

ANSWERS TO SITUATIONS IN CIVIL RIGHTS TRAINING PRESENTED TO THE CACFP SPONSORS ASSOCIATION ON SEPTEMBER 18, 2007 IN INDIANAPOLIS, IN

1. SITUATION: Someone complains that she was denied participation in the CACFP because she is a Muslim. Is this a civil rights violation since religion is not a protected class?

ANSWER: A complaint like this would not be handled as a civil rights matter because there would be no basis for citing a civil rights violation. It would, however, be addressed as a program matter because if true, an inappropriate eligibility criterion dealing with religion was applied which served as a barrier to participation. Any complaints that make allegations that are not related to a protected class are referred to the program to be handled as a customer service issue and/or to determine if program rules were violated.

2. SITUATION; Someone who runs a day care center would like to apply for CACFP but doesn't like the idea of opening up enrollment to everyone because some existing customers distrust people not like themselves. Is this allowed?

ANSWER: No. As long as the day care center accepts Federal financial assistance for CACFP or from any other source, it cannot discriminate in any aspect of its operations based on race, color, national origin, age, sex, or disability. Other Federal agencies may have additional protected classes.

3. SITUATION: A sponsor decides to conduct audits of all of the day care centers only in a certain zip code. Are there legitimate business reasons for doing this? Could this be considered discrimination and if so, what kind? Are there other ways to achieve the same result?

ANSWER: There is probably a legitimate business reason such as insuring accountability for doing these audits. By singling out a zip code, however, there might be disparate impact discrimination if the day care homes in that zip code are run primarily by people of the same racial or ethnic group. To overcome charges of discrimination, the agency would have to demonstrate that there is less discriminatory way of achieving the same objective(s) and that the government interest served by the business reasons outweighs any discrimination that might result. It is important to consider the possible impact of policies before they are implemented.

4. SITUATION: A day care center run by a church and operating the CACFP only admits children who are of the faith served by the church and requires children to say a prayer before the meal. Are there any civil rights problems here, and if so, what?

ANSWER: Since CACFP is authorized under the Richard B. Russell National School Lunch Act, based on the exception in 7 CFR 16.3 (c), there would not be a civil rights problem. Faith based organizations may consider religion in their admissions practices and impose religious attendance.

5. SITUATION: An atheist complains to you that she was not hired by a church run day care center because of her lack of religious beliefs. What should you do?

ANSWER: You really do not have to do anything. Religious institutions are exempt from the Title VII provisions that prohibit discrimination based on religion. If the person wants to complain, refer her to the Equal Employment Opportunity Commission (EEOC). We do not investigate employment discrimination complaints unless the behavior directly impact program delivery.

6. SITUATION: A sponsor develops a computer based training module for civil rights and wants to distribute it to day care centers to train front line staff. Is this acceptable?

ANSWER: Yes. FNS Instruction 113-1 allows lots of flexibility in terms of how training is delivered as long as front line staff and their supervisors are trained annually. It is important to track who is trained to make sure the requirement is met. How training is conducted can range from one-on-one briefings to computer based training to classroom presentations and anything in between. It is important to have provisions for make-up sessions for anyone who misses the training. Computer based training is good in that there are ways to build in tracking systems to insure that everyone completes the training. The drawbacks are a lack of interaction including a lack of ability to share situations and to get questions answered on the spot.

7. SITUATION: The parents of a child refuse to complete the racial ethnic data section of the application. What should the day care provider do?

ANSWER: Explain to the parents that if they refuse to code then you or someone else will code for them based on perception. If they still refuse, check off one box for ethnicity (either Hispanic or Latino or Not Hispanic or Latino) and one race. Unlike applicants or participants who may code multiple races, someone coding for someone else should code only one race.

8. SITUATION: The area served by a day care center has a large ethnic community where many of the people have limited English proficiency. What are some public notification techniques that could be used to reach out to this community?

ANSWER: Establishing contacts with community groups and leaders could be a key way to help build trust. These people could also help spread the word about CACFP to members of the community and might even translate information and help with interpreting. In addition, look for ethnic media outlets, especially newspapers and radio. Especially for smaller groups, the newspapers might be out of state or might be national so do not limit yourselves. Use computer search engines to find sources and contacts. Have materials available in the language spoken by the group and be helpful and accommodating. Learn something about the culture and to the extent possible make the day care center friendly to the group.

9. SITUATION: A day care center wants to move to a bigger space in another part of town. Are there civil rights or public notification issues possibly connected to this?

ANSWER: There may be civil rights issues if there are groups negatively impacted by the move. This is why it is important to solicit input from the community. Things such as public transportation, parking, and other accessibility issues need to be considered. The new space needs to conform to Americans with Disabilities Act (ADA) guidelines. Make sure modifications are agreed to and guaranteed for completion by a certain date BEFORE you sign a lease.

10. SITUATION: Since FNS has not printed new posters, may states design and print their own posters?

ANSWER: No. Unfortunately, USDA does not allow States to design and print their own posters. States may, however, choose to copy and print the existing AD-475C as long as it is the official 11" wide by 17" long. As soon as new posters become available, FNS will advise State agencies about ordering new supplies. It is important that poster ordering procedures be communicated to local providers. Ideally, this information should be available on the State agency's or sponsor's web site. FNS will refer requesters to State agencies. How to order posters should be included in civil rights training for local providers.

11. SITUATION: A CACFP site prints an informational brochure in another language. Since the nondiscrimination statement is very technical and the population is not well educated, it is felt there is no need to include it. It would also take up too much space. Is this correct?

ANSWER: No. The nondiscrimination statement must be on all materials and sources used to inform the public about FNS funded programs such as the CACFP. The nondiscrimination statement would need to be translated into the language used on the brochure. Keep in mind that the short statement may be used if there is no room for the longer statement, but the short statement must be in a font size no smaller than the font used in the rest of the publication. Also, avoid using the short statement on any materials that provide a comprehensive overview of the program or that are intended to advise people about their rights and responsibilities related to the program.

12. SITUATION: A parent who is a chronic complainer is now threatening to file a discrimination complaint because you put her child in the "naughty nook" for misbehaving. What should you do?

ANSWER: If you have procedures for discipline, show them to the parent and make sure you apply the procedures consistently so that children of one race, sex, or national origin are not singled out for punishments for actions where other children are not punished when they do the same thing. Under no circumstances should you try to deter the parent from filing a complaint. Instead, provide the parent with information on how to file a complaint.

13. SITUATION: A parent wants to enroll a disabled child in a day care center. The day care center asks if it can refuse the child admission because it would be too hard to deal with this. What do you respond?

ANSWER: As a rule, except for religious institutions, child care providers may not discriminate against disabled children in enrollment. The Department of Justice has issued extensive guidance on this in the form of Q&A's that are part of the handouts from this session.

14. SITUATION: A reputable charitable organization in your community wants to provide holiday gifts and asks for a list of all of the Hispanic children being served by your organization. How should you respond?

ANSWER: Under no circumstances should the charitable organization, no matter how reputable, be provided with names. First, it would violate privacy and requirements relating to confidentiality of racial/ethnic data. Also, by singling out Hispanic children to receive gifts, this organization is seeking to violate Title VI by discriminating based on national origin since this would impact negatively on other children. By identifying the Hispanic children, the provider would be facilitating discrimination.