

North Dakota Department of Public Instruction
Summer Food Service Program
Appeals Procedures
Revised February 2010

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

NDDPI actions subject to appeal are:

- (1) Denial of an application for 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 CFR 225.9(d)(5));
- (4) Refusal to forward to 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 Sponsor or a site.

The NDDPI action being appealed remains in effect during the appeal process. Sponsor may continue to operate the program during the appeal process unless the NDDPI action is based on imminent danger to the health or welfare of children, as specified in NDDPI's notice of action. If the NDDPI 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 NDDPI takes an action against a Sponsor that is subject to appeal according to program regulations (7 CFR 225), NDDPI sends notice of the action, and the grounds upon which the action was based, to Sponsor by certified mail – return receipt requested. NDDPI advises Sponsor that it has the right to appeal the NDDPI action.

2. Request for Appeal

If Sponsor decides to appeal the NDDPI action, Sponsor must submit an appeal request in writing not later than 14 days after the date that Sponsor received the notice of action to:

Robert Marthaller, Assistant Superintendent
North Dakota Department of Public Instruction
600 East Boulevard Avenue, Dept. 201
Bismarck, ND 58505-0440

Sponsor's written request must include the following information:

- 1 A description of the NDDPI action or actions that are being appealed.
2. Name, address, telephone number, and, if available, e-mail address, for the person authorized to represent Sponsor.
3. 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.
4. An indication whether Sponsor will be submitting additional written documentation. Written documentation must be submitted within 7 days of the appeal request.
5. The appeal request must be signed and dated.

NDDPI 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.

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

3. Representation
Sponsor may retain legal counsel or may be represented by another authorized person.
4. Review of Record
NDDPI will make available, from the date that NDDPI receives the appeal request, any information on which the NDDPI 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 Appeals Official. To be considered, written documentation must be submitted with 7 days of submitting the appeal request, must clearly identify the NDDPI action being appealed, and must include a photocopy of the notice of action issued by NDDPI.
6. Hearing
If a hearing is requested, the hearing must be held no later than 14 days after receipt of the appeal request. If Sponsor has indicated that it will be submitting written documentation in accordance with section (6), the hearing will not be scheduled within the first 7 days after receipt of the appeal request to allow time for submission of the written documentation. Sponsor must be provided with at least 5 days advance notice of the time and place of a hearing by certified mail, return receipt requested.

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

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

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

7. Decision without Hearing
No hearing will be held and the Appeal Official 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 Official
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.
9. Decision
The Appeal Official will make a determination based solely on the information provided by NDDPI and Sponsor and Program regulations. The decision of a majority of the members of the Appeal Official is the decision of the Appeal Official.

Within 5 working days after the hearing, or within 5 working days after receipt of written documentation if no hearing is held, the Appeal Official 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 NDDPI and may not be used as a basis for overturning NDDPI's action if a decision is not made within the specified timeframe.

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