



National School Lunch Program Administrative Review Appeal Right



If you disagree with a decision rendered by the Department of Education and Early Development, you have the right to request an administrative review of that decision by an impartial Administrative Review (Hearing) Official for the reasons of the denial of all or part of a Claim for Reimbursement or withholding payment arising from an administrative review (initial or follow-up).

In order to arrange for a review, you must file a written request within 15 calendar days of receipt of the notice of the decision. The request should state the reasons why you feel the decision or action is wrong and if you want an in-person hearing. Your request must be addressed to the following office:

**Office of the Commissioner
Department of Education & Early Development
PO Box 110500
Juneau, Alaska 99811**

I. State Agency Responsibility:

- 1) Send written notice of reason for action to agency and responsible parties
- 2) Inform agency & responsible parties of appeal rights

II. Appellant Responsibility

- 1) Request administrative review – not later than 15 calendar days (in writing) from date of receipt of notice (earliest form of transmission), specify if in-person review is requested
 - 2) Submit written documentation or evidence within 30 days of receipt of notice
- or-**
- 3) Be present at hearing (may represent self, retain legal counsel, or may be represented by another person)

III. Administrative Review (Hearing) Official Responsibility

- 1) Acknowledge receipt of administrative review request within 10 calendar days of receipt
- 2) Notify appellant and State Agency of Hearing location and time 10 calendar days in advance (if applicable)
- 3) Make a determination based on information provided by State Agency and the appellant
- 4) Notify appellant and State Agency within 60 calendar days of receipt of request for administrative review

USDA NSLP Regulations 7 CFR 210.18

(q) School food authority appeal of State agency findings. Except for FNS-conducted reviews authorized under §210.29(d)(2), each State agency shall establish an appeal procedure to be followed by a school food authority requesting a review **of a denial of all or a part of the Claim for Reimbursement or withholding payment arising from administrative or follow-up review activity** conducted by the State agency under §210.18 of this part. State agencies may use their own appeal procedures provided the same procedures are applied to all appellants in the State and the procedures

meet the following requirements: appellants are assured of a fair and impartial hearing before an independent official at which they may be represented by legal counsel; decisions are rendered in a timely manner not to exceed 120 days from the date of the receipt of the request for review; appellants are afforded the right to either a review of the record with the right to file written information, or a hearing which they may attend in person; and adequate notice is given of the time, date, place and procedures of the hearing. If the State agency has not established its own appeal procedures or the procedures do not meet the above listed criteria, the State agency shall observe the following procedures at a minimum:

(1) The written request for a review shall be postmarked within **15 calendar days** of the date the appellant received the notice of the denial of all or a part of the Claim for Reimbursement or withholding of payment, and the State agency shall acknowledge the receipt of the request for appeal within 10 calendar days;

(2) The appellant may refute the action specified in the notice in person and by written documentation to the review official. In order to be considered, written documentation must be filed with the review official not later than **30 calendar days** after the appellant received the notice. The appellant may retain legal counsel, or may be represented by another person. 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 of request for review. Failure of the appellant school food authority's representative to appear at a scheduled hearing shall constitute the appellant school food authority's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official;

(3) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least **10 calendar days advance written notice**, sent by certified mail, return receipt requested, of the time, date and place of the hearing;

(4) Any information on which the State agency's action was based shall be available to the appellant for inspection from the date of receipt of the request for review;

(5) The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section;

(6) The review official shall make a determination based on information provided by the State agency and the appellant, and on Program regulations;

(7) **Within 60 calendar days** of the State agency's receipt of the request for review, by written notice, sent by certified mail, return receipt requested, the review official shall inform the State agency and the appellant of the determination of the review official. The final determination shall take effect upon receipt of the written notice of the final decision by the school food authority;

(8) The State agency's action shall remain in effect during the appeal process;

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

Withholding funds 7 CFR 210(m)

(m) *Fiscal action.* Fiscal action for violations identified during an administrative review or any follow-up reviews must be taken in accordance with the provisions in §210.19(c) of this part.

(1) *Performance Standard 1 violations.* A State agency is required to take fiscal action for all violations of Performance Standard 1. The State agency may limit fiscal action from the point corrective action occurs back through the beginning of the review period for errors identified under paragraphs (g)(1)(i)(A) through (C) of this section, provided corrective action occurs.

(2) *Performance Standard 2 violations.* Except as noted under paragraph (m)(2)(iv) of this section, a State agency is required to take fiscal action for violations of Performance Standard 2 as follows:

(i) For food component violations cited under paragraph (g)(2) of this section, the State agency must take fiscal action and require the school food authority and/or school reviewed to take corrective action for the missing component. If a corrective action plan is in place, the State agency may limit fiscal action from the point corrective action occurs back through the beginning of the review period for errors identified under paragraph (g)(2) of this section.

(ii) For repeated violations involving vegetable subgroups and milk type cited under paragraph (g)(2) of this section, the State agency must take fiscal action provided that:

(A) Technical assistance has been given by the State agency;

(B) Corrective action has been previously required and monitored by the State agency; and

(C) The school food authority remains in noncompliance with the meal requirements established in parts 210 and 220 of this chapter.

(iii) For violations involving food quantities and whole grain-rich foods cited under paragraph (g)(2) of this section and for violations of calorie, saturated fat, sodium, and *trans* fat requirements cited under paragraph (g)(2)(iv) of this section, the State agency has discretion to apply fiscal action provided that:

(A) Technical assistance has been given by the State agency;

(B) Corrective action has been previously required and monitored by the State agency; and

(C) The school food authority remains in noncompliance with the meal requirements established in parts 210 and 220 of this chapter.

(iv) *Performance-based cash assistance.* In addition to fiscal action described in paragraphs (m)(2)(i) through (iii) of this section, school food authorities may not earn performance-based cash assistance authorized under §210.4(b)(1) unless immediate corrective action occurs. School food authorities will not be eligible for the 6 cents per lunch reimbursement, as adjusted, with the beginning of the month following the administrative review and, at State discretion, for the month of review. Performance-based cash assistance may resume beginning in the first full month the school food authority demonstrates to the satisfaction of the State agency that corrective action has taken place.

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1. **mail:** U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410; or
2. **fax:** (833) 256-1665 or (202) 690-7442; or
3. **email:** program.intake@usda.gov

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