

**Language and Disability Access Plan**

March 2025



**Ellen E. Weaver**

*State Superintendent of Education*

# Contents

[Contents 2](#_Toc192161329)

[**Language Access Plan** 4](#_Toc192161330)

[**Procedures** 5](#_Toc192161331)

[Identifying Individuals with LEP and Language Assistance Needs: 5](#_Toc192161332)

[Identifying Qualified Language Assistance Services: 5](#_Toc192161333)

[Obtaining a Qualified Interpreter: 6](#_Toc192161334)

[Use of Family, Friends, and Minor Children as Interpreters of Translators: 7](#_Toc192161335)

[Providing Written Translations: 8](#_Toc192161336)

[Use of Machine Translation Software, Artificial Intelligence, and Other Emerging Technologies for Translation and Interpretation Purposes: 8](#_Toc192161337)

[Providing Notice to Individuals with LEP: 9](#_Toc192161338)

[Recording and Tracking Language Assistance Services: 9](#_Toc192161339)

[Assessing and Monitoring Language Needs and Implementation: 9](#_Toc192161340)

[**DISABILITY ACCESS PLAN AND POLICY** 10](#_Toc192161341)

[Policy 10](#_Toc192161342)

[What is a Disability? 11](#_Toc192161343)

[What is a Preference? 12](#_Toc192161344)

[Section 504/ADA Coordinators 12](#_Toc192161345)

[SFA/LEA Section 504 Coordinators: 12](#_Toc192161346)

[SFA/LEA ADA Coordinators: 13](#_Toc192161347)

[**Procedures** 13](#_Toc192161348)

[Public Notification: 13](#_Toc192161349)

[Procedural Safeguards Under the Procedural Safeguards Requirements: 13](#_Toc192161350)

[**Equally Effective Communication** 14](#_Toc192161351)

[Overview of the ADA Requirements: Effective Communication | ADA.gov 14](#_Toc192161352)

[Auxiliary Aids and Services: 15](#_Toc192161353)

[Effective Communication Provisions: 17](#_Toc192161354)

[Companions with Communication Disabilities: 17](#_Toc192161355)

[Use of Accompanying Adults or Children as Interpreters: 18](#_Toc192161356)

[Who Decides Which Aid or Service Is Needed? 18](#_Toc192161357)

[Limitations: 19](#_Toc192161358)

[**Reasonable Modifications** 19](#_Toc192161359)

[Modifications to the School Meal Service: 20](#_Toc192161360)

[Seamless Summer Option (SSO): 20](#_Toc192161361)

[Service Animals: 21](#_Toc192161362)

[**Wheelchairs, Mobility Aids, and Other Power-Driven Mobility Devices** 23](#_Toc192161363)

[ADA Requirements: Wheelchairs, Mobility Aids, and Other Power-Driven Mobility Devices | ADA.gov 23](#_Toc192161364)

[Wheelchairs 23](#_Toc192161365)

[Other Power-Driven Mobility Devices 23](#_Toc192161366)

[Choice of Device: 24](#_Toc192161367)

[Physical Access to Buildings and Facilities: 24](#_Toc192161368)

[**Websites and Mobile App Access for People with Disabilities** 25](#_Toc192161369)

[Reasonable Modifications and Fundamental Alteration/Undue Burden 25](#_Toc192161370)

[**Recording and Tracking and Monitoring Disability Compliance** 26](#_Toc192161371)

[**Training** 26](#_Toc192161372)

**Language Access Plan**

**The South Carolina Department of Education (SCDE), Office of Health And Nutrition (OHN) and its School Food Authorities/Local Educational Agencies (SFAS/LEAS) must** take reasonable steps to ensure all SFAs provide meaningful access and an equal opportunity to participate in services, activities, programs, and other benefits. Taking these steps will ensure we do not discriminate on the basis of national origin in violation of *Title VI of the Civil Rights Act of 1964*, as amended and federal implementing regulations at [*7 CFR 15*](https://www.ecfr.gov/current/title-7/subtitle-A/part-15)*; 28 CFR 42; and 34 CFR 100.3*. The USDA published additional applicable regulations and guidance at *USDA Departmental Regulation (DR) 4330-002: Nondiscrimination In Programs and Activities Receiving Federal Financial Assistance from USDA (July 27, 2021) (USDA DR 4330-002); USDA DR 4300-003, Equal Opportunity Public Notification Policy (October 2019) (USDA DR 4330-003); USDA Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency, 79 Fed. Reg. 70771 (November 28, 2014) (USDA LEP Guidance); Meaningful Access for Persons with Limited English Proficiency (LEP) in the School Meal Programs: Guidance and Q&As (SP 37-2016); and FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities (FNS Instruction 113-1), Section IX.*

SCDE will ensure meaningful access for individuals with limited English proficiency (LEP), including applicants, participants and their authorized representatives.The policy provides for the translation of vital information and documents using qualified translators. A vital information and documents contain content that impact an individual’s rights, responsibilities, or access to important benefits or services, including meal application forms, instructions letters, and any written material related to individual rights. This policy also requires the use of qualified interpreters and qualified bilingual personnel when communicating with individuals with LEP.

All language assistance services, including interpreters, translators, and other aids, will be provided at no cost to participants, and LEP individuals will be informed of this assistance in a language they understand. There will be no discrimination based on language ability in accessing the school meal programs.

*The SCDE-OHN* will conduct a regular review of the language access needs of participants, as well as update and monitor the implementation of this policy and these procedures, as necessary. The current Language Access Coordinator (LAC) responsible for implementing and monitoring this Language Access Plan is:

Carla Garland, Education Associate, Office of Health and Nutrition

Mobile 803-351-0309 - Web [www.ed.sc.gov](https://gcc02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.ed.sc.gov%2F&data=05%7C02%7Cgail.hoffman%40usda.gov%7C04551aa21ae44505686f08dcf52ebc63%7Ced5b36e701ee4ebc867ee03cfa0d4697%7C1%7C0%7C638654829541638186%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=QgTn9yJO9qzscElWsgwx1K1QQSR7akvGWvXQu83R2Ew%3D&reserved=0)

Address 428 Wholesale Lane

West Columbia, SC 29172

cgarland@ed.sc.gov

**Procedures**

***Identifying Individuals with LEP and Language Assistance Needs:***

The SCDE-OHNwill promptly identify the language and communication needs of the LEP person. “I Speak” Cards or language identification tools are readily available to staff across all schools and meal distribution sites.

***Identifying Qualified Language Assistance Services:***

The SCDE-OHN and its subrecipients and contractors must utilize qualified and competent language assistance services when communicating with individuals with LEP. The SCDE-OHN and its subrecipients and contractors reserves the right to examine at any time the qualifications of new interpreters and translator(s) to assess their suitability and to review their qualifications.

**Sample qualification standards for translation contracts:**

The contractor that provides translators services for SCDE-OHN and SFAs/LEAs must ensure translators are available in the required languages and have a minimum of two (2) years of experience in all phases of language translations. Translators must be independently assessed in translation/transcription skills with passing scores (defined as Interagency [Language Roundtable (ILR)](https://www.govtilr.org/) scores of 2+ or equivalent) on language/translation tests administered by the state or federal government or an equivalent qualified professional organization. The contractor accepts current certifications from the following: the [National Association of Judiciary Interpreters and Translators (NAJIT)](https://najit.org/); the [American Translators Association (ATA](https://www.atanet.org/)); and the [Council for the Teaching of Foreign Languages (ACTFL)](https://www.actfl.org/assessments) through its testing branch Language Testing International (LTI).  This list is not exhaustive. See resources on [Language Access Planning | LEP.gov](https://www.lep.gov/language-access-planning).

A qualified translator/transcriber should:

1. Know both English and target language vocabularies typically used in formal, consultative, and casual modes of communication in a social services context, including colloquial slang, idiosyncratic slang, and regionalisms.
2. Know specialized vocabulary (and terminology) in both English and the target language related to the SCDE-OHN’s and SFA/LEA’s varied roles and missions, particularly the SCDE-OHN’s and SFA’s/LEA’s programs which interact consistently with LEP populations.
3. Write in English and the target language fluently including regionalisms and colloquial and idiosyncratic slang without altering meaning.
4. Transcribe or translate in a manner that is factually and conceptually accurate without changes, omissions, or additions.
5. Preserve the tone, sentiment, and emotional character of the materials.

**Sample qualification standards for interpretation contracts:**

The Contractor should supply interpreters in the languages specified by the SCDE-OHN and SFAs/LEAs who have a minimum of two (2) years of experience in all phases of language interpretation. Interpreters must be independently assessed in interpretation skills with passing scores (defined as [ILR](https://www.govtilr.org/) scores of 2+ or equivalent) on language/interpretation tests.  Federal, State or the [National Association of Judiciary Interpreters and Translators (NAJIT) Judiciary Interpreters and Translators Certification Examination (JITCE)](https://najit.org/) certification will be accepted. This list is not exhaustive.

A qualified interpreter should:

1. Be knowledgeable of both English and foreign language vocabularies typically used in formal, consultative, and casual modes of communication in social services contexts, including colloquial slang, idiosyncratic slang, and regionalism.
2. Be knowledgeable of specialized vocabulary (terminology) in both English and the foreign language related to the SCDE-OHN’s and SFA’s/LEA’s varied roles and missions, particularly for the SCDE-OHN’s and SFA’s/LEA’s components with greater interaction with limited English proficient populations.
3. Be able to speak English and foreign language fluently, including regionalisms and colloquial slang without altering meanings, and do so with clear and intelligible pronunciation.
4. Be able to interpret in a manner that is factually and conceptually accurate without changes, omissions, or additions.
5. Be able to preserve the tone, sentiment, and emotional level of the original oral statement.
6. Be able to maintain appropriate speed and projection while rendering interpretation, and request and incorporate clarification of speaker’s statements only when justified.
7. Abide by relevant code of linguist ethics.

***Obtaining a Qualified Interpreter:***

If staff have difficulty securing a qualified interpreter, contact the LAC, Carla Garland, at (803) 734-0518 or (803) 351-0309). She has

1. Maintains an accurate and current list showing the name, language, phone number and hours of availability of bilingual staff. Given the lack of designated bilingual staff at the State Agency, the Language Access Coordinator will establish a relationship(s) with a qualified interpreter or services that will provide reliable access. It is also important to have interpreters ready and available in cases of emergency.
2. Contacts the appropriate qualified bilingual staff member to interpret.
3. Utilizes the contracted telephonic interpreter services.
4. Obtains an outside interpreter (contract or volunteer) if qualified bilingual staff are not available to speak directly in-language with the individual with LEP or a qualified bilingual staff interpreter is not available to interpret.

***Use of Family, Friends, and Minor Children as Interpreters of Translators:***

In many circumstances, family members, especially children, are not competent to provide quality and accurate interpretations, as issues of confidentiality, privacy, or conflict of interest may arise. If an individual with LEP prefers to use a family member, remind the individual with LEP of the availability of qualified interpreters at no cost to them. If the individual with LEP choose to use a friend, or acquaintance as an interpreter, the SCDE-OHN, SFA/LEA, or other subrecipient administering any aspect of the school meal programs, must monitor the communication situation for miscommunication and bias. If detected, SCDE-OHN and its SFAs/LEAs and other subrecipients must secure a qualified interpreter to observe or take control over the interpretation process. Minor children under the age of 18 will **not** be used to interpret to ensure confidentiality of information and accurate communication unless it is a last-resort alternative in an emergency or exigent situation that is not reasonably foreseeable.

The LAC will work with a vendor from the most current state-approved list of vendors for interpreting and translation, providing written and oral language services sited below, upon request:

**Global Interpreting Network**

28546 Constellation Rd., Valencia CA 91355

(866) 397-9288

[Clientservices@globalinterpreting.com](mailto:Clientservices@globalinterpreting.com)

Customer Service, 24/7

Interpretation and Translation

**MasterWord Services, Inc.**

303 Stafford St., Houston, Texas 77079

(346) 907-6499

[gzozaya@masterword.com](mailto:gzozaya@masterword.com)

Graciela Zozaya, 24/7

Interpretation and Translation

**Voiance Language Services, Inc.**

2650 E. Elvira Road, Suite 132, Tucson, ZA 85756

(520) 573-2367

[bmartin@voiance.com](mailto:bmartin@voiance.com)

Bill Martin, 24/7

Interpretation, Translation, and Localization

**Linguistica International, Inc.**

4250 W 5415 S, Kearns, UT 84118

(801) 618-1454

[jordan@linguisticainternational.com](mailto:jordan@linguisticainternational.com)

Jordan Daines, 24/7

Interpretation and Translation

***Providing Written Translations:***

1. The State Agency will take a systematic approach that will identify and prioritize the need to translate vital documents into high demand languages. The SFAs will submit documents for translation to ***Carla Garland, LEP Coordinator.*** Original documents being submitted for translation will be in final, approved form with updated and accurate information.
2. SFAs will provide translation of other written materials, if needed, as well as written notice of the availability of translation services, free of charge, for individuals with LEP.
3. The SFAswill set benchmarks for translation of vital documents into additional languages over time.

***Use of Machine Translation Software, Artificial Intelligence, and Other Emerging Technologies for Translation and Interpretation Purposes:***

SCDE-OHN, SFAs/LEAs and its subrecipients and contractors are committed to providing meaningful access to its programs and services for individuals with limited English proficiency (LEP), especially if machine translation software is utilized in the interest of public convenience. While machine translation software can facilitate access to information, the English language version remains the official source text. Users with questions or concerns regarding machine-generated translations are encouraged to contact designated SCDE OHN representatives.

SCDE-OHN, SFAs/LEAs, subrecipients and contractors acknowledges the importance of ensuring the accuracy, privacy, and ethical handling of information translated or using machine translation, AI, or similar technologies. Compliance with all relevant requirements, including measures for data integrity and confidentiality, is integral to the agency’s approach, ensuring that individuals with LEP receive accurate, reliable, and culturally appropriate information without compromising data security.

In alignment with [USDA guidance to recipients of federal financial assistance](https://www.federalregister.gov/d/2014-27960), SCDE OHN, SFAs/LEAs and subrecipients must employ or contract with qualified human translators for the translation and review of vital documents and other critical information on its websites and digital platforms impacting access to FNS programs and activities. These measures are especially prioritized where accuracy is essential, or where source content includes complex or culturally specific language. Vital documents—defined as paper or electronic materials and information essential for accessing programs or activities—will be translated as necessary to support meaningful access for LEP individuals.

SCDE-OHN, SFAs/LEAs, subrecipients, and contractors understand that displaying a disclaimer on websites regarding the accuracy of translations generated by machine translation software, artificial intelligence, or any other translation technology does not relieve the SCDE-OHN and its subrecipients and contractors of their responsibility to provide access to translated information that is accurate, reliable, and culturally appropriate. In all instances, a disclaimer must not interfere with or create a barrier to the public’s ability to select a language in which to automatically translate information.

SCDE-OHN and SFAs/LEAs will monitor subrecipients’ and contractors' compliance with this policy guidance if using machine translation software, artificial intelligence, and other emerging technologies for translation and interpretation purposes**.**

***Providing Notice to Individuals with LEP:***

***The SCDE-OHN*** will inform SFAs/LEAs, subrecipients, and contractors to provide LEP persons of the availability of language assistance, free of charge, by providing written notice in languages LEP persons will understand.  At a minimum, a multilingual tagline notice (e.g., [Assistance Tagline Translations | Food and Nutrition Service](https://www.fns.usda.gov/cr/assistance-tagline-translations)) must be posted and easily discoverable in a conspicuous location near the top of the home page of the school meal programs at [SCDE-OHN](https://ed.sc.gov/districts-schools/health-and-nutrition/meal-programs/) and district websites advertising school meal programs. The State Agency will create a participant list to notify participants through email and work with community organizations to assist in disseminating information that is relevant to individuals that will benefit from our services. Additionally, a multilingual tagline notice may be displayed on SCDE-OHN webpage at <https://www.ed.sc.gov/districts-schools/health-and-nutrition/meal-programs/civil-rights-limited-english-proficiency-accessibility-requirements> to assist individuals seeking services. A multilingual tagline notice must be posted in a conspicuous location on the walls within each school and added to parent orientation materials/packets/manuals distributed to families at the beginning of each school year. Notification will also be provided through one or more of the following: outreach documents, the SCDE-OHN website, telephone, and/or community-based organizations.

***Recording and Tracking Language Assistance Services:***

The SCDE-OHN, SFAs/LEAs, and other subrecipients administering the school meal programs must document and track the number of LEP persons served, language preferences, interpretations and translations provided, and other data points. This data must be reported to the SCDE-OHN Language Access Coordinator and USDA Food and Nutrition Service, as requested.

***Assessing and Monitoring Language Needs and Implementation:***

On an ongoing basis, the SCDE-OHNwill assess changes in demographics, types of services, or other needs that may require re-evaluation of this policy and its procedures. The assessment will cover the four factor analysis required by the [USDA LEP Guidance](https://www.federalregister.gov/documents/2014/11/28/2014-27960/guidance-to-federal-financial-assistance-recipients-regarding-the-title-vi-prohibition-against) or [FNS SP 37–2016](https://www.fns.usda.gov/cn/meaningful-access-persons-lep-school-meal-guidance-and-qas). The SCDE-OHN will develop a self-assessment tool and survey Department and SFA/LEA staff involved with the school meal programs at least every three years to identify gaps in services and to determine if this plan is effective. In addition, the SCDE-OHN will regularly assess the efficacy of these procedures, including but not limited to mechanisms for securing interpreter services, equipment used for the delivery of language assistance, complaints filed by LEP persons, feedback from participants, school districts, and/or community organizations.

Additionally, during routine administrative reviews, SCDE-OHNwill ensure SFAs/LEAs and other subrecipients take reasonable steps to ensure meaningful access to services for individuals with LEP. This includes verifying whether these entities are equipped with and utilize qualified interpreters and translators in a timely manner when communicating with individuals with LEP and whether they translate vital documents and information into frequently encountered languages.

**DISABILITY ACCESS PLAN AND POLICY**

SCDE-OHN and its SFAs/LEAs, and subrecipients, public entities (state and local agencies), public accommodations, and contractors (covered entities) involved in the school meal programs must ensure equal opportunity access and equally effective communication for individuals with disabilities. This includes individuals with LEP who also have a communication disability. For example, individuals with LEP may have a hearing, visual, or speech disability that makes effective communication difficult. For more information regarding the statutory and regulatory requirements refer to  [7 CFR Part 15b -- Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance](https://www.ecfr.gov/current/title-7/subtitle-A/part-15b); [28 CFR Part 35 -- Nondiscrimination on the Basis of Disability in State and Local Government Services](https://www.ecfr.gov/current/title-28/chapter-I/part-35); and [28 CFR Part 36 -- Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities](https://www.ecfr.gov/current/title-28/chapter-I/part-36).

***Policy***

No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of SCDE-OHN. To this end, SCDE-OHN, SFAs/LEAs, and subrecipients and contractors must:

* Make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination on the basis of disability, unless an entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. This includes providing individuals with disabilities with an equal opportunity to participate in the most integrated setting.
* Ensure that communication with people with visual, hearing or speech disabilities is equally effective as communication with people without disabilities when accessing its programs, activities and services.
* Notify persons with disabilities about the grievance procedures and about the availability of reasonable modifications and auxiliary aids and services in an alternative format that they can understand.
* Ensure accessibility to its facilities, websites and online systems for persons with disabilities.
* Adopt policies and procedures that ensure individuals with disabilities are provided with an equal opportunity to participate and equally effective communication when accessing the SCDE-OHN’s programs, activities and services.

Additional References for entities administering school meals programs:

* USDA-FNS Policy Memorandum on Modifications to Accommodate Disabilities in the School Meal Program, September 27, 2016
* USDA-FNS Accommodating Children with Disabilities in the School Meals Program: Guidance for School Food Service Professionals, July 25, 2017
* USDA-FNS Policy Memorandum on Modifications to Accommodate Disabilities in the Child and Adult Care Food Program and Summer Food Service Program, June 22, 2017
* USDA-FNS Child Nutrition Program Meal Service During Novel Coronavirus Outbreaks: Questions and Answers #4, April 21, 2020

**What is a Disability?**

The ADA Amendments Act of 2008 clarified the term disability to include any person with a physical or mental impairment that substantially limits one or more major life activities, has a history or record of such an impairment, or is perceived by others as having such an impairment.Major life activities include, but are not limited to:

* Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, bending, speaking, breathing, learning, reading, and concentrating.
* The operation of a **major bodily function,** such as the functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within a body system.

Congress enacted the [ADA Amendments Act of 2008](https://archive.ada.gov/regs2016/final_rule_adaaa.html) to restore the understanding that the definition of “disability” shall be broadly construed and applied without extensive analysis. The primary consideration when serving individuals with disabilities is whether SCDE-OHN, SFAs/LEAs, subrecipients, and contractors comply with their statutory and regulatory obligations not to discriminate on the basis of disability. In other words, the ADAAA makes it very clear that the **emphasis** must be on making reasonable modifications and providing auxiliary aids and services for individuals with disabilities and not on determining whether an individual has a disability. Under the ADAAA, an individual with a disability does not carry a high burden of ‘proving’ they have a disability.

**What is a Preference?**

These are not considered medical conditions or disabilities and **do not** need to be accommodated.

* Lifestyle choices, such as vegan, vegetarian, or organic
* Religious choices, such as eliminating pork
* Preference that a child eat a gluten-free diet because a parent believes it is better for the child

If a sponsor or provider chooses to accommodate a request due to a dietary preference, then they must ensure all meal pattern requirements are met for the meal to be eligible for reimbursable.

**Section 504/ADA Coordinators**

Depending on the number of employees, covered entities must appoint a Section 504 and ADA coordinator to ensure adherence to federal regulations and directives. The current SCDE-OHN Section 504/ADA Coordinator responsible for implementing and monitoring this Disability Access Plan and Policy is:

Carla Garland, Education Associate

Office of Health and Nutrition

Mobile 803-351-0309

Web [www.ed.sc.gov](https://gcc02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.ed.sc.gov%2F&data=05%7C02%7Cgail.hoffman%40usda.gov%7C04551aa21ae44505686f08dcf52ebc63%7Ced5b36e701ee4ebc867ee03cfa0d4697%7C1%7C0%7C638654829541638186%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=QgTn9yJO9qzscElWsgwx1K1QQSR7akvGWvXQu83R2Ew%3D&reserved=0)

Address 428 Wholesale Lane

West Columbia, SC  29172

cgarland@ed.sc.gov

***SFA/LEA Section 504 Coordinators:***

* All recipients of federal financial assistance with **15 or more** employees must designate a Section 504 Coordinator who is responsible for ensuring compliance with all disability requirements at 7 CFR 15b.
* All recipients of federal financial assistance with **less than 15** employees must still designate someone who can provide technical assistance when making accommodation for participants with special diet requests due to a medical need.

***SFA/LEA ADA Coordinators:***

* All state and local governments entities (public entities) with **50 or more** employees must designate an ADA Coordinator who is responsible for ensuring compliance with all disability requirements at 28 CFR 35.

One person may serve as both Section 504 and ADA Coordinator.

**Team Approach:**

SCDE-OHN recommends its subrecipients implement the following:

* Create a team including those involved with providing special diet accommodation and others trained in this area, such as a registered dietitian and/or public health nurse
* Work with the participant or their parent and/or guardian to review the request and develop a solution as quickly as possible
* Develop policies and practices that allow for the special diet requests they most commonly encounter to be quickly and consistently addressed
* The team should be advised that any medical information obtained must be kept confidential.

**Procedures**

***Public Notification:***

SCDE-OHN and its SFAs/LEAs, subrecipients, public entities, and contractors (“covered entities”) are required to notify individuals with disabilities of their right to free reasonable modifications and auxiliary aids and service and to provide accommodations upon request.

***Procedural Safeguards Under the Procedural Safeguards Requirements:***

SFAs**/**LEAs must provide a process for the prompt resolution of grievances that includes the option for an impartial hearing [7 CFR 15b]. Specifically, the Procedural Safeguards process requires SFAs/LEAs to provide notice and information to parents and guardians regarding how to request reasonable modifications. The notice also must explain the parent or guardian’s procedural rights, which include the right to:

* File a grievance if they believe 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 counsel at the hearing.
* Examine the record.
* Receive notice of the final decision and a procedure for review, i.e. the right to appeal the hearing’s decision.

Information on this requirement can be found in USDA’s regulation, Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance at 7 CFR 15b.25 (“Procedural Safeguards”) and at 7 CFR 15.b6(b) (“Adoption of Grievance Procedures”). An overview of this requirement is also included in SP 59-2016 (see above). Procedures in place to address requests to accommodate children with disabilities in the school, in compliance with Section 504 of the Rehabilitation Act of 1973 or IDEA, may be used to fulfill the requirement to maintain Procedural Safeguards for meal medication.

**Equally Effective Communication**

SCDE-OHN, SFAs/LEAs, subrecipients, and contractors must ensure communications with individuals and their companions with communication disabilities (hearing, visually, and speech) are equally effective as communications with people without disabilities.Additionally,SCDE-OHN will ensure SFAs/LEAs, other subrecipients, and contractors ensure communications with individuals and their companions with disabilities is equally effective as communications with people without disabilities.

***Overview of the*** [***ADA Requirements: Effective Communication | ADA.gov***](https://www.ada.gov/resources/effective-communication/)

People who have vision, hearing, or speech disabilities (“communication disabilities”) use different ways to communicate. For example, people who are blind may give and receive information audibly rather than in writing and people who are deaf may give and receive information through writing or sign language rather than through speech.

The ADA requires that title II entities (State and local governments) and title III entities (businesses and nonprofit organizations that serve the public) communicate effectively with people who have communication disabilities. The goal is to ensure that communication with people with these disabilities is equally effective as communication with people without disabilities.

* The purpose of the effective communication rules is to ensure that the person with a vision, hearing, or speech disability can communicate with, receive information from, and convey information to, the covered entity.
* Covered entities must provide auxiliary aids and services when needed to communicate effectively with people who have communication disabilities.
* The key to communicating effectively is to consider the nature, length, complexity, and context of the communication and the person’s normal method(s) of communication.
* The rules apply to communicating with the person who is receiving the covered entity’s goods or services as well as with that person’s parent, spouse, or companion in appropriate circumstances.

***Auxiliary Aids and Services:***

The ADA uses the term “auxiliary aids and services” (“aids and services”) to refer to the ways to communicate with people who have communication disabilities.

* For people who are blind, have vision loss, or are deaf-blind, this includes providing a qualified reader; information in large print, Braille, or electronically for use with a computer screen-reading program; or an audio recording of printed information. A “qualified” reader means someone who can read effectively, accurately, and impartially, using any necessary specialized vocabulary.
* For people who are deaf, have hearing loss, or are deaf-blind, this includes providing a qualified notetaker; a qualified sign language interpreter, oral interpreter, cued-speech interpreter, or tactile interpreter; real-time captioning; written materials; or a printed script of a stock speech. A **qualified interpreter** is an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.

* For people who have speech disabilities, this may include providing a qualified speech-to-speech transliterator (a person trained to recognize unclear speech and repeat it clearly), especially if the person will be speaking at length, such as giving testimony in court, or just taking more time to communicate with someone who uses a communication board. In some situations, keeping paper and pencil on hand so the person can write out words that staff cannot understand or simply allow more time to communicate with someone who uses a communication board or device may provide effective communication. Staff should always listen attentively and not be afraid or embarrassed to ask the person to repeat a word or phrase they do not understand.

In addition, aids and services include a wide variety of technologies including 1) assistive listening systems and devices; 2) open captioning, closed captioning, real-time captioning, and closed caption decoders and devices; 3) telephone handset amplifiers, hearing-aid compatible telephones, text telephones (TTYs) , videophones, captioned telephones, and other voice, text, and video-based telecommunications products; 4) videotext displays; 5) screen reader software, magnification software, and optical readers; 6) video description and secondary auditory programming (SAP) devices that pick up video-described audio feeds for television programs; 7) accessibility features in electronic documents and other electronic and information technology that is accessible (either independently or through assistive technology such as screen readers).

Real-time captioning (also known as computer-assisted real-time transcription, or CART) is a service like court reporting in which a transcriber types what is being said at a meeting or event into a computer that projects the words onto a screen. This service, which can be provided on-site or remotely, is particularly useful for people who are deaf or have hearing loss but do not use sign language.

The free nationwide telecommunications relay service (TRS), reached by calling 7-1-1, uses communications assistants (also called CAs or relay operators) who serve as intermediaries between people who have hearing or speech disabilities who use a text telephone (TTY) or text messaging and people who use standard voice telephones. The communications assistant tells the telephone user what the other party is typing and types to tell the other party what the telephone user is saying. TRS also provides speech-to-speech transliteration for callers who have speech disabilities.

Video relay service (VRS) is a free, subscriber-based service for people who use sign language and have videophones, smart phones, or computers with video communication capabilities. For outgoing calls, the subscriber contacts the VRS interpreter, who places the call and serves as an intermediary between the subscriber and a person who uses a standard voice telephone. The interpreter tells the telephone user what the subscriber is signing and signs to the subscriber what the telephone user is saying.

Video remote interpreting (VRI) is a fee-based service that uses video conferencing technology to access an off-site interpreter to provide real-time sign language or oral interpreting services for conversations between hearing people and people who are deaf or have hearing loss. The new regulations give covered entities the choice of using VRI or on-site interpreters in situations where either would be effective. VRI can be especially useful in rural areas where on-site interpreters may be difficult to obtain. Additionally, there may be some cost advantages in using VRI in certain circumstances. However, VRI will not be effective in all circumstances. For example, it will not be effective if the person who needs the interpreter has difficulty seeing the screen (either because of vision loss or because he or she cannot be properly positioned to see the screen, because of an injury or other condition). In these circumstances, an on-site interpreter may be required.

If VRI is chosen, all the following specific performance standards must be met:

* real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;
* a sharply delineated image that is large enough to display the interpreter’s face, arms, hands, and fingers, and the face, arms, hands, and fingers of the person using sign language, regardless of his or her body position;
* a clear, audible transmission of voices; and
* adequate staff training to ensure quick set-up and proper operation.

Many deaf-blind individuals use support service providers (SSPs) to assist them in accessing the world around them. SSPs are not “aids and services” under the ADA. However, they provide mobility, orientation, and informal communication services for deaf-blind individuals and are a critically important link enabling them to independently access the community at large.

***Effective Communication Provisions:***

Covered entities must provide aids and services when needed to communicate effectively with people who have communication disabilities. The key to deciding what aid or service is needed to communicate *effectively* is to consider the nature, length, complexity, and context of the communication as well as the person’s normal method(s) of communication.

A person’s method(s) of communication is also key. For example, sign language interpreters are effective only for people who use sign language. Other methods of communication, such as those described above, are needed for people who may have lost their hearing later in life and do not use sign language. Similarly, Braille is effective only for people who read Braille. Other methods are needed for people with vision disabilities who do not read Braille, such as providing accessible electronic text documents, forms, etc., that can be accessed by the person’s screen reader program.

Covered entities are also required to accept telephone calls placed through TRS and VRS, and staff who answer the telephone must treat relay calls just like other calls. The communications assistant will explain how the system works if necessary.

Remember, the purpose of the effective communication rules is to ensure that the person with a communication disability can receive information from, and convey information to, the covered entity.

***Companions with Communication Disabilities:***

In many situations, covered entities communicate with someone other than the person who is receiving their goods or services. For example, school staff usually talk to a parent about a child’s progress; hospital staff often talk to a patient’s spouse, other relatives, or friend about the patient’s condition or prognosis. The rules refer to such people as “companions” and require covered entities to provide effective communication for companions who have communication disabilities. The term “companion” includes any family member, friend, or associate of a person seeking or receiving an entity’s goods or services who is an appropriate person with whom the entity should communicate.

***Use of Accompanying Adults or Children as Interpreters:***

Historically, many covered entities have expected a person who uses sign language to bring a family member or friend to interpret for him or her. These people often lacked the impartiality and specialized vocabulary needed to interpret effectively and accurately. It was particularly problematic to use people’s children as interpreters. The ADA places responsibility for providing effective communication, including the use of interpreters, directly on covered entities. They cannot require a person to bring someone to interpret for him or her. A covered entity can rely on a companion to interpret in only two situations:

1. In an emergency involving an imminent threat to the safety or welfare of an individual or the public, an adult or minor child accompanying a person who uses sign language may be relied upon to interpret or facilitate communication only when a qualified interpreter is not available.
2. In situations *not* involving an imminent threat, an adult accompanying someone who uses sign language may be relied upon to interpret or facilitate communication when a) the individual requests this, b) the accompanying adult agrees, and c) reliance on the accompanying adult is appropriate under the circumstances. This exception does not apply to minor children.

Even under exception (2), covered entities may *not* rely on an accompanying adult to interpret when there is reason to doubt the person’s impartiality or effectiveness. For example:

* It would be inappropriate to rely on a companion to interpret who feels conflicted about communicating bad news to the person or has a personal stake in the outcome of a situation.
* When responding to a call alleging spousal abuse, police should never rely on one spouse to interpret for the other spouse.

***Who Decides Which Aid or Service Is Needed?***

When choosing aid or service, title II entities (state and local governments) are *required* to give primary consideration to the choice of aid or service requested by the person who has a communication disability. The state or local government must honor the person’s choice, unless it can demonstrate that another equally effective means of communication is available, or that the use of the means chosen would result in a fundamental alteration or in an undue burden (see limitations below). If the choice expressed by the person with a disability would result in an undue burden or a fundamental alteration, the public entity still has an obligation to provide an alternative aid or service that provides effective communication if one is available.

Title III entities (public accommodations) are *encouraged* to consult with the person with a disability to discuss what aid or service is appropriate. The goal is to provide an aid or service that will be effective, given the nature of what is being communicated and the person’s method of communicating. Covered entities may require reasonable advance notice from people requesting aids or services, based on the length of time needed to acquire the aid or service, but may not impose excessive advance notice requirements. “Walk-in” requests for aids and services must also be honored to the extent possible.

***Limitations:***

Covered entities are required to provide aids and services unless doing so would result in an “undue burden,” which is defined as significant difficulty or expense. If a particular aid or service would result in an undue burden, the entity must provide another effective aid or service, if possible, that would not result in an undue burden. Determining what constitutes an undue burden will vary from entity to entity and sometimes from one year to the next. The impact of changing economic conditions on the resources available to an entity may also be taken into consideration in making this determination.

Indetermining whether a particular aid or service would result in undue financial and administrative burdens, title II entities state and local governments (public entities) should take into consideration the cost of the aid or service considering all resources available to fund the program, service, or activity and the effect on other expenses or operations. The decision that a particular aid or service would result in an undue burden must be made by a high-level official, no lower than a department head, and must include a written statement of the reasons for reaching that conclusion.

For public accommodations, including businesses and nonprofits, whendetermining whether a particular aid or service would result in an undue burden, a title III entity should take into consideration the nature and cost of the aid or service relative to their size, overall financial resources, and overall expenses. In general, a business or nonprofit with greater resources is expected to do more to ensure effective communication than one with fewer resources. If the entity has a parent company, the administrative and financial relationship, as well as the size, resources, and expenses of the parent company, would also be considered. In addition, covered entities are not required to provide any aid or service in those rare circumstances where it would fundamentally alter the nature of the goods or services they provide to the public. In the performing arts, for example, slowing down the action on stage to describe the action for patrons who are blind or have vision loss may fundamentally alter the nature of a play or dance performance.

**Reasonable Modifications**

SCDE-OHN and its SFAs/LEAS and other subrecipients must make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination on the basis of disability, unless these entities can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. This includes providing individuals with disabilities with an equal opportunity to participate in the most integrated setting.

A reasonable modification is a change or exception to a policy, practice, or procedure that allows people with disabilities to have equal access to programs, services and activities. A reasonable modification can also be a structural change made to existing premises, occupied or to be occupied by a person with a disability, to afford such person full enjoyment of the premises.

***Modifications to the School Meal Service:***

The SFA must make meal modifications, including substitutions in lunches and afterschool snacks, for children with a disability and whose disability restricts their diet. The modification must be related to the disability or limitations caused by the disability and must be offered at no additional cost to the child or household. Additionally, sponsors or providers:

* Are not required to provide the specific brand names requested. And meal modifications do not need to mirror the meal or menu item being substituted. *EXAMPLE:* If spaghetti is on the menu, sponsors or providers are not required to provide a gluten-free spaghetti option for a participant with Celiac disease, they could provide another entrée (i.e. beans and rice) instead.
* Are required to serve participants with special diet requests due to medical need in the least restrictive and most integrated setting possible. *EXAMPLE:* A participant cannot be required to sit in another room during meal services.
* Always balance safety with stigma when accommodating a severe anaphylactic food allergy and a separate table may be necessary to control exposure to the allergen.

For more information, please refer to:

* [2017 Edition of Accommodating Children with Disabilities in the School Meal Programs | Food and Nutrition Service](https://www.fns.usda.gov/cn/2017-edition-accommodating-children-disabilities-school-meal-programs)
* **SP 59-2016:** Policy Memorandum on Modifications to Accommodate Disabilities in the School Meal Programs, September 27, 2016, [http://www.fns.USDA.gov/policy-memorandum-modifications-accommodate-disabilities-school-meal-programs](http://www.fns.usda.gov/policy-memorandum-modifications-accommodate-disabilities-school-meal-programs)
* **SP 26-2017**: Accommodating Disabilities in the School Meal Programs: Guidance and Questions and Answers (Q&As), April 25, 2017, [Accommodating Disabilities in the School Meal Programs: Guidance and Q&As | Food and Nutrition Service](https://www.fns.usda.gov/cn/accommodating-disabilities-school-meal-programs-guidance-qas)

***Seamless Summer Option (SSO):***

SFAs participating in the National School Lunch Program’s SSO in which the site has been approved to offer a non-congregate meal service, must comply with the provisions specified in **§ 210.34 Seamless Summer Option non-congregate meal service.** A school food authority operating the Seamless Summer Option in a rural area may be approved to offer a non-congregate meal service consistent with that established in [part 225 of this chapter](https://www.ecfr.gov/current/title-7/part-225). Such school food authorities must comply with the non-congregate meal service provisions set forth at [§ 225.16(b)(5)(i)](https://www.ecfr.gov/current/title-7/section-225.16#p-225.16(b)(5)(i)) and [(iv) of this chapter](https://www.ecfr.gov/current/title-7/section-225.16#p-225.16(b)(5)(iv)) and may use the non-congregate meal service options contained in [§ 225.16(i) of this chapter](https://www.ecfr.gov/current/title-7/section-225.16#p-225.16(i)).

***Service Animals:***

For service animal access requirements, see [ADA Requirements: Service Animals | ADA.gov](https://www.ada.gov/resources/service-animals-2010-requirements/).

Service animals are defined as dogs that are individually trained to do work or perform tasks for people with disabilities.  Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties. Service animals are working animals, not pets. The work or task a dog has been trained to provide must be directly related to the person’s disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

Covered entities must permit service animals to accompany people with disabilities in all areas where members of the public are allowed to go.

**Where Service Animals Are Allowed:**

Covered entities that serve the public generally must allow service animals to accompany people with disabilities in all areas of the facility where the public is allowed to go.  For example, in a hospital it usually would be inappropriate to exclude a service animal from areas such as patient rooms, clinics, cafeterias, or examination rooms. However, it may be appropriate to exclude a service animal from operating rooms or burn units where the animal’s presence may compromise a sterile environment.

**Service Animals Must Be Under Control:**

A service animal must be under the control of its handler. A service animals must be harnessed, leashed, or tethered, unless the individual’s disability prevents using these devices or these devices interfere with the service animal’s safe, effective performance of tasks.  In that case, the individual must maintain control of the animal through voice, signal, or other effective controls.

**Inquiries, Exclusions, Charges, and Other Specific Rules Related to Service Animals:**

When it is not obvious what service an animal provides, only limited inquiries are allowed. Staff may ask two questions

1. is the dog a service animal required because of a disability, and
2. what work or task has the dog been trained to perform.

Staff cannot ask about the person’s disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task.

Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. When a person who is allergic to dog dander and a person who uses a service animal must spend time in the same room or facility, for example, in a school classroom, they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility.

A person with a disability cannot be asked to remove his service animal from the premises unless:

1. the dog is out of control and the handler does not take effective action to control it or
2. the dog is not housebroken.

When there is a legitimate reason to ask that a service animal be removed, staff must offer the person with the disability the opportunity to obtain goods or services without the animal’s presence. Covered entities that sell or prepare food must generally allow service animals in public areas even if state or local health codes prohibit animals on the premises.

People with disabilities who use service animals cannot be isolated from other patrons, treated less favorably than other patrons, or charged fees that are not charged to other patrons without animals. In addition, if a business requires a deposit or fee to be paid by patrons with pets, it must waive the charge for service animals. And staff are not required to provide care for or supervision of a service animal.

**Miniature Horses**

In addition to the provisions about service dogs, federal regulations have a separate provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities. (Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and generally weigh between 70 and 100 pounds.) Entities covered by the ADA must modify their policies to permit miniature horses where reasonable. The regulations set out four assessment factors to assist entities in determining whether miniature horses can be accommodated in their facility:

1. whether the miniature horse is housebroken;
2. whether the miniature horse is under the owner’s control;
3. whether the facility can accommodate the miniature horse’s type, size, and weight; and
4. whether the miniature horse’s presence will not compromise legitimate safety requirements necessary for safe operation of the facility.

**Wheelchairs, Mobility Aids, and Other Power-Driven Mobility Devices**

[***ADA Requirements: Wheelchairs, Mobility Aids, and Other Power-Driven Mobility Devices | ADA.gov***](https://www.ada.gov/resources/opdmds/)

People with mobility, circulatory, respiratory, or neurological disabilities use many kinds of devices for mobility. Some use walkers, canes, crutches, or braces. Some use manual or power wheelchairs or electric scooters. In addition, advances in technology have given rise to new devices, such as Segways, that some people with disabilities use as mobility devices, including many veterans injured while serving in the military. And more advanced devices will inevitably be invented, providing more mobility options for people with disabilities.

Covered entities must allow individuals with disabilities who use wheelchairs, mobility aids or other power-driven mobility devices (OPDMD) into all areas where the public is allowed to go, unless the entity can demonstrate that the device cannot be accommodated because of legitimate safety requirements. Such safety requirements must be based on actual risks, not on speculation or stereotypes about a particular class of devices or how individuals will operate them.

***Wheelchairs***

The term “wheelchair” is defined in the new rules as “a manually operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor or of both indoor and outdoor locomotion.”

***Other Power-Driven Mobility Devices***

In recent years, some people with mobility disabilities have begun using less traditional mobility devices such as golf carts or Segways®. These devices are called “other power-driven mobility device” (OPDMD) in the rule. OPDMD is defined in the new rules as “any mobility device powered by batteries, fuel, or other engines… that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices… such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair”. When an OPDMD is being used by a person with a mobility disability, different rules apply under the ADA than when it is being used by a person without a disability.

Staff must consider these factors in determining whether to permit OPDMDs on their premises:

* the type, size, weight, dimensions, and speed of the device;
* the volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);
* the facility's design and operational characteristics, such as its square footage, whether it is indoors or outdoors, the placement of stationary equipment, devices, or furniture, and whether it has storage space for the device if requested by the individual;
* whether legitimate safety standards can be established to permit the safe operation of the device; and
* whether the use of the device creates a substantial risk of serious harm to the environment or natural or cultural resources or poses a conflict with Federal land management laws and regulations.

Communicate clearly to the public any OPDMD **not** permitted in an area where FNS programs, services and activities are offered. Staff may not ask individuals using such devices about their disability but may ask for a credible assurance that the device is required because of a disability. If the person presents a valid, State-issued disability parking placard or card or a State-issued proof of disability, that must be accepted as credible assurance on its face. If the person does not have this documentation, but states verbally that the device is being used because of a mobility disability, that also must be accepted as credible assurance, unless the person is observed doing something that contradicts the assurance.

***Choice of Device:***

People with disabilities have the right to choose whatever mobility device best suits their needs. For example, someone may choose to use a manual wheelchair rather than a power wheelchair because it enables her to maintain her upper body strength. Similarly, someone who can stand may choose to use a Segway® rather than a manual wheelchair because of the health benefits gained by standing. A facility may be required to allow a type of device that is generally prohibited when being used by someone without a disability when it is being used by a person who needs it because of a mobility disability.

For example, if golf cars are generally prohibited in a park, the park may be required to allow a golf car when it is being used because of a person’s mobility disability, unless there is a legitimate safety reason that it cannot be accommodated.

***Physical Access to Buildings and Facilities:***

Covered entities must ensure individuals with disabilities are not excluded from programs and services because facilities are unusable or inaccessible to them. These entities must ensure that people with disabilities have access to programs and services under the same terms and conditions as other people. Covered entities must abide by the [2010 ADA Standards for Accessible Design | ADA.gov](https://www.ada.gov/law-and-regs/design-standards/2010-stds/).

**Websites and Mobile App Access for People with Disabilities**

State and local government entities are required to improve web and mobile application (app) access for people with disabilities. Covered entities must ensure its websites and online platforms are accessible to persons with disabilities with disabilities and include accessible features. Covered entities must ensure that in-house staff and contractors responsible for web page and content development are properly trained. And, covered entities must provide a way for visitors to request accessible information or services by posting a telephone number or e-mail address on program home pages. In the development of program websites and online platforms, the covered entity should periodically enlist disability groups to test pages for ease of use and to increase accessibility.

The Department of Justice recently issued a final rule which clarifies how State and local governments can meet their existing ADA obligations as many of their activities move to the digital space. For more information [Justice Department to publish final rule to strengthen web and mobile app access for people with disabilities - Pacific ADA Center](https://www.adapacific.org/justice-department-to-publish-final-rule-to-strengthen-web-and-mobile-app-access-for-people-with-disabilities/). This rule will ensure that people with disabilities can better access important programs and activities like health care, transportation information, and education, through web content and mobile apps.

***Reasonable Modifications and Fundamental Alteration/Undue Burden***

Covered entities are not required to modify policies, practices or procedures if the entity can demonstrate that making the modification would fundamentally alter the nature of the service, program or activity. If the modification requested would cause undue financial burden on the program or activity to the level that it would make continued operation of the program unfeasible, the modification need not be provided. However, denying a modification(s) under the fundamental alteration exception should not result in the denial of access to the program or other benefits or services.

The decision that a particular aid or service would result in an undue burden or fundamental alteration must be made by a high-level official, no lower than a department head and must be accompanied by a written statement of the reasons for reaching that conclusion. The covered entity still must provide services to the maximum extent possible

**Direct Threat**

Direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services as provided in 28 CFR § 35.139. A state or local government agency (public entity) is not required to permit an individual to participate in or benefit from the services, programs, or activities of that public entity when that individual poses a direct threat to the health or safety of others. [Note: Direct threat to others – not self.] Determining direct threat requires individualized assessment based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk. (See 28 CFR § 35.139(b).

**Recording and Tracking and Monitoring Disability Compliance**

Covered entities must develop a method for recording and tracking requests for reasonable modifications and auxiliary aids and services at the point of contact with any person with disabilities. This system must also provide a method for staff to document what modification, aid or services was provided in response to each request or provided when necessary to ensure equal participation and equally effective communication. This recording and tracking method must ensure that staff follow the SCDE-OHN policies regarding the use of family and friends as interpreters to communicate with persons with disabilities.

**Training**

A critical and often overlooked component of ensuring disability compliance is comprehensive and ongoing staff training. Covered entities may have established good policies, but if front line staff are not aware of them or do not know how to implement them, problems can arise. Covered entities must include staff disability access requirements for providing reasonable modifications to and communicating effectively with people who have communication disabilities. This includes training on special diet procedures. Training should occur annually for in-service personnel and within the first 30 days of employment for new hires.