

Appeal Procedure Summer Food Service Program

This Appeal Procedure is included with the final or closeout letter regarding any appealable action taken by the Minnesota Department of Education (MDE) in its administration of the Summer Food Service Program (SFSP). An organization that sponsors the SFSP (Sponsor) must follow this procedure to appeal an MDE action.

MDE actions subject to appeal are:

- 1) Denial of an application for a sponsor or a site to participate in the program.
- 2) Denial of a request for an advance payment.
- 3) Denial of a claim for reimbursement (except for late submission under 7 Code of Federal Regulations § 225.9(d)(5)).
- 4) Refusal to forward to the U.S. Department of Agriculture (USDA) an exception request for payment of a late claim or a request for an upward adjustment to a claim.
- 5) A claim against a sponsor for remittance of an overpayment.
- 6) Termination of a sponsor or a site.

Appeals are heard by a three-person panel at MDE, as described in section 8 of this procedure.

The MDE action being appealed remains in effect during the appeal process. Sponsor may continue to operate the program during the appeal process unless the MDE action is based on imminent danger to the health or welfare of children, as specified in MDE's notice of action. If the MDE action is termination of Sponsor from program participation for reasons other than imminent danger to the health or welfare of children and the appeal results in overturning the termination, reimbursement shall be paid after the appeal decision for meals served during the appeal process.

PROCEDURE

1. Notice of Action

When MDE takes an action against a Sponsor that is subject to appeal according to program regulations (7 Code of Federal Regulations 225), MDE sends notice of the action, and the grounds upon which the action was based, to Sponsor by certified mail – return receipt requested. MDE advises Sponsor that it has the right to appeal the MDE action.

2. Request for Appeal

Sponsor may appeal the MDE action by submitting an appeal request in writing not later than 14 days after the date that Sponsor received the notice of action to: Director of Food and Nutrition Service, Minnesota Department of Education, 1500 Highway 36 West, Roseville, MN 55113.

MDE will acknowledge the receipt of an appeal request within 10 days of its receipt of the request by certified mail, return receipt requested.

Sponsor's written request must include the following information:

- a. A description of the MDE action or actions that are being appealed.
- b. Name, address, telephone number and, if available, e-mail address, for the person authorized to represent Sponsor.
- c. An indication whether Sponsor is requesting that a hearing be held in addition to, or in lieu of, a review of written information. If Sponsor does not specifically request a hearing, the appeal will be based on a review of the written information.
- d. Written documentation may be submitted with the appeal request or within seven (7) days of the appeal request.
- e. The appeal request must be signed and dated.

MDE strongly recommends that Sponsor send an appeal request, and any other documentation, in a manner that provides Sponsor with proof of receipt such as certified mail, return receipt requested.

3. Representation

Sponsor may retain legal counsel or may be represented by another authorized person.

4. Review of Record

MDE will make available, from the date that MDE receives the appeal request, any information on which the MDE action was based.

5. Opposition and Submission of Written Documentation

Sponsor may refute the findings contained in the notice of action either in person, if a hearing was requested, or by submitting written documentation to the Appeal Panel. To be considered, written documentation must be submitted within seven (7) days of submitting the appeal request, must clearly identify the MDE action being appealed, and must include a photocopy of the notice of action issued by MDE.

6. Hearing

If a hearing is requested, the hearing must be held no later than 14 days after receipt of the appeal request. Sponsor will be provided with at least five (5) days advance notice of the time and place of a hearing by certified mail, return receipt requested.

Prior to the hearing, the Appeal Panel will review all written information submitted by Sponsor.

An MDE representative shall be allowed to attend the hearing to respond to Sponsor's testimony and written information and to answer questions from the Appeal Panel.

If Sponsor's authorized representative fails to appear at a scheduled hearing, Sponsor waives the right to a personal appearance before the Appeal Panel, unless the Appeal Panel agrees to reschedule the hearing.

7. Decision Without a Hearing

No hearing will be held and the Appeal Panel will base its decision on a full review of the administrative record if Sponsor:

- Did not request a hearing in accordance with the requirements in Section 2 of this procedure, or
- Waived the right to a hearing by failing to appear at a scheduled hearing as described in Section 6 of this procedure.

8. Appeal Panel

The Appeal Panel acts as the review official required in 7 Code of Federal Regulations § 225.13(b). The members of an Appeal Panel will be independent, impartial, and not accountable to any person authorized to make decisions that are subject to appeal. To this effect, the Appeal Panel will be made up of MDE staff from outside the Food and Nutrition Service (FNS) unit that initiated the MDE action. The Appeal Panel is composed of three MDE staff, who are independent of the original decision-making process, from a pool of available members. The pool includes:

- Manager and selected staff of MDE-FNS Internal Operations.
- Manager and selected staff of MDE-FNS Policy and Analysis.
- MDE financial and administrative specialists.
- Assistant Commissioner, Office of Student Support Services.

The Appeal Panel will select one of its members who may be contacted directly by Sponsor.

9. Decision

The Appeal Panel will make a determination based solely on the information provided by MDE and Sponsor and program regulations. The decision of a majority of the members of the Appeal Panel is the decision of the Appeal Panel.

Within five (5) working days after the hearing, or within five (5) working days after receipt of written documentation if no hearing is held, the Appeal Panel makes a determination based on a full review of the administrative record and informs Sponsor of the decision by certified mail, return receipt requested. This timeframe is an administrative requirement for MDE and may not be used as a basis for overturning MDE's action if a decision is not made within the specified timeframe.

The determination made by the Appeal Panel is the final administrative determination to be afforded to Sponsor.

10. Record

MDE maintains searchable records of appeals and results, subject to the Minnesota Government Data Practices Act.

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disability, sex, gender identity, religion, reprisal and, where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

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Individuals who are deaf, hard of hearing, or have speech disabilities and wish to file either an EEO or program complaint please contact USDA through the Federal Relay Service at (800) 877-8339 or (800) 845-6136 (in Spanish).

Persons with disabilities who wish to file a program complaint, please see information above on how to contact us by mail directly or by email. If you require alternative means of communication for program information (e.g., Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

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