fi6 Rd

United States Department of Agriculture

Food and Nutrition Service

Mountain Plains Region

1244 Speer Boulevard
Denver, CO 80204

MAY 09 1994

Reply to Attn. of: SP-94-68
CACFP-392
SFSP-232

Subject: Civil Rights Complaint Procedures

To: STATE AGENCY DIRECTORS (Special Nutrition Programs) - Colorado ED, Colorado DH, Colorado SS, Iowa, Kansas, Missouri ED, Missouri DH, Montana OPI, Montana DHES, Nebraska ED, Nebraska SS, North Dakota, South Dakota, Utah, Wyoming ED, and Wyoming DHSS

Civil Rights Instructions 113-4, 113-6, and 113-8 were issued in the early 1980s and do not address current complaint procedures of discrimination. Attached for your information and clarification are guidelines on the processing of various Civil Rights complaints.

The Mountain Plains Civil Rights/Equal Employment Opportunity Office has ultimate responsibility for processing complaints of discrimination. All discrimination complaints for race, color, national origin, or age must be sent to the Regional Office (RO) for processing. State Agencies (SA) have the option to process complaints based on sex or disability discrimination. If a SA plans to exercise this option, written procedures must be submitted to the RO for approval to ensure due process rights are protected. Also, the SA must provide training for personnel responsible for processing these complaints.

If you have any questions, please contact Evelyn Stafford at (303) 844-0307 or a member of my staff.

Ann C. DeGroat

ANN C. DEGROAT
Regional Director
Special Nutrition Programs

cc: Evelyn Stafford

Attachment

SPECIAL NUTRITION, FOOD DISTRIBUTION AND WIC PROGRAMS

CIVIL RIGHTS COMPLAINT PROCESSING SYSTEMS FOR STATE AGENCIES

Background

The Food and Nutrition Service (FNS) administers food assistance programs for eligible program participants while providing the appropriate mechanisms to ensure equal opportunity in the provision of benefits and services. Various civil rights laws and regulations provide for protection against program discrimination on the basis of race, color, national origin, age, sex and disability.

One of the mechanisms where these protections are offered, is the Civil Rights Complaint process. The FNS Civil Rights Division (FNSCRD) is responsible for managing the civil rights complaint process and overseeing all of the activities to provide for due process and equal opportunity. Title VI of the Civil Rights Act of 1964, Section 603 on Judicial Review, provides for due process. It establishes that any department or agency action taken in accordance with the provisions of Title VI is subject to judicial review. Federal processing of complaints is the administrative process available prior to judicial review. The CRD and Regional Civil Rights Directors are responsible for providing all program applicants and participants access to administrative redress.

As part of the USDA regulations implementing Title VI of the Civil Rights Act of 1964, Departmental Regulation 7 CFR 15.6 requires that any person who believes that he/she has been discriminated against, may file a complaint with the Secretary of Agriculture within 180 days of the alleged discrimination. Complaints may also be filed with the Regional Office for Civil Rights.

Purpose

The purpose of these guidelines is to outline civil rights complaint procedures for administering State Agencies (SAs) in coordination with FNS regional office and FNSCRD. The objective in processing allegations of discrimination is to provide a fair and responsive hearing within the mandates of civil rights laws and regulations while making the best possible use of federal and state resources. The process must provide the complainant full due process and for corrective action that remedies any conditions that deny equal opportunity to participate in a federally funded program.
The civil rights laws and regulations under which FNS and SAs will process discrimination complaints are as follow:

- Title VI of the Civil Rights Act of 1964 and USDA Implementing Regulations 7 CFR 15 Subparts A and C which prohibit discrimination based on race, color, and national origin.

- Department of Justice (DOJ) Regulations for the Coordination and Enforcement of Non-discrimination in Federally Assisted Programs under Title VI of the Civil Rights Act of 1964, 28 CFR 42.401 to 42.415.

- Department of Justice Guidelines for the Enforcement of Title VI of the Civil Rights Act of 1964, 28 CFR 50.3.

- Title IX of the Education Amendments of 1972 and USDA Implementing Regulation 7 CFR 15a which prohibit discrimination based on sex. This regulation applies only to education programs or activities.

- Section 504 of the Rehabilitation Act of 1973 and USDA Implementing Regulation 7 CFR 15b which prohibit discrimination based on disability.

- Executive Order 12250 (45 FR 72995, November 4, 1980 (3 CFR, 1980 Compilation, p. 298)), Coordination and Enforcement of Non-discrimination Provision, which empowers the Attorney General to coordinate the implementation and enforcement by executive agencies of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973.

- Age Discrimination Act of 1975 which prohibits discrimination based on age.

- Civil Rights Restoration Act of 1987 which overturns a 1984 Supreme Court decision that has limited the scope of Federal law prohibiting discrimination on the basis of sex, race, age, or mental or physical disability.

- FNS Civil Rights Instruction 113-1, Revision 1, issued May 1982 which delineates the Agency's policy on non-discrimination. The Instruction delegates specific responsibilities within FNS necessary to seek compliance with the relevant civil rights laws and regulations.

Complaint Procedures

All civil rights complaints--written, verbal, and/or anonymous--must be accepted for processing. In the event a complainant makes the allegation verbally or through a telephone conversation and refuses or is not inclined to record the allegation(s) in writing, the person to whom the allegations are made shall write up the issues of the complaint, ensuring that all of the appropriate information is documented in sufficient detail to conduct an inquiry.

Department of Justice Regulations 28 CFR 42.408(c) on complaint procedures requires that where federal agencies allow states to process complaints, federal agencies are required to ascertain whether the SA's procedures for processing complaints are adequate.

Complaints Based on Race, Color, National Origin

Departmental Regulations 7 CFR 15.3 and 15.6 require that no person shall be excluded from participation on the grounds of race, color, or national origin. A complaint must be filed no later that than 180 days from the date of the alleged discrimination. Such complaints shall be promptly referred to the Secretary of Agriculture or the Denver Regional Office for Civil Rights within 5 calendar days of receipt.

There are currently no civil rights policies or instructions which allow for SAs to process complaints filed on the basis of race, color, or national origin.

Complaints Based on Sex Discrimination

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in any educational program or activity receiving Federal financial assistance. Non-discrimination Regulations on the basis of sex, 7 CFR Part 15a(7)(b) allows for SAs to adopt and publish grievance procedures providing for prompt, and equitable resolution of student and employee complaints alleging any discriminatory action which is prohibited by these regulations.

The grievance procedures must incorporate appropriate due process standards to ensure for prompt and equitable resolution. Complaints may be forwarded to FNS for processing in accordance with 7 CFR 15.6.

When a SA elects to process incoming complaints based on sex, all related information shall be forwarded to the FNS Regional Office for Civil Rights within 90 calendar days of receipt.

Discrimination Based on Disability

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of a disability. Implementing Regulations 7 CFR Part 15b(17) provides that no qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving financial assistance from FNS.

These regulations also contain provisions for SAs to process incoming allegations of discrimination based on disability.

The same guidelines as sex discrimination complaint processing apply. All complaint resolutions must be accompanied with a notification to the complainant about their right to appeal the SA's decision with the Office of the Secretary of Agriculture, Washington, D.C. 20250.

Age Discrimination Complaints

All complaints alleging discrimination on the basis of age are to be forwarded to the appropriate FNS regional office by the State agency within 5 working days for referral to the Federal Mediation and Conciliation Service (FMCS).

FNSCRD will ensure that, as required by regulation, the complaints are referred to FMCS within 10 calendar days of receipt by FNS.

If mediation is successful, FMCS will forward a report to FNSCRD so that the case can be closed. If unsuccessful, the complaint will be referred to FNSCRD for processing through the established complaint processing system.

Examples of discrimination may be found in the applicable FNS-113 Civil Rights Instruction.