



Department of Education

Townsend Building
401 Federal Street Suite 2
Dover, Delaware 19901-3639
education.delaware.gov

Cynthia Marten
Secretary of Education
302-735-4000
302-739-4654 (fax)

Summer Food Service Program Appeal Procedures

In accordance with 7 CFR §225.13(a), each State agency shall establish a procedure to be followed by an applicant appealing. Appeals shall not be allowed on decisions made by FNS with respect to late claims or upward adjustments under §225.9(d)(6).

Actions Which Can Be Appealed

A sponsoring organization, on behalf of a site under its jurisdiction, may appeal the following adverse actions:

- A. Denial of application for participation;
- B. Denial of sponsor's request for advance payments;
- C. Denial of a sponsor's claim for reimbursement payments (except for late submission under §225.9(d)(6));
- D. A State agency's refusal to forward to FNS an exception request by the sponsor for payment of a late claim or a request for an upward adjustment to a claim;
- E. A claim(s) against a sponsor for remittance of a payment;
- F. The termination of the sponsor or a site;
- G. A denial of a sponsor's application for a site;
- H. A denial of a food service management company's application for registration; or
- I. Revocation of a food service management company's registration.

7 CFR §225.13 continued:

(b) At a minimum, appeal procedures shall provide that:

- (1) The sponsor or food service management company be advised in writing of the grounds upon which the State agency based the action. The notice of action, which shall be sent by certified mail, return receipt requested, shall also state that the sponsor or food service management company has the right to appeal the State's action;
- (2) The sponsor or food service management company be advised in writing that the appeal must be made within a specified time and must meet the requirements of paragraph (b)(4) of this section. The State agency shall establish this period of time at not less than one week nor more than two weeks from the date on which the notice of action is received;

(3) The appellant be allowed the opportunity to review any information upon which the action was based;

(4) The appellant be allowed to refute the charges contained in the notice of action either in person or by filing written documentation with the review official. To be considered, written documentation must be submitted by the appellant within seven days of submitting the appeal, must clearly identify the State agency action being appealed, and must include a photocopy of the notice of action issued by the State agency;

(5) A hearing be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter appealing the action. The appellant may retain legal counsel or may be represented by another person. Failure of the appellant's representative to appear at a scheduled hearing shall constitute the appellant's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and written information and to answer questions from the review official;

(6) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least 5 days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing;

(7) The hearing be held within 14 days of the date of the receipt of the request for review, but, where applicable, not before the appellant's written documentation is received in accordance with paragraphs (b) (4) and (5) of this section;

(8) The review official be independent of the original decision-making process;

(9) The review official make a determination based on information provided by the State agency and the appellant, and on Program regulations;

(10) Within 5 working days after the appellant's hearing, or within 5 working days after receipt of written documentation if no hearing is held, the reviewing official make a determination based on a full review of the administrative record and inform the appellant of the determination of the review by certified mail, return receipt requested;

(11) The State agency's action remains in effect during the appeal process. However, participating sponsors and sites may continue to operate the Program during an appeal of termination, and if the appeal results in overturning the State agency's decision, reimbursement shall be paid for meals served during the appeal process. However, such continued Program operation shall not be allowed if the State agency's action is based on imminent dangers to the health or welfare of children. If the sponsor or site has been terminated for this reason, the State agency shall so specify in its notice of action; and

(12) The determination by the State review official is the final administrative determination to be afforded to the appellant.

(c) The State agency shall send written notification of the complete appeal procedures and of the actions which are appealable, as specified in paragraph (a) of this section, to each potential sponsor applying to participate and to each food service management company applying to register in accordance with §225.6(g).

(d) A record regarding each review shall be kept by the State agency, as required under §225.8(a). The record shall document the State agency's compliance with these regulations and shall include the basis for its decision.

[54 FR 18208, Apr. 27, 1989, as amended at 64 FR 72486, Dec. 28, 1999; 78 FR 13450, Feb. 28, 2013]

All appeals should be submitted in writing to the Education Associate, Federal Funds/LEA Indirect Costs in the Financial Management and Operations Branch at the following address:

Delaware Department of Education
Attn: SFSP Hearing Official
401 Federal Street, Suite 1
Dover, DE 19901

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