MEMORANDUM

TO: Child Nutrition Directors
    Public Schools
    Private Schools
    RCCI's
    Special Milk Sponsors

FROM: June Barrett, Program Coordinator
       Child Nutrition Programs

Date: May 29, 2015

RE: Guidance on Prohibition of Separation by Gender during Child Nutrition Program Meal Service

The attached memorandum SP 31-2015, CACFP 12-2015, SFSP 14-2015 reviews the prohibition on gender separation during the Child Nutrition Program meal service and explains the possible circumstances that would be permissible. This memorandum supersedes the previously rescinded guidance SP 32-2012, CACFP 16-2012, SFSP 12-2012. In most cases, separating children based on gender during Child Nutrition Program meal service is strictly prohibited.

Co-educational schools and school-based sites can apply for an exception to the prohibition on gender-separated meal service if this is inconsistent with the institution’s religious tenets. Other institutions and organizations may apply for exemption to the prohibition of gender-separated meal service in these circumstances:

- Meal service at religious institutions operating under the dictates of the religion with which they are affiliated.
- Meal service at juvenile correctional facilities where combining members of the opposite gender would present a potential safety risk.
- Meal service at facilities that fully separate by gender as part of their normal operation.

One of the reasons listed above and an explanation of the necessity of gender-separated meal service must be expressed in order to receive approval from the State agency. No other reasons are acceptable for approval.

Please review attached memos thoroughly for additional guidance. If you have any questions concerning this correspondence, please contact the School Program Staff at 334-242-8228. Thank you for your cooperation.

JBB/AB/JR

Attachment:
SP 31-2015
DATE: March 20, 2015


SUBJECT: Guidance on Prohibition of Separation by Gender during Child Nutrition Program Meal Service

TO: Regional Administrators
   Deputy Regional Administrators
   Regional Civil Rights Directors
   Regional Directors
   Special Nutrition Programs
   All Regions

   State Directors
   Child Nutrition Programs
   All States

Background

This memorandum explains the prohibition on separation by gender during Child Nutrition Program meal service and outlines select circumstances under which gender-based separation may be permissible. This memorandum supersedes previously rescinded guidance SP 32-2012, CACFP 16-2012, as well as SFSP 12-2012, “Prohibition of Separation by Gender during Child Nutrition Program Meal Service,” originally issued May 9, 2012.

School food authorities (SFAs), organizations, and institutions impacted by this guidance are those participating in any of the following Child Nutrition Programs: National School Lunch Program; School Breakfast Program; Fresh Fruit and Vegetable Program; Special Milk Program; Child and Adult Care Food Program; and Summer Food Service Program. These include any schools, child or adult care institutions and facilities, camps (including residential facilities), and other sites, as defined in 7 CFR §§ 210.2, 215.2, 225.2, and 226.2, that are providing meal service as a Program activity.

Separation by Gender During Meal Service Prohibited

In general, SFAs, institutions, and organizations participating in the Child Nutrition Programs are not permitted to separate children on any protected basis during the service of Program meals or snacks, in keeping with Federal non-discrimination laws and policies as outlined for the Department of Agriculture (USDA) programs in 7 CFR Parts 15, 15a, and 15b. Federal law prohibits discrimination based on gender at any educational institution receiving Federal assistance.

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Exceptions to the Prohibition on Gender-Separated Meal Service

For co-educational schools and school-based sites:

The Food and Nutrition Service (FNS) recognizes religious exemptions granted by the Department of Education (ED) without prior express approval. ED guidelines allow school and school-based sites to apply for an exemption when Federal law prohibiting gender separation is inconsistent with the institution’s religious tenets. These exemptions apply broadly to operations, including the meal service at a given site, such as a faith-based school.

Additionally, ED guidelines specifically allow for the approval of gender-separate instruction at public primary and secondary non-vocational schools that could take a variety of forms. It is important to emphasize that since the general rule is that gender separation during meal service is prohibited, a co-educational school may not use limited ED approval of gender-separate instruction to justify blanket gender separation during meal service. Limited exemptions in such situations must be expressly approved by FNS.

For other institutions and organizations:

State agencies may approve exemptions allowing separation by gender during a Child Nutrition Program meal service for participating SFAs, organizations, and institutions, without express prior approval from FNS, in the following circumstances:

- Meal service at religious institutions operating under the dictates of the religion with which they are affiliated.
- Meal service at juvenile correctional facilities where combining members of the opposite gender would present a potential safety risk.
- Meal service at facilities that fully separate by gender as part of their normal operations (for example, gender-separated summer camps).

When requesting an exemption, the Child Nutrition Program operator must specify which of the above listed reasons apply and why separation by gender is necessary. State agencies must document all exemption requests, including the date of approval or disapproval, and if applicable, the duration of the approval. We recommend that exemption approvals are documented in the agreement between the Program operator and the State agency.

The above listed exemptions are the only acceptable bases for gender separation during Child Nutrition Program meal service. Any gender separation not based on the ED and/or FNS approval processes is strictly prohibited.

On a case by case basis, situations that do not clearly fit into any of the exemptions outlined above may be considered by the State agency in direct consultation with the FNS Regional Office, including the FNS Civil Rights Office and appropriate FNS National Office Child Nutrition Program staff.
State agencies are reminded to distribute this memorandum to Program operators immediately. Program operators should direct any questions concerning this guidance to their State agency. State agencies with questions should contact the appropriate FNS Regional Office.

Angela Kline
Director
Policy and Program Development Division
Child Nutrition Programs

for
David Youngblood
Director
Civil Rights Division
Food and Nutrition Service