

OHIO DEPARTMENT OF EDUCATION ~ OFFICE FOR CHILD NUTRITION OHIO SUMMER FOOD SERVICE PROGRAM FOR CHILDREN APPEAL PROCEDURES

The Ohio Department of Education ("ODE"), Office for Child Nutrition is the agency charged with administering the Ohio Summer Food Service Program ("SFSP").

1. ACTIONS WHICH CAN BE APPEALED TO OHIO DEPARTMENT OF EDUCATION, OFFICE FOR CHILD NUTRITION

A Summer Food Service Program sponsor may appeal adverse state agency administrative actions through a formal hearing. Section 225.13 (b) of the regulations governing the Summer Food Service Program for Children describes the procedures for a sponsor to appeal adverse actions which may be taken against a sponsor by the state agency. Such actions are listed below:

ACTIONS WHICH CAN BE APPEALED TO STATE AGENCY BY SUMMER FOOD SERVICE PROGRAM SPONSOR

- a. Denial of the application for participation;
- b. Denial of a request for an advance payment;
- c. Denial of a timely claim submittal for reimbursement;
- d. Denial by the state agency to forward to FNS an exception request from the sponsor for payment of a late claim or a request for an upward adjustment of a claim;
- e. Claims against a sponsor for recovery of overpayment;
- f. Termination of the participation of a sponsor or sponsor's site;
- g. Denial of a site application;

The state agency action shall remain in effect during the appeal process. However, participating sponsors and sites may continue to operate under the program during an appeal of termination. If the appeal results in overturning the state agency's decision, reimbursement shall be paid for meals served during the appeal period. However, such continued operation under the program shall not be allowed if the state agency's action is based on imminent danger 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.

Appeals are not allowed on decisions made by the Food and Nutrition Service with respect to late claims or upward adjustments under 7CFR 225.9(d)(5)

2. PROCEDURE FOR FILING AN APPEAL, Source 7CFR 225.13(b)

The sponsor shall 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 include a statement indicating that the sponsor had the right to appeal the action of the State agency. All Appeal Requests must be sent within 10 days from the date on which the notice of action is received to: **Jessica Voltolini, Assistant Chief Legal Counsel, Ohio Department of Education, 25 South Front Street, Mail Stop 707, Columbus, OH 43215-4183**. If the tenth day falls on a Saturday, Sunday or federal legal holiday, the request may be postmarked or delivered on the next day that is not Saturday, Sunday or a federal legal holiday

ODE will acknowledge receipt of the Appeal Request in writing no later than ten (10) calendar days after its receipt. ODE's letter acknowledging receipt will indicate the date upon which the Appeal Request was received by ODE.

3. CONTENTS OF A REQUEST FOR REVIEW

A written request for review must clearly identify the state agency action being appealed and be

signed by a responsible representative of the appellant. A photocopy of the state agency notice of adverse action must accompany each request for review.

An appellant may respond to the charges contained in the state agency notice of adverse action by filling supporting documentation with its request for review, or indicate in its request that such documentation will be filed with ODE within seven calendar days after submitting its request for review. An appellant shall be afforded the opportunity to review any information upon which the adverse action was based.

4. REQUESTING A HEARING

An appellant may request a hearing before the review officer in addition to, or instead of, a review of documentation submitted by the appellant and the state agency, only if the appellant specifically asks for such a hearing in its written request for review. An appellant may retain legal counsel or be represented by another person at the hearing.

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.

If the appellant requests a hearing, the appellant and state agency will 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.

The hearing shall be held within 14 working days from the date ODE receives the request for review but not before the appellant's written documentation is received by ODE.

5. THE REVIEW OFFICER'S DETERMINATION

The review officer shall make a decision to uphold, reverse or modify the state agency's action based on a full review of the documentation and information provided by the appellant and the state agency, and on program regulations. The review officer's written determination shall be sent to the appellant and to the state agency by certified mail, return receipt requested, within five working days after the close of the hearing, or within five working days after receipt of the appellant's supporting documentation if no hearing is conducted.

The state agency's action shall remain in effect during the appeal process. However, participating sponsors and sites may continue to operate under the program during an appeal of termination. If the appeal results in overturning the state agency's decision, reimbursement shall be paid for meals served during the appeal period; however, such continued operation under the program shall not be allowed if the state agency's action is based on imminent reason, the state agency shall so specify in its notice of action. The review officer's determination is the final administrative determination to be afforded the appellant and is effective upon receipt by the appellant.

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