APPELLANT: Churchville-Chili Central School District
139 Fairbanks Road
Churchville, NY 14428

RESPONDENT: New York State Education Department
Child Nutrition Program Administration
99 Washington Avenue, Room 1623
Albany, NY 12234

STATE: New York; County of Monroe

In the Matter of the Appeal by

CHURCHVILLE-CHILI CENTRAL SCHOOL DISTRICT
LEA CODE: 261501060000

from a decision by the New York State Education Department to reclaim reimbursement funds from the 2008-2009 school year under the National School Lunch Program

DECISION

I find that respondent acted in accordance with the Federal Child Nutrition Program's regulations, specifically those that pertain to the National School Lunch Program found at 7 CFR Part 210, when it determined that a reclaim of between $10,000 and $12,000 must be taken from appellant's 2008-2009 National School Lunch Program reimbursement.

This Decision is rendered this 16th day of June, 2011

Maureen Lavare

Maureen Lavare
Hearing Officer

LIST OF REPRESENTATIVES

For the Appellant

Dr. Pamela Kissel, Superintendent and
Franklin C. Nardone, CPA and Assistant Superintendent for Business Services
Churchville-Chili Central School District
139 Fairbanks Road
Churchville, NY 14428

For the Respondent

Frances O'Donnell
Coordinator
New York State Education Department
Child Nutrition Program Administration
99 Washington Avenue, Room 1623
Albany, NY 12234

DOCUMENTS SUBMITTED AND REVIEWED

SUBMITTED BY APPELLANT

1) May 11, 2011 letter to Hearing Officer Maureen Lavare from Franklin C. Nardone, CPA and Assistant Superintendent for Business Services of Churchville-Chili Central School District (CSD) appealing an April 25, 2011 letter from Frances O'Donnell, Coordinator, New York State Education Department's Child Nutrition Program notifying the school district that fiscal sanctions will be taken.
2) May 7, 2009 letter from Jamie McMillan, School Food Program Specialist II with the New York State Education Department's Child Nutrition Program, to Dr. Pam Kissel, Superintendent of the Churchville-Chili CSD regarding the Performance Standard 2 violation found during the April 15, 2009 Coordinated Review Effort.
3) May 29, 2009 letter to Jamie McMillan from Dr. Pamela Kissel and Roberta D'Agostino, Director of Nutritional Services at Churchville-Chili CSD, responding to the May 7, 2009 letter, including corrective actions.
4) April 25, 2011 letter from Frances O'Donnell to Dr. Pamela Kissel notifying her that a reclaim estimated between $10,000 and $12,000 will be taken based on the violations found during the April 15, 2009 Coordinated Review Effort.
5) Standardized Recipe Information for (No Cook) #116 Pretzel Lunch.

SUBMITTED BY RESPONDENT

1) June 1, 2011 letter from Frances N. O'Donnell to Hearing Officer Maureen Lavare responding to the appeal by Churchville-Chili CSD.
2) April 15, 2009 Coordinated Review Effort Form regarding Churchville-Chili CSD.
3) May 7, 2009 letter from Jamie McMillan to Dr. Pam Kissel regarding the Performance Standard 2 violation found during the April 15, 2009 Coordinated Review Effort.
4) Coordinated Review, School Food Authority Review Summary from Churchville-Chili CSD dated April 15, 2009.
5) Standardized Recipe Information for (No Cook) Pretzel Lunch stamped received by the Child Nutrition Program on June 8, 2009.
6) Standardized Recipe Information for (No Cook) Pretzel Lunch stamped received by Grants Management on May 16, 2011.
7) April 25, 2011 letter from Frances O'Donnell to Dr. Pamela Kissel notifying her that a reclaim estimated between $10,000 and $12,000 will be taken based on the violations found during the April 15, 2009 Coordinated Review Effort.
8) Copies of portions of 7 CFR Part 210.

PROCEDURAL BACKGROUND

On May 16, 2011 I received a letter dated May 11, 2011 from the Churchville-Chili Central School District (hereinafter "appellant") requesting an appeal. Appellant sought to appeal a decision by the New York State Education Department, Child Nutrition Program (hereinafter "respondent") reclaiming between $10,000 and $12,000 of National School Lunch Program reimbursements from the 2008-2009 school year. By letter dated May 17, 2011 I found that the appeal request was made timely and required the parties to submit any written documentation that it wanted considered as part of the appeal to my office by June 1, 2011. I provided respondent with a copy of the documentation submitted by appellant with its request for appeal and I note that respondent provided copies of its documentation to appellant's representatives.

FACTUAL BACKGROUND

Appellant is a school food authority as that term is defined in the regulations governing the National School Lunch Program (7 CFR §210.2). Appellant operates a National School Lunch Program in its schools. Respondent is required to conduct an administrative review of all school food authorities at least once during each five year review cycle, ensuring that each school food authority is reviewed at least once every six years (7 CFR §210.18[c][1]). In accordance with this requirement respondent conducted a Coordinated Review Effort (hereinafter "CRE") of appellant's nutrition program on April 15, 2009 to evaluate its compliance with Part 210 of the Code of Federal Regulations.

During the April 15, 2009 CRE respondent observed that the cheese sauce being offered with the pretzel lunch did not qualify as a creditable meat/meat alternate component for meeting the meal pattern requirements under 7 CFR §210.10 (k)(1) (respondent's documents #1, 2 and 4). According to respondent, it made this determination by reviewing the nutrient label on the cans of cheese sauce available at the site (respondent's document #1). Respondent asserts that as a result of alerting appellant's Cook Manager that the cheese sauce was not a creditable meat/meat alternate, the Cook Manager made four slices of cheese available to be served with each pretzel lunch (respondent's document #1). Respondent further asserts that the students were noticeably confused by the additional cheese offering (respondent's document #1). Alternatively, appellant contends that four slices of cheese have been offered with the pretzel lunch since the beginning of the 2008-2009 school year (appellant's document #1). As evidence, appellant submits a sheet labeled "Standardized Recipe Information" which states that one of the ingredients for the pretzel lunch is four slices of American cheese (appellant's document #5 and respondent's documents #5 and 6).

By letter dated May 7, 2009 respondent notified appellant that during the CRE it found a Performance Standard 2 violation, which is a critical area of non-compliance (appellant's document #2 and respondent's document #3). Specifically, respondent stated that it found that appellant was claiming lunches for reimbursement that did not contain all of the required components required by program regulations. Performance Standards 1 and 2 comprise the "critical areas" which serve as measurements of compliance with the National School Lunch Program's regulations (7 CFR §210.18[b][2]). Performance Standard 2 violations are defined as requiring that "lunches claimed for reimbursement within the school food authority contain meal elements (food items/components, menu items or other items, as applicable) as required under §210.10" (7 CFR §210.18[b][2][ii] and see 7 CFR §210.18[g][2] for a listing of school food authority review requirements under Performance Standard 2).

Appellant responded to respondent by letter dated May 29, 2009 and stated that it offered cheese slices with the pretzel lunch throughout the school year (appellant's document #3). As evidence of this, it provided a "Standardized Recipe Information" sheet for the pretzel lunch, which stated that four slices of American cheese is an ingredient in the pretzel lunch (respondent's document #5). The letter also provided three corrective actions appellant would implement (appellant's document #3).

By letter dated April 25, 2011, respondent notified appellant that it intended to reclaim between $10,000 and $12,000 of National School Lunch Program reimbursements from appellant for the Performance Standard 2 violation documented at the April 15, 2009 CRE (appellant's document # 4 and respondent's document #7). This appeal ensued.

ARGUMENTS MADE ON APPEAL

Appellant argues that it provided four slices of cheese with the pretzel lunch throughout the 2008-2009 school year and therefore, its pretzel lunches were in compliance with the requirements of 7 CFR §210.10(k)(1).

Respondent argues that cheese slices were only made available in the pretzel lunch after it was pointed out at the April 15, 2009 CRE that the cheese sauce did not qualify as a creditable meat/meat alternate component in compliance with 7 CFR §210.10(k)(1). Because appellant did not include a creditable meat/meat alternate component in these lunches, respondent states that it must reclaim 11,901 pretzel lunches provided between September 2008 and the time of the CRE review. Further, respondent asserts that in accordance with 7 CFR §210.18(m) it is required to take fiscal action for a Performance Standard 2 violation.

FINDINGS

Appellant asserts that throughout the 2008-2009 school year it has provided four slices of American cheese, which is a creditable meat alternate, with its pretzel lunches and as evidence it submits a "Standardized Recipe Information" sheet for its pretzel lunch which lists four slices of American cheese as an ingredient. Respondent states that the four slices of American cheese were only offered with the pretzel lunch after it pointed out to appellant at the April 15, 2009 CRE that the cheese sauce was not a creditable meat/meat alternate component for meeting the meal pattern requirements under 7 CFR §210.10(k)(1). Respondent correctly points-out that appellant has submitted two different "Standardized Recipe Information" sheets for the pretzel lunch. The information contained on the sheet submitted to respondent with appellant's May 29, 2009 letter varies slightly from the "Standardized Recipe Information" sheet submitted with appellant's May 11, 2011 letter to me requesting an appeal (see respondent's documents #5 and 6).

Upon review of these sheets, I note that they contain no recipe information at all. The 2009 sheet simply states "bake pretzel according to package directions." It is unclear why there would be a recipe sheet for a pre-packaged pretzel. Appellant does not offer an explanation for this nor does it explain why two different recipe sheets were submitted. It appears that the sheets, although titled "Standardized Recipe Information" are used by appellant to include a listing of the necessary meal components to ensure that a meal satisfies the requirements of the National School Lunch Program. Additionally, these sheets do not include the cheese sauce that was provided to students with the pretzel lunch. On the day of the CRE respondent observed that the pretzel lunch included cheese sauce and states that it specifically reviewed the ingredients of the sauce to see if it would qualify as a meat alternate. Neither one of the "Standardized Recipe Information" sheets, however, state that cheese sauce is a component of this meal. Appellant has not provided an explanation why it offered cheese sauce to students on the day of the CRE when it is not listed as a meal component on its "Standardized Recipe Information" sheet for the pretzel lunch. The two different "Standardized Recipe Information" sheets appellant provided after the CRE are inconsistent with the pretzel lunches that were served on the day of the CRE as observed by respondent. Thus, I find that appellant did not present sufficient evidence to prove that it provided four slices of American cheese with its pretzel lunches served throughout the 2008-2009 school year.

Fiscal action is required for all Performance Standard 2 violations (7 CFR §210.18[m]). Respondent is therefore required to take fiscal action for the Performance Standard 2 violation found during the April 15, 2009 CRE. Further, the federal National School Lunch Program regulations state that "fiscal action should be extended back to the beginning of the school year or that point in time during the current school year when the infraction first incurred, as applicable" (CFR §210.19[c][2][ii]). In this case, information was provided to respondents during the CRE that 11,901 pretzel lunches were served by appellant since the beginning of the school year. Respondent's reclaim of 11,901 pretzel lunches from appellant's 2008-2009 National School Lunch Program, which equals an amount between $10,000 and $12,000 is therefore reasonable.

CONCLUSION

I find that respondent acted in accordance with the Federal Child Nutrition Program's regulations, specifically those that pertain to the National School Lunch Program found at 7 CFR Part 210 when it determined that a reclaim of between $10,000 and $12,000 must be taken from appellant's 2008-2009 National School Lunch Program reimbursement.