

**South Dakota DOE - SUMMER FOOD SERVICE PROGRAM
NOTICE OF APPEAL PROCEDURES**

Actions Which Can Be Appealed

In accordance with 7 CFR 225.13, a sponsoring organization or a food service management company as applicable, may appeal the following actions made by Child and Adult Nutrition Services hereinafter referred to as the State Agency (SA):

- 1) denial of an organization's application for participation;
- 2) denial of an application submitted by a sponsoring organization for a site;
- 3) termination of the participation of a sponsor or a site;
- 4) denial of a sponsor's request for advance payment;
- 5) denial of all or a part of a sponsor's claim for reimbursement (except for late submission under 225.9 (d)(6));
- 6) claim against a sponsor for the remittance of a payment;
- 7) refusal by the State Agency to forward to FNS an exception request by the sponsor for payment of a late claim or a request for an upward adjustment to a claim;
- 8) denial of a food service management company's application for registration; or
- 9) revocation of a food service management company's registration.

STATE AGENCY RESPONSIBILITIES

The sponsor or food service management company 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 or food service management company has the right to appeal the action of the State Agency.

FILING AN APPEAL

- a) The appellant shall have an opportunity to review any information upon which the action was based.
- b) The appeal must be postmarked no later than two weeks from the date of receipt of the notice of action.
- c) The appeal request must state whether the appellant desires the hearing office to review records only or if the appellant desires a hearing before the review official/hearing officer.
- d) The appellant may refute the charges contained in the notice of action either in person or by filing written documentation with the review official. To be considered, written documentation must be submitted by the appellant within seven (7) days of submitting the appeal, must clearly identify the State Agency action being appealed, and must include a photocopy of the notice of action issued by the State Agency.
- e) Mail the request to the Secretary, Department of Education, 800 Governors Drive, Pierre, SD 57501-2235.
- f) The appellant may retain legal counsel or may be represented by another person.

PROCEDURES FOR HANDLING REVIEW

- 1) A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter requesting the appeal the action.
- 2) 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.

- 3) 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.
 - a. If the appellant has requested a hearing, the appellant and the State Agency shall 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.
 - b. The hearing shall be held within fourteen (14) days of the date of the receipt of the request for review, but, where applicable, not before the appellant's written documentation is received in accordance with paragraphs (4) and (5) of 225.13.
 - c. The review official shall be independent of the original decision making process.
 - d. A record regarding each review shall be kept by the State Agency for a period of three years following the date of the final determination of the appeal. Records may be kept in their original form or on microfilm. The record shall document the State Agency's compliance with these regulations and shall include the basis for the decision.

DETERMINATION OF THE REVIEW OFFICER

- 1) The review official shall make a determination based on information provided by the State Agency and the appellant, and in consistency with Summer Program regulations and policy.
- 2) Within five (5) working days after the appellant's hearing, or within five (5) working days after receipt of written documentation if no hearing is held, the reviewing official must make a determination based on a full review of the administrative record and inform the appellant of the determination of the review by certified mail, return receipt requested.

PROCEDURE PRIOR TO REVIEW

The State Agency's action shall remain in effect during the appeal process. However, participating sponsors and sites may continue operating under the Summer Program during an appeal or termination, and if the appeal results in overturning the State Agency's decision, reimbursement shall be paid for eligible meals served during the appeal process. However, such continued summer program operation 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.

FINAL DETERMINATION

The determination by the State review official is the final administrative determination to be afforded to the appellant.

TERMINATION PROCEDURES

As established by 7 CFR 225.11 (c) of the SFSP Regulations:

- a. The State Agency shall not enter into an agreement with any applicant sponsor/local agency identifiable through its corporate organization, officers, employees, or otherwise, as an institution which participated in any Federal child nutrition program and was seriously deficient in its operation of any such program. The State Agency shall terminate the Program agreement with any sponsor/local agency which it determines to be seriously deficient. However, the State Agency shall afford a sponsor/local agency reasonable opportunity to correct problems before terminating the sponsor/local agency for being seriously deficient.

- b. The State Agency may approve the application of a sponsor/local agency, which has been disapproved or terminated in prior years, if the sponsor/local agency demonstrates to the satisfaction of the State Agency that the sponsor/local agency has taken appropriate corrective actions to prevent recurrence of the deficiencies. Serious deficiencies which are grounds for disapproval of applications and for termination include, but are not limited to, any of the following:
- (1) Noncompliance with the applicable bid procedures and contract requirements of Federal child nutrition program regulations.
 - (2) Private Non-profit organizations with IRS tax-exempt status revoked are immediately terminated and found serious deficient. SFSP04-2017
 - (3) The submission of false information to the State Agency.
 - (4) Failure to return to the State Agency any start-up or advance payments which exceeded the amount earned for serving meals in accordance with Part 225, or failure to submit all claims for reimbursement in any prior year, provided that failure to return any advance payments for months for which claims for reimbursement are under dispute from any prior year shall not be grounds for disapproval in accordance with this paragraph.
 - (5) Program violations at a significant proportion of the sponsor/local agency's sites. Such violations include, but are not limited to, the following:
 - (a) Noncompliance with the meal service time restrictions set forth in Section 225.16(c).
 - (b) Failure to maintain adequate records.
 - (c) Failure to adjust meal orders to conform to variations in the number of participating children.
 - (d) The simultaneous service of more than one meal to any child.
 - (e) The claiming of Program payments for meals not served to participating children.
 - (f) Service of a significant number of meals which did not include required quantities of all meal components.
 - (g) Excessive instances of off-site meal consumption.
 - (h) Continued use of food service management companies that are in violation of health codes.
- c. Sponsor/local agencies or sites which have been terminated in accordance with the provisions above shall be allowed to appeal in accordance with 7CFR 225.13; see 7 CFR 225.6 (4) (ii).