SUMMER FOOD SERVICE PROGRAM (SFSP)
APPEAL PROCEDURES

For the purpose of this document, the word appellant *will refer to sponsor.*

1. The Appellant will be notified in writing by certified mail, return receipt requested, of the grounds upon which the Oklahoma State Department of Education (SDE) based its action. The notice must inform the Appellant of its right to appeal. Two methods for appeal are authorized.

   a. The Appellant may request a review of the records. Upon receipt of such a request, the SDE must contract with an administrative law judge to conduct the review.

   OR

   b. The Appellant may request a hearing in addition to, or in lieu of, a request for a review of documents. Upon receipt of a request for a hearing, the SDE must contract with an administrative law judge to conduct the hearing.

2. The written request for a review of records or for a hearing must be filed by the Appellant no more than seven calendar days from the date the Appellant receives the notice of the action. A hearing must be held by the review official in addition to, or in lieu of, a review of written information ***only if*** the Appellant so specified in the letter requesting the appeal. Therefore, the written request ***must specify*** which type of appeal is requested. Mail written request to the Oklahoma State Department of Education, Child Nutrition Programs, Suite 310, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

3. The Appellant may refute the information contained in the notice of action in person or by written documentation presented to the review official. In order to be considered, written documentation must be filed with the review official ***within seven calendar days of submitting the appeal***; it must clearly identify the State Agency action being appealed and must include a photocopy of the notice of action issued by the SDE. The Appellant is allowed the opportunity to review any information upon which the action was based. The Appellant may be represented by legal counsel or another person. The following applies to the two methods for the appeal process:

   a. Review of Records

      - Upon receipt of an appeal requesting a review of records, the review official must notify the Appellant of the timelines for submission of documents.

      - Records submitted that were not available during the review or audit shall not be considered unless documentation is accepted by the review official.

- Failure to submit written documentation to refute the action taken by the SDE within the seven-day time period must constitute the Appellant's waiver of the appeal, resulting in the action taken by the SDE being upheld.

- The review official shall be an independent and impartial administrative law judge.

b. Hearing

- Upon receipt of an appeal requesting a hearing, the review official must notify the Appellant of the timeline for submission of documents.

- Written documentation submitted after the seven-day time period will not be considered at any point during the appeal process, including the hearing.

- If the Appellant chooses to be represented by legal counsel, the Appellant will notify the review official of the counsel's name and address.

- The Appellant and SDE will be notified by certified mail, return receipt requested, of the time, date, and place of the hearing. The notice must be provided at least five calendar days prior to the hearing.

- Failure of the Appellant or its representative(s) to appear at a scheduled hearing will 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.

- A representative of the SDE 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.

- The review official will be an independent and impartial administrative law judge.

4. The hearing will be held within 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 Item 3 on the previous page.

5. Documents and information relating to the Appellant and the action taken will be available for inspection and duplication pursuant to the Open Records Fee Schedule at the Office of Child Nutrition Programs (CNP).

6. The review official must make a determination based on information provided by the SDE, the Appellant, and the laws and regulations governing the SFSP.

7. Within five working days after the Appellant's hearing, or within five working days after receipt of the written documentation if no hearing is held, the review official must make a determination and inform the Appellant and the SDE of the determination of the review by certified mail, return receipt requested.

8. The State Agency's action remains in effect during the appeal process. However, participating Appellants and sites may continue to operate the program during an appeal of termination and if the appeal results in overturning the State Agency's decision, reimbursement shall be paid for meals served during the appeal process. However, such continued program operation shall not be allowed if the State Agency's action is based on imminent dangers to the health or welfare of children. If the Appellant or site has been terminated for this reason, the State Agency shall so specify in its notice of action.

9. The determination of the review official is the final administrative determination to be afforded the Appellant.

10. Pursuant to federal regulations, appeals will not be allowed on decisions made by the Food and Nutrition Service (FNS) on requests for exceptions to the claims submission deadlines or requests for upward adjustments to claims.

    Section 225.6(a)(4)(i) of program regulations:

    The criminal penalties and provisions established in Section 12(g) of the National School Lunch Act (42 U.S.C. 1760[g]) that gives substantially: Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such funds, assets, or property to personal use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of $100 or more, be fined not more than $25,000 or imprisoned not more than five years, or both, or if such funds, assets, or property are of a value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.