disabilities who are being educated in regular school programs. In some

cases, the disability may prevent the child from eating meals prepared for the general school population.

The U.S. Department of Agriculture's (USDA) nondiscrimination regulation (7 CFR 15b), as well as the regulations governing the National School Lunch Program and School Breakfast Program, make it clear that substitutions to the regular meal must be made for children who are unable to eat school meals because of their disabilities, when that need is certified by a licensed physician.

In most cases, children with disabilities can be accommodated with little extra expense or involvement. The nature of the child's disability, the reason the disability prevents the child from eating the regular school meal, and the specific substitutions needed must be specified in a statement signed by a licensed physician. Often, the substitutions can be made relatively easily. There are situations, however, which may require additional equipment or specific technical training and expertise. When these instances occur, it is important that school food service managers and parent(s) be involved at the outset in preparations for the child's entrance into the school.

This guidance describes some of the factors which must be considered in the early phases of planning and suggests ways in which the school food service can interact with other responsible parties in the school and the community at large to serve children with disabilities.

The guidance is based on the policy guidelines outlined in the FNS Instruction *783-2,* Revision *2, Meal Substitutions for Medical or Other Special Dietary Reasons.*

Serving children with disabilities presents school food service staff with new challenges as well as rewards. This guidance presents information on how to handle situations that may arise and offers advice about such issues as funding and liability.

The guidance was prepared in consultation with the U.S. Department of Justice and the U.S. Department of Education and will be periodically updated to reflect new scientific information or new statutory and program guidelines.

II. DEFINITIONS OF DISABILITY AND OF OTHER SPECIAL DIETARY NEEDS

A. DISABILITY

Rehabilitation Act of 1973 and the *Americans with Disabilities Act*

Under Section 504 of the *Rehabilitation Act of* 1973, and the *Americans with Disabilities Act* (ADA) of 1990, a "person with a disability" means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

The term "physical or mental impairment" includes many diseases and conditions, a few of which may be:

· orthopedic, visual, speech, and hearing impairments;

· cerebral palsy;

· epilepsy;

· muscular dystrophy;

· multiple sclerosis;

· cancer;

· heart disease;

· metabolic diseases, such as diabetes or phenylketonuria (PKU);

· food anaphylaxis (severe food allergy);

· mental retardation;

· emotional illness;

· drug addiction and alcoholism;

· specific learning disabilities;

· HIV disease; and tuberculosis.

Please refer to the Acts noted above for a more detailed explanation. Major life activities covered by this definition include caring for one's self, eating, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Individuals with Disabilities Education Act

The term child with a "disability" under Part B of the Individuals *with Disabilities Education Act* (IDEA) means a child evaluated in accordance with IDEA as having one or more of the recognized thirteen disability categories and who, by reason thereof, needs special education and related services.

IDEA recognizes thirteen disability categories which establish a child's need for special education and related services. These disabilities include:

· autism;

· deaf-blindness;

· deafness or other hearing impairments;

· mental retardation;

· orthopedic impairments;

· other health impairments due to chronic or acute health problems, such as asthma, diabetes, nephritis, sickle cell anemia, a heart condition, epilepsy, rheumatic fever, hemophilia, leukemia, lead poisoning, tuberculosis;

· emotional disturbance;

· specific learning disabilities;

· speech or language impairment;
· traumatic brain injury; and

· visual impairment; including blindness which adversely affects a child's educational performance, and

· multiple disabilities.

Attention deficit disorder or attention deficit hyperactivity disorder may fall under one of the thirteen categories. Classification depends upon the particular characteristics associated with the disorder and how the condition manifests itself in the student, which will determine the category.

The Individualized Education Program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with the IDEA and its implementing 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 child with a disability covered under the IDEA.

NOTE: Some states supplement the IEP with a written statement specifically designed to address a student's nutritional needs. Other states employ a "Health Care Plan" to address the nutritional needs of their students. For ease of reference, the term "IEP" is used to reflect the IEP as well as any written statement designating the required nutrition services.

When nutrition services are required under a child's IEP, school officials need to make sure that school food service staff is involved early on in decisions regarding special meals.

Physician's Statement for Children with Disabilities

USDA regulations 7 CFR Part 15b require substitutions or modifications in school meals for children whose disabilities restrict their diets. A child with a disability must be provided substitutions in foods when that need is supported by a statement signed by a licensed physician. The physician's statement must identify:

- the child's disability;
- an explanation of why the disability restricts the child's diet;
- the major life activity affected by the disability;
- the food or foods to be omitted from the child's diet, and the food or choice of foods that must be substituted.

In Cases of Food Allergy

Generally, children with food allergies or intolerances do not have a disability as defined under either Section 504 of the Rehabilitation Act or Part B of IDEA, and the school food service may, but is not required to, make food substitutions for them.

However, when in the licensed physician's assessment, food allergies may result in severe, life-threatening (anaphylactic) reactions, the child's condition would meet the definition of "disability," and the substitutions prescribed by the licensed physician must be made.

B. OTHER SPECIAL DIETARY NEEDS

The school food service may make food substitutions, at their discretion, for individual children who do not have a disability, but who are medically certified as having a special medical or dietary need.

Such determinations are only made on a case-by-case basis. This provision covers those children who have food intolerances or allergies but do not have life-threatening reactions (anaphylactic reactions) when exposed to the food(s) to which they have problems.

Medical Statement for Children with Special Dietary Needs

Each special dietary request must be supported by a statement, which explains the food substitution that is requested. It must be signed by a recognized medical authority.

The medical statement must include:

- an identification of the medical or other special dietary condition which restricts the child's diet;
- the food or foods to be omitted from the child's diet; and
- the food or choice of foods to be substituted.

III. SCHOOL ISSUES

The school food service, like the other programs in the school, is responsible for ensuring that its benefits (meals) are made available to all children, including children with disabilities. This raises questions in a number of areas:

A. What are the responsibilities of the school food service?

B. Where can additional funds be obtained?

C. Who can provide more information and technical assistance?

SCHOOL FOOD SERVICE RESPONSIBILITIES

- School food service staff must make food substitutions or modifications for students with disabilities.

- Substitutions or modifications for children with disabilities must be based on a prescription written by a licensed physician.

- The school food service is encouraged, but not required, to provide food substitutions or modifications for children without disabilities with medically certified special dietary needs who are unable to eat
- regular meals as prepared.

- Substitutions for children without disabilities, with medically certified special dietary needs must be based on a statement by a recognized medical authority.

- Under no circumstances are school food service staff to revise or change a diet prescription or medical order.

- For USDA's basic guidelines on meal substitutions and accessibility, see FNS Instruction *783-2,* Revision *2, Meal Substitutions for Medical or Other Special Dietary Reasons,* in **Appendix** A.

- It is important that all recommendations for accommodations or changes to existing diet orders be documented in writing to protect the school and minimize misunderstandings. Schools should retain copies of special, non-meal pattern diets on file for reviews.

- The diet orders do not need to be renewed on a yearly basis; however schools are encouraged to ensure that the diet orders reflect the current dietary needs of the child.

Providing Special Meals to Children with Disabilities

The school food service is required to offer special meals, at no additional cost, to children whose disability restricts their diet as defined in USDA's nondiscrimination regulations, 7 CFR Part 15b.

- If a child's IEP includes a nutrition component, the school should ensure that school food service managers are involved early on in decisions regarding special meals or modifications.

- The school food service is not required to provide meal services to children with disabilities when the meal service is not normally available to the general student body, unless a meal service is required under the child's IEP.

For example, if a school breakfast program is not offered, the school food service is not required to provide breakfast to the child with a disability, unless this is specified in the child's IEP.

However, if a student is receiving special education and has an IEP, and the IEP indicates that the child needs to be served breakfast at school, then the school is required to provide this meal to the child and may choose to have the school food service handle the responsibility. This is discussed in more detail in *Section V,* under Situation 2.

Menu Modifications for Children with Disabilities

Children with disabilities who require changes to the basic meal (such as special supplements or substitutions) are required to provide documentation with accompanying instructions from a licensed physician.

This is required to ensure that the modified meal is reimbursable, and to ensure that any meal modifications meet nutrition standards which are medically appropriate for the child.

Texture Modifications for Children with Disabilities

For children with disabilities who only require modifications in texture (such as chopped, ground or pureed foods), a licensed physician's written instructions indicating the appropriate food texture is recommended, but not required.

However, the State agency or school food authority may apply stricter guidelines, and require that the school keep on file a licensed physician's statement concerning needed modifications in food texture.

- In order to minimize the chance of misunderstandings, it is recommended that the school food service, at a minimum, maintain written instructions or guidance from a licensed physician regarding the texture modifications to be made. For children receiving special education, the texture modification should be included in the IEP.

- School food service staff must follow the instructions that have been prescribed by the licensed physician.

Serving the Special Dietary Needs of Children Without Disabilities

Children without disabilities, but with special dietary needs requiring food substitutions or modifications, may request that the school food service meet their special nutrition needs.

- The school food authority will decide these situations on a case-by-case basis. Documentation with accompanying information must be provided by a recognized medical authority.

- While school food authorities are encouraged to consult with recognized medical authorities, where appropriate, schools are not required to make modifications to meals based on food choices of a family or child regarding a healthful diet.

B. FUNDING SOURCES

Price of Meals

Meals must be served free or at a reduced price (a maximum of 40 cents for lunch and 30 cents for breakfast) to children who qualify for these benefits regardless of whether or not they have a disability.

Schools may not charge children with disabilities or with certified special dietary needs who require food substitutions or modifications more than they charge other children for program meals or snacks.

Incurring Additional Expenses

In most cases, children with disabilities can be accommodated with little extra expense or involvement. If additional expenses are incurred in providing food substitutions or modifications for children with special needs, generally the school food authority should be able to absorb the cost of making meal modifications or paying for the services of a registered dietician.

However, when the school food service has difficulty covering the additional cost, there are several alternative sources of funding which school food service managers, school administrators, parents or guardians, and teachers may consider. These sources include the school district's general fund and the additional funding sources listed below.

Any additional funding received by school food services for costs incurred in providing special meals must accrue to the nonprofit school food service account.

Directions for Using Medical Statement Forms

When a foodservice manager is asked to make a menu substitution for a student, it is the responsibility of the parent/guardian making the request to submit a properly filled out and documented medical statement form.

To assist foodservice managers in this process, staff of the School Nutrition Training and Programs Unit of the Michigan Department of Education, has developed Medical Statement Forms.

Two forms are available for use when special food substitutions are requested for a student. For a student with a handicap, the “Medical Statement for Student ***With*** a Disability” should be used. For a student without a handicap, the “Medical Statement for Student ***Without*** a Disability” should be used.

Please contact a School Meals Consultant at 517-373-3347 if any additional information is needed.

Michigan Department of Education
Office of School Support Services

REQUEST FOR SPECIAL DIETARY NEEDS ACCOMMODATIONS

The information on this form should be updated as necessary to reflect the current needs of the participant.

1. School/Agency Name:	**2. Site Name:**	**3. Site Telephone:**
4. Name of Participant/Student:		**5. Participant Age:**
6. Name of Parent/Guardian:		**7. Parent/Guardian Telephone:**

8. Check One:

☐ Participant has a disability or a medical condition and *requires* a special meal or accommodation. (Refer to instructions on reverse side of this form.) Schools and agencies participating in federal nutrition programs must comply with requests for special meals and any adaptive equipment. **A licensed physician currently managing the disability care of this participant/student must sign this form.**

☐ Participant *does not have a disability*, but is requesting a special meal or accommodation due to food intolerance(s) or other medical reasons. Food preferences are not an appropriate use of this form. Schools and agencies participating in federal nutrition programs are not required to make accommodations when there is not a documented disability but may make accommodations for reasonable requests at their discretion. **A licensed physician, physician's assistant, registered dietitian, or nurse practitioner must sign this form.**

☐ Participant does not have a disability, but is requesting a special accommodation for a **fluid milk substitute** that meets the USDA nutrient standards for non-dairy beverages offered as milk substitutes. Granting the request of a non-dairy milk substitute is at the discretion of the facility.
Product Name: _____ **Meets Requirements?** ☐ Yes ☐ No ☐ Unsure
Reason for request: _____ Please skip to #15.
A licensed physician, physician's assistant, registered dietitian, nurse practitioner, or parent/guardian may sign this form.

9. Disability or medical condition requiring a special meal or accommodation:

10. If participant has a disability, provide a brief description of participant's major life activity affected by the disability:

11. Diet prescription and/or accommodation: (*describe in detail to ensure proper implementation-attach additional pages as needed*)

12. Foods to be omitted and substitutions: (*list specific foods to be omitted and suggested substitutions - attach additional pages as needed.*)

Food(s) To Be Omitted:	**Suggested Substitution(s):**

13. Indicate texture:
☐ Regular ☐ Chopped ☐ Ground ☐ Pureed

14. Adaptive Equipment:

15. Signature of Parent/Guardian:	**16. Printed Name:**	**17. Date:**	
18. Signature of Medical Authority:	**19. Printed Name with credentials:**	**20. Telephone:**	**21. Date:**

Michigan Department of Education
Office of School Support Services

REQUEST FOR SPECIAL MEALS AND/OR ACCOMMODATIONS INSTRUCTIONS

1. **School/Agency Name:** Print the name of the school or agency that is providing the form to the parent.
2. **Site Name:** Print the name of the site where meals will be served (e.g., XYZ school, XYZ child care center, XYZ family day care home, etc.)
3. **Site Telephone:** The telephone number of site where meal will be served. See #2.
4. **Name of Participant/Student:** Print the name of the child or adult participant to whom the information pertains.
5. **Participant Age:** Print the age of the participant. For infants, please use Date of Birth.
6. **Name of Parent/Guardian:** Print the name of the person requesting the participant's medical statement.
7. **Parent/Guardian Telephone:** Print the telephone number of parent or guardian.
8. **Check One:** Check a box (☐) to indicate whether participant has a disability, does not have a disability or does not have a disability but is requesting special accommodation for fluid milk substitution.
9. **Disability or medical condition requiring a special meal or accommodation:** Describe the medical condition that requires a special meal or accommodation (e.g., juvenile diabetes, allergy to peanuts, etc.)
10. **If participant has a disability, provide a brief description of participant's major life activity affected by the disability:** Describe how the physical or medical condition affects the participant. For example: "Allergy to peanuts causes a life-threatening reaction."
11. **Diet prescription and/or accommodation:** Describe a specific diet or accommodation that has been prescribed by a physician or describe diet modification requested for a non-disabling condition. For example: "All foods must be either in liquid or pureed form. Participant cannot consume any solid foods."
12. **Food(s) to be omitted and suggested substitution(s):** List specific foods that must be omitted. For example, "exclude fluid milk." List specific foods to include in the diet. For example, "Nutritionally equivalent nondairy beverage."
13. **Indicate texture:** Check a box (☐) to indicate the type of texture of food that is required. If the participant does not need any modification, check "Regular."
14. **Adaptive Equipment:** Describe specific equipment required to assist the participant with dining. Examples may include: sippy cup, large handled spoon, wheel-chair accessible furniture, etc.
15. **Signature of Parent/Guardian:** Signature of parent/guardian requesting the accommodation.
16. **Printed Name:** Print name of parent/guardian completing form.
17. **Date:** Date parent/guardian signed form.
18. **Signature of Medical Authority:** Signature of medical authority requesting the special meal or accommodation.
19. **Printed Name with credentials:** Print name of medical authority, including credentials.
20. **Telephone:** Telephone number of medical authority.
21. **Date:** Date medical authority signed form.

The American with Disabilities Act Amendment Act defines a "disability," in part, as a physical or mental impairment that substantially limits a major life activity or major bodily function of an individual. (For additional information on the definition of disability, please refer to Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act Amendments Act of 2008). Information regarding the ADAAA, which expanded the definition of disability, can be found at: http://www.law.georgetown.edu/archiveada/documents/ComparisonofADAandADAAA.pdf

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If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at http: //www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.Individuals who are deaf, hard of hearing 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.

Fluid Milk Substitutions in the Child Nutrition Programs

Non-Dairy Beverages Meeting United States Department of Agriculture Substitution Criteria per Eight Fluid Ounces

Nutrients	**USDA Criteria per 8 Fluid Ounces**	*8th Continent* **Original Soymilk**	*8th Continent* **Light Chocolate Soymilk**	*8th Continent* **Vanilla Soymilk**	*Pacific* **All Natural Ultra Soy Original**	*Pacific* **All Natural Ultra Soy Vanilla**	*Kikkoman* **Pearl Organic Soymilk Smart Original**	*Kikkoman* **Pearl Organic Soymilk Smart Creamy Vanilla**
Calcium (mg)	276	300	300	300	300	300	300	350
Protein (g)	8	8	8	8	10	10	8	9
Vitamin A (IU)	500	500	500	500	500	500	500	500
Vitamin D (IU)	100	100	100	100	100	100	100	120
Magnesium (mg)	24	24	24	24	60	60	24	80
Phosphorus (mg)	222	250	300	250	250	250	250	400
Potassium (mg)	349	360	440	460	460	460	350	410
Riboflavin (mg)	0.44	0.51	0.51	0.51	0.51	0.51	0.51	0.765
Vitamin B12 (mcg)	1.1	1.2	1.2	1.2	1.5	1.5	1.2	1.5
Packaging		8, 32 or 64 fl. oz. carton	8 oz. carton only	32 fl. oz. carton	32 fl. oz. carton	32 fl. oz. carton	8.25 fl. oz. single-serve size	8.25 fl. oz. single-serve size

Breast milk and Lactose-free milk (such as Lactaid) are nutritionally equivalent.

***The Michigan Department of Education does not endorse the companies or products listed. This chart is for informational purposes only. Contact the product manufacturer at the time of purchase to ensure product formulations have not changed.**

Nutrients	USDA Criteria per 8 Fluid Ounces	*Kikkoman* **Pearl Organic Soymilk Smart Chocolate**	*Walmart Great Value* **Original Soymilk**	*Sunrich Naturals* **Original Soymilk**	*Sunrich Naturals* **Vanilla Soymilk**	*Sunrich Naturals* **Organic Vanilla Soymilk**	*Silk* **Original Soymilk**	*Kirkland Signature* **Organic Soymilk Plain**
Calcium (mg)	276	400	300	300	300	300	450	300
Protein (g)	8	8	8	8	8	8	8	8
Vitamin A (IU)	500	500	500	500	500	500	500	500
Vitamin D (IU)	100	120	120	100	100	100	120	120
Magnesium (mg)	24	100	40	40	40	40	60	40
Phosphorus (mg)	222	450	250	250	250	228	250	250
Potassium (mg)	349	550	360	360	360	360	370	360
Riboflavin (mg)	0.44	0.765	0.51	0.425	0.425	0.45	0.51	0.51
Vitamin B12 (mcg)	1.1	1.5	3	1.2	1.2	1.1	3	3
Packaging		8.25 fl. oz. single-serve size	64 fl. oz. carton	8 fl. oz. carton	8 fl. oz. carton	32 fl. oz. carton	32 or 64 fl. oz. carton	32 fl. oz. carton

Breast milk and Lactose-free milk (such as Lactaid) are nutritionally equivalent. *The Michigan Department of Education does not endorse the companies or products listed. This chart is for informational purposes only. Contact the product manufacturer at the time of purchase to ensure product formulations have not changed.

9/2014

United States Department of Agriculture

Food and Nutrition Service

3101 Park Center Drive

Alexandria, VA 22302-1500

DATE: November 12, 2009

MEMO CODE: SP 07-2010 CACFP 04-2010 SFSP 05-2010

SUBJECT: Q&As: Milk Substitution for Children with Medical or Special Dietary Needs (Non-Disability)

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Special Nutrition Programs
All States

This memorandum replaces SP 35-2009: Q&As Milk Substitution for Children with Medical or Special Dietary Needs, dated August 13, 2009. We have attached the complete set of questions and answers and highlighted the three additions.

Schools have the option to offer a nondairy milk substitute to a student with a medical or special dietary need other than a disability. The final rule *Fluid Milk Substitutions in the School Nutrition Programs* (73 FR 52903, September 12, 2008) addresses the substitution of fluid milk for children whose non-disabling allergies, culture, religion, or ethical beliefs preclude the consumption of cow's milk. The final rule sets nutrition standards for the nondairy milk substitutes that may be offered as part of the reimbursable meal. The attached Questions and Answers clarify various issues concerning the substitution of fluid milk in non-disability cases.

Note that this final rule does not apply in cases of disability. For a student with a recognized disability who cannot consume cow's milk, the school must omit or substitute fluid milk based on the written statement from a licensed physician.

Please distribute this information to your school food authorities as soon as possible. State agencies should contact their regional office if they have any questions.

Original Signed

Cynthia Long
Director
Child Nutrition Division

Attachment

Q&As: Fluid Milk Substitutions in the School Nutrition Programs

(Final rule published September 12, 2008; 73 FR 52903)

1. What are the main changes prompted by the final rule?

The most significant changes made by the final rule are:

- Allows parents/guardians to request a fluid milk substitute for a child with medical or special dietary needs other than a disability
- Establishes nutrient standards for nondairy beverages offered as fluid milk substitutes in the school meal programs

2. Does the final fluid milk substitution rule apply to the NSLP, SBP, afterschool snack service, and the seamless summer option?

Yes, the milk substitution provision is applicable to all institutions participating in these school meals programs. If a school or institution chooses to offer a milk substitute for a child with a medical or special dietary need other than a disability, the nondairy product that is offered as part of the reimbursable meal must meet the nutrient standards established by the final rule.

3. Does the final fluid milk substitution rule apply to the Special Milk Program (SMP)?

Yes. Although the final milk substitution rule does not specifically refer to the SMP, we are extending the final rule to this Program. We want to ensure that school-age children who cannot consume cow's milk due to a medical or special dietary need have access to a nondairy beverage that supplies the important nutrients found in cow's milk. Therefore, if an SMP operator decides to offer a milk substitute to a child with a medical or special dietary need other than a disability, the program operators must provide a nondairy beverage that meets the nutrition standards in the final rule in order to receive Federal reimbursement. Juice, water, or other beverages no longer qualify as a milk substitute and no reimbursement will be provided for them as an alternate beverage.

4. Does the final milk substitution rule apply to the Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP)?

No. Section 9(a)(2)(B) of the NSLA only addresses the substitution of milk in the school meals programs.

5. If a school is operating a preschool or summer program and claiming meals under CACFP or SFSP, may the school follow the milk substitution rule?

Yes. Schools that participate in CACFP or SFSP may follow the milk substitution rule.

6. Is a meal without fluid milk or an acceptable milk substitute reimbursable?

Under Offer v. Serve (OvS), a meal without fluid milk is reimbursable. If there is no OvS, a reimbursable meal must include milk or an acceptable milk substitute as described in this rule, except for a student with a disability (in which case this rule does not apply because the school must follow the licensed physician's written statement).

7. Must the school offer a milk substitute for a child with a medical or special dietary need at the request of a medical authority or a parent?

No, a school has discretion to offer a milk substitute as part of the reimbursable meal to a child with a medical or special dietary need other than a disability. However, FNS is concerned about the ability of children making this request to obtain the key nutrients found in fluid milk through school meals programs. We encourage schools to try to meet the dietary needs of these children by offering a nondairy beverage that meets the requirements of the final rule. If the school chooses to do so, it must accept a written request from a medical authority (as defined by the State) or a parent/legal guardian.

8. Must a school comply with a statement from a licensed physician or a medical authority indicating that a specific beverage (e.g., juice) must be provided in place of milk to a child with a medical or special dietary need other than a disability?

No, a school needs to comply with a statement from a licensed physician only when a milk substitution is necessary due to a disability. When the milk substitution request is due to a medical or special dietary need other than a disability, the school chooses whether to accommodate the student and selects the nondairy beverage(s) in accordance with the final milk substitution rule.

9. If a school chooses to offer milk substitutes for children with medical or special dietary needs, may it only accept written requests from medical authorities?

No, the school does not have the option to refuse a parent's request. Section 9(a)(2)(B) of the NSLA and program regulations at 7 CFR 210.10(g)(2)(ii)(B) allow a statement from a parent/guardian, as well as a medical authority.

10. What type of documentation must be submitted to the school to request a milk substitute for a child with a medical or special dietary need other than a disability?

The written request from the medical authority or the parent/guardian must identify the student's medical or other special dietary need that precludes the consumption of cow's milk. No other information is required.

11. Do the regulations prohibit a school food service operation from offering children with medical or special dietary needs a milk substitute that does not meet the nutrient standards in this rule?

The final milk substitution rule addresses the substitution of milk as part of the reimbursable school meal. However, if a meal includes a milk substitute that does not meet the requirements of this rule (e.g., juice) no reimbursement would be provided for that meal.

12. Is it necessary to offer a choice of acceptable milk substitutes?

No, a school may offer one or more acceptable milk substitutes for children with medical or special dietary needs.

13. What are the acceptable reasons for requesting a milk substitute for a student who does not have a recognized disability?

Section 9(a)(2)(B) of the National School Lunch Act does not specify the medical or special dietary needs that are covered by the milk substitution provision. Any reasonable request could be accepted. For example, a request due to a milk allergy, vegan diet, as well as religious, cultural or ethical reasons would be acceptable and could be accommodated. If a request only states that a child does not like milk, the student can be offered flavored milk instead of a milk substitute that meets the requirements of this rule.

14. Should lactose-free milk always be the substitute for a non-disabled student with lactose intolerance, even if the written statement indicates that water or juice should be provided?

Water or juice can no longer be offered as a fluid milk substitute for a student with medical or special dietary needs. For practical reasons, lactose-free milk should be the first choice for a student who has lactose intolerance. Lactose-free milk provides the same key nutrients found in regular cow's milk and is readily available nationwide. Furthermore, FNS allows lactose-free milk to be provided as part of the reimbursable meal without documentation. A nondairy beverage meeting the requirements of the final milk substitution rule could also be offered, but it is not necessary.

15. Is water an allowable substitute for milk and does it need to be fortified?

Water is not considered an acceptable substitute for fluid milk. Only a beverage meeting the nutrient standards at levels specified in the final rule may be substituted for fluid milk. (See also question 18)

16. May a school decline to offer an acceptable milk substitute to children with medical or special dietary needs, other than disabilities, due to cost?

Yes, a school has the choice to accommodate a milk substitution request from a child with medical or special dietary needs other than a disability. However, the NSLP and SBP seek to safeguard the well-being of all children, including those with special needs. We believe that accommodating the medical or special dietary needs of children helps to maintain student participation in the school meals programs. Because milk substitution requests are granted on a case-by-case basis and a school selects the acceptable nondairy beverage(s), we anticipate that in most cases the substitution could be accommodated without undue financial hardship. However, in some situations, cost may be a legitimate reason for declining to offer a milk substitute to a child with a medical or special dietary need.

17. May a school claim a meal that includes four food components (other than fluid milk) and beverage brought from home, as indicated by a medical authority or a licensed physician?

Under OvS, a meal without fluid milk can be reimbursable. If there is no OvS, a reimbursable meal for a child with a medical or special dietary need must include milk or an acceptable milk substitute provided by the school as part of a reimbursable meal. If the school does not offer an acceptable milk substitute for students without disabilities, the student has to take the fluid milk for the meal to be reimbursable.

If the student has a disability, the school can omit or substitute fluid milk based on the written statement from a licensed physician. For a student with a recognized disability, the meal may consist of only four components and a beverage from home, if so prescribed by a licensed physician.

18. Does a school have to accept milk substitution requests even if it is not offering a milk substitution for children with medical or special dietary needs?

If a school has decided not to offer a milk substitution for students with medical or special dietary needs, it should communicate this decision to all households at the beginning of the school year to minimize the number of written requests. We do not expect schools to keep documentation of non-disability milk substitution requests that are not being implemented.

19. Can an SFA continue to honor milk substitution requests for children without disabilities that were approved prior to this final rule and, thus, offer juice in place of fluid milk?

No. In SY 2008-2009, FNS temporarily allowed SFAs to honor accommodations granted under previous meal variation regulations because at that time there were no acceptable milk substitutes in the market. We understand that some acceptable products are currently available. Therefore, beginning in SY 2009-2010, SFAs that wish to offer a milk substitute for a student with a medical or special dietary need other than a disability must offer a beverage that meets the nutrient standards established in the final rule. This rule does not restrict the ability of schools to continue offering lactose-free milk as part of the reimbursable meal for children who have lactose intolerance.

20. How can a school determine what products meet the requirements of this final rule?

Because the Nutrition Facts Label nutrition label on food products does not list all the required nutrients (see below), the food service operation needs to request documentation from the product manufacturer to confirm the presence of all required nutrients at the proper level. The State Agency can provide guidance or assist with product selection.

Milk Substitute Nutrition Standards

Nutrient	Per Cup
Calcium	276 mg
Protein	8 g
Vitamin A	500 IU
Vitamin D	100 IU
Magnesium	24 mg
Phosphorus	222 mg
Potassium	349 mg
Riboflavin	.44 mg
Vitamin B-12	1.1 mcg

21. Does USDA maintain a list of acceptable products?

No, school food authorities (SFAs) are responsible for selecting and purchasing food products to be offered as part of the school meals programs. USDA does not evaluate, approve, or endorse any nondairy beverage intended to be offered as a milk substitute. We understand that availability of products meeting the nutrient standards in this rule varies across the country. SFAs may want to seek help from their State Agency to identify acceptable products or potential manufacturers.

22. Are the milk substitution requirements for the NSLP and the WIC food package the same?

Yes, the required nutrient standards are the same. Other requirements in the milk substitution rule, such as the written substitution request, do not apply to WIC.

23. Is FNS Instruction 783-2, Rev. 2, *Meal Substitutions for Medical or Other Special Dietary Reasons* still valid?

Yes, this Instruction, issued on October 14, 1994, is still current and applies to meal variations for children with and without disabilities. The final milk substitution rule establishes additional requirements that only apply to fluid milk substitution for children without disabilities.

24. May a school serve organic milk or milk with a label indicating it was produced from cows not treated with hormones?

Yes. Schools may routinely offer all students organic milk or milk with a label indicating it was produced from cows not treated with hormones. The requirement is for fluid milk, and milk labeled in this manner would meet the requirement.

25. Must a school honor a request to substitute milk with organic milk or milk with a label indicating it was produced from cows not treated with hormones?

No, the choice to purchase milk labeled in this manner is at the discretion of the school.