

Commodity Supplemental Food Program (CSFP)

Fair Hearing Rules Pursuant to 7 C.F.R. § 247.33

These rules shall govern the fair hearing process when a CSFP applicant or participant appeals an adverse action, which may include the denial or discontinuance of CSFP benefits, disqualification from the program, or a claim to repay the value of commodities received as a result of fraud.

1. An individual, or an individual's parent or caretaker, hereinafter referred to as "appellant," may request a fair hearing by making a clear expression, verbal or written, to the South Dakota Department of Education, Office of Child and Adult Nutrition Services (CANS), that an appeal of the adverse action is desired.

2. The request for fair hearing must be received by CANS within 60 days from the date the notification of adverse action is mailed or otherwise provided in writing to appellant. CANS may dismiss a request for a fair hearing if the request is not received within the 60 day time period referenced in this paragraph.

3. The hearing officer may dismiss a request for fair hearing if the request is withdrawn in writing by the appellant or an authorized representative of the appellant.

4. The hearing officer may dismiss a request for fair hearing if the appellant fails to appear, without good cause, for the scheduled hearing.

5. The hearing officer will provide the appellant with at least ten days advance written notice of the time and place of hearing and include these rules of procedure for the hearing.

6. The appellant has the right to:

- a. Examine documents supporting the adverse action, before and during the hearing;
- b. Be assisted or represented by an attorney or other persons at the appellant's cost;
- c. Bring witnesses;
- d. Present arguments;
- e. Question or refute testimony or evidence, including an opportunity to confront and cross-examine others at the hearing; and
- f. Submit evidence to help establish the facts and circumstances.

7. The fair hearing will be conducted by an impartial official who does not have any personal stake in the decision and who was not directly involved in the adverse action that resulted in the hearing.

8. The hearing officer is responsible for:

- a. Ensuring that oaths or affirmations are administered, as required by the State;
- b. Ensuring that all relevant issues are considered;
- c. Ensuring that all evidence necessary for a decision to be made is presented at the hearing, and included in the record of the hearing;
- d. Ensuring that the hearing is conducted in an orderly manner, in accordance with due process; and
- e. Making a hearing decision.

9. The hearing record will include the decision and a transcript or recording of the testimony or an official report of what transpired at the hearing, along with all pleadings and all exhibits presented at the hearing.

10. The hearing officer will issue findings of fact and conclusions of law which summarize the facts of the case, specify the reasons for the decision, and identify the evidence supporting the decision and the laws or regulations that the decision upholds.

11. The decision by the hearing officer is binding.

12. The decision will be served upon the appellant and the agency making the adverse action within 45 days of receipt of the request for fair hearing by CANS.