

**NEW YORK STATE EDUCATION DEPARTMENT  
SUMMER FOOD SERVICE PROGRAM  
APPEAL PROCEDURES**

**I. ACTIONS UNDERTAKEN UNDER THE SUMMER FOOD SERVICE PROGRAM WHICH CAN BE APPEALED TO NEW YORK STATE DEPARTMENT OF EDUCATION**

1. In accordance with the federal regulations of the Summer Food Service Program (SFSP), the New York State Education Department (NYSED) has established these appeal procedures to be followed when a SFSP Sponsor requests a review of an administrative action taken by the Child Nutrition Program (CNP). The appeal process is specified in 7 CFR §225.13 and allows for appeals for the following actions:

- 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.**

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

2. The Sponsor shall be advised in writing of the grounds upon which the state agency based the administrative action. The state agency notice of action, which shall be sent by certified mail, return receipt requested, shall also include a statement indicating that the sponsor has the right to appeal the action of the state agency.

**II. PROCEDURE FOR FILING AN APPEAL**

1. All appeal requests must be postmarked by the U.S. Postal Service or delivered to the hearing official **within 10 days of receipt** of the state agency notice of action. The date indicated on the return receipt of the notice of action is the receipt date. If the 10th day falls on a Saturday, Sunday, or federal holiday, request will be timely if it is postmarked or delivered the next business day which is not a Saturday, Sunday or federal legal holiday.
2. The written request for review **must clearly identify the state agency action being appealed** and signed by a responsible representative of the Sponsor. A photocopy of the state agency notice of action must accompany each request for a review.
3. The Sponsor has two appeal options. It can request a review of documentation upon submission of such documentation to the Impartial Hearing Officer (IHO) (**written appeal**) or it can request a **hearing** before the IHO, which is informal and will be held in NYSED's Albany Office. The Sponsor must **clearly state** in its appeal request which type of appeal it is seeking.

4. The Sponsor may respond to the charges contained in the state agency notice of action by filing supporting documentation with its request for review, or indicate in its request that such documentation will be filed **with the IHO within 7 calendar days after submitting the request for review.** A Sponsor shall be afforded the opportunity to review any information upon which the adverse action was based.
5. All appeal requests must be sent to the following address:

**ATTN: Appeals Coordinator**  
**The New York State Education Department**  
**Child Nutrition Program Administration**  
**89 Washington Avenue, Rm 375 EBA**  
**Albany, NY 12234**  
**Telephone No. (518) 473-8781**  
**Fax No. (518) 473-0018**  
**[cn@mail.nysed.gov](mailto:cn@mail.nysed.gov)**

### **III. ASSIGNMENT OF AN IMPARTIAL HEARING OFFICER AND SUBMISSION OF DOCUMENTATION**

1. Upon receipt of an appeal request the CNP Office will immediately assign an independent IHO to decide the appeal
2. The IHO will immediately acknowledge the Sponsor's appeal and require the parties to submit documentation pursuant to the timeframes established in 7 CFR §225.13. In the acknowledgment letter, the IHO will seek approval from the parties to use email throughout the appeal process. The IHO may schedule the hearing as part of the acknowledgment letter. If the acknowledgment letter scheduled a hearing, the parties may request an adjournment if needed. After receipt of the acknowledgment letter, the parties must immediately bring any timeliness concerns or other procedural issues to the IHO's attention. **The Sponsor and the CNP must copy each other on all submissions.**

### **IV. HEARING**

1. Pursuant to 7 CFR §225.13, if the Sponsor requested a hearing, it shall be **held within 14 days** from the date the IHO receives the request for review but not before the Sponsor's written documentation is received by the IHO. The hearing may be held at a later date if all parties agree.
2. Pursuant to 7 CFR §225.13, the IHO will provide the parties with **at least 5 day advance written notice** of the time, date and location of the hearing, sent by certified mail, return receipt requested, if the parties did not otherwise agree to the use of email.
3. The parties may retain legal counsel or be represented by another person at the hearing.
4. Failure of the Sponsor or Sponsor's representative to appear at a scheduled hearing shall constitute its waiver of the right to a personal appearance before the IHO, unless the IHO agrees to reschedule the hearing. A representative of the state agency shall be allowed to attend the hearing to respond to the Sponsor's testimony and written information and to answer questions from the IHO.

## V. THE HEARING OFFICER'S DECISION

1. The IHO 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 Sponsor and the state agency, and on program regulations.
2. The IHO's written determination shall be sent to the Sponsor and to the state agency by certified mail, return receipt requested, **within 5 days** after the close of the hearing or **within 5 days after receipt** of the Sponsor's supporting documentation if no hearing is conducted.
3. **The state agency's action shall remain in effect during the appeal period.** However, participating Sponsors and sites may continue to operate under the *program during the appeal period **at their own risk***. *If the appeal results in overturning the state agency's decision, reimbursement shall be paid for meals served during the appeal period. If the appeal does not result in overturning the state agency's decision, no reimbursement shall be made. However, such continued operation under the program shall **not be allowed** if the state agency's action is based on **imminent danger to 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.
4. The IHO's determination is the final administrative determination to be afforded the Sponsor and is effective upon receipt by the Sponsor.