

**NEW YORK STATE EDUCATION DEPARTMENT
NATIONAL SCHOOL LUNCH PROGRAM
APPEAL PROCEDURES**

I. ACTIONS WHICH CAN BE APPEALED TO THE NEW YORK STATE DEPARTMENT OF EDUCATION.

1. In accordance with the federal regulations of the Child Nutrition Programs (CNP), the New York State Education Department (NYSED) has established an appeal procedure to be followed when a School Food Authority (SFA) requests a review of a denial of all, or a part of, the reimbursement claim or withholding of payments arising from a review conducted by the Department under 7 CFR Part 210 as well as termination from the program.
2. The SFA will be provided with written notice of the grounds for denial of all or part of a reimbursement claim or withholding of payment arising from a review conducted by the Department under 7 CFR Part 210 as well as termination from the Program. The notice will be sent by certified mail, return receipt requested, and will include the appeal process as specified in 7 CFR §210.18 (q).
3. **All Reimbursement holds etc. will remain in effect during the appeal process.**

II. PROCEDURE FOR FILING AN APPEAL

1. All appeal requests must be received by the CNP office and be postmarked or delivered to the CNP office within **15 calendar days** of the receipt date (the date indicated on the return receipt of the notice of action or the date of delivery if an alternative method of delivery of the notice of action is utilized.) on which the SFA received notice of the CNP's decision to deny all, or a part of, the reimbursement claim or withholding of payments arising from a review conducted by the Department under 7 CFR Part 210 or termination from the program. Please be advised that facsimile or email transmission must be received by the CNP office by COB (typically 5 p.m. EST) on the 15th day in order to be considered timely. 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@nysed.gov**

2. The SFA has two appeal options. It can request a review of documentation upon submission of such documentation to the IHO (**written appeal**) or it can request a **hearing** before the Impartial Hearing Officer (IHO), which is informal and will

be held in NYSED's Albany Office. The SFA must **clearly state** in its appeal request which type of appeal it is seeking.

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

1. Upon receipt of an appeal request the CNP Office will assign an independent IHO to decide the appeal. Decisions will be rendered in a timely manner **not exceeding 120** days from the date the CNP received the appeal request.
2. The IHO will acknowledge the SFA's appeal request within **10 calendar days** of the CNP's receipt of the appeal request, or as soon as possible thereafter and will require the parties to submit documentation within an established timeframe. In the acknowledgment letter, the IHO will seek approval from the parties to use email throughout the appeal process. After receipt of the acknowledgment letter, the parties must immediately bring any timeliness concerns or other procedural issues to the IHO's attention.
3. All documentation that an SFA would like the IHO to review and consider must be submitted to the IHO within the time frame established in the acknowledgment letter by the IHO. **The SFA and the CNP must copy each other on all submissions.**

IV. HEARINGS

1. If the SFA requested a hearing, it may be scheduled within the IHO's acknowledgment letter or soon after the acknowledgment letter is issued to the parties, but in no event shall the hearing be held later than **45 days after** the CNP's receipt of the appeal request.
2. The IHO will provide the parties with **at least 10 calendar 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 will have the right to retain legal counsel or to be represented by another person.
4. A representative of the CNP Administration will be present to respond to testimony and answer questions from the IHO.
5. Failure of the SFA or their representative to appear at a scheduled hearing shall constitute the SFA's waiver of its right to a personal appearance before the IHO.

V. HEARING OFFICERS DECISION

1. The IHO's decision will be rendered via certified mail, return receipt requested, if the parties did not otherwise agree to the use of email, **within 120 days** from the date the CNP received the appeal request.
2. The IHO's decision will be based on documentation and information supplied by the parties (either upon submission or at the hearing) and on program regulations.

3. The IHO's determination is the final administrative determination.