



## **NH Appeals/Hearing Policy**

**Policy:** It is the policy of the Department of Education, Division of Program Support, Bureau of Nutrition Programs and Services to provide a procedure for the federal regulation of providing an independent, impartial system for hearing appeals.

### **Summer Food Service Program**

#### **225.13(a)**

Denial of an application for participation; denial of a sponsor's request for an advance payment; denial of a sponsor's claim for reimbursement (except for late submission under 225.9(d)(5); a state agency refusal to forward to FCS an exception request by the sponsor for payment of a late claim or a request for an upward adjustment to a claim; a claim against a sponsor for remittance of a payment; the termination of the sponsor of a site; denial of a sponsor's application for a site; denial of a Food Service Management Company's application for registration; if applicable, the revocation of a Food Service Management company's registration. Appeals shall not be allowed on decisions made by FNS with respect to late claims or upward adjustments under 225.9(d)(6).

#### **225.13(b)**

At a minimum, appeal procedures shall provide that:

- (1) The sponsor or food service management company 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 state that the sponsor or food service management company has the right to appeal the State's action;
- (2) The sponsor or food service management company be advised in writing that the appeal must be made within a specified time and must meet the requirements of paragraph (b)(4) of this section. The State agency shall establish this period of time at not less than one week nor more than two weeks from the date on which the notice of action is received;
- (3) The appellant be allowed the opportunity to review any information upon which the action was based;
- (4) The appellant be allowed to 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 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;
- (5) A hearing 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 appealing the action. The appellant may retain legal counsel or may be represented by another person. 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. 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;
- (6) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing;
- (7) The hearing 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 paragraphs (b) (4) and (5) of this section;

- (8) The review official be independent of the original decision-making process;
- (9) The review official make a determination based on information provided by the State agency and the appellant, and on Program regulations;
- (10) Within 5 working days after the appellant's hearing, or within 5 working days after receipt of written documentation if no hearing is held, the reviewing official 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;

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- (11) The State agency's action remain in effect during the appeal process. However, participating sponsors 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 sponsor or site has been terminated for this reason, the State agency shall so specify in its notice of action; and
- (12) The determination by the State review official is the final administrative determination to be afforded to the appellant.
- (c) The State agency shall send written notification of the complete appeal procedures and of the actions which are appealable, as specified in paragraph (a) of this section, to each potential sponsor applying to participate and to each food service management company applying to register in accordance with § 225.6(g).
- (d) A record regarding each review shall be kept by the State agency, as required under § 225.8(a). The record shall document the State agency's compliance with these regulations and shall include the basis for its decision.

**Procedure:** Rules for the purpose of conducting an adjudicative hearing in a contested case, investigations or other cases where a hearing is provided pursuant to **RSA 541-A** in areas with the board's jurisdiction, are the cornerstone of this procedural map. Prior to initiating a formal appeal, every effort should be made to resolve the contested decision with the appropriate administrative appointee. In the case of sponsors of the USDA programs, this may be the Administrator of the Bureau of Nutrition Programs and Services, the Director of the Division of Integrated Programs, or the Commissioner of Education.

- a. **RSA 541-A:38. Part 220** provides for a neutral evaluation, mediation, or arbitration as a method of alternative dispute resolution by which the board hopes to encourage an informal settlement to any dispute becoming a contested case. However, if this process is unsuccessful, the following procedures are in place:
- b. **Step 1—Request to Initiate**
  - Request shall be in writing and shall be addressed to the State Board of Education in care of the Department of Education.
  - Each request shall state the name, address, and phone number of the person making the request.
  - The circumstances of the dispute and an identification of the appointed or elected education officials who made the decision being appealed.
  - The law, rule or local policy which was the basis for the decision which the person is challenging;
  - How the person has been adversely affected by the decision; and
  - Any other information the person deems relevant to a speedy resolution of the matter.
- c. **Step 2—Receipt of Request**
  - The department shall assign the case to a hearing officer who shall represent the board in accordance with **RSA 186:10-a**
  - Within 10 days, the hearing officer shall discuss alternative dispute resolution procedures with the parties, including neutral evaluation and mediation as outlined in ED 220
  - The hearing officer shall schedule at least one pre-hearing conference in accordance with ED 204 if neither party agrees to an alternative dispute resolution method outlined in Ed. 220.
- d. **Step 3--Settlements**

- Upon agreements by all parties to an offer of settlement, the hearing officer shall cause a formal document to be drawn which shall specify the terms and conditions of the settlement.
- Until all parties have signed the document, the agreement shall not become final and binding. All parties shall receive copies of the fully executed documents.
- By signing the document all parties shall thereby waive their right to an adjudicative proceeding and the matter and related matters and issues shall be deemed concluded and the settlement binding on the parties.

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**e. Step 4—Appearance before Board or Hearing Officer**

- A person shall appear in a proceeding by personal attendance or through the attendance of a representative appointed by the person.
- Individuals or public or corporate bodies may appoint a representative who is either an attorney-at-law licensed in NH or is a person knowledgeable about the subject matter of the appeal to represent him or her.
- Parties shall retain counsel at their own expense and requests for appointment of counsel shall not be entertained.

**f. Step 5---Proposed Decision**

- Presented to all parties within 45 days of the hearing.
- Within prescribed time frames the hearing officer shall provide to the full board the record of the hearing, including the hearing officer’s proposed decision and any written exceptions to rulings by the office.

**g. Step 6—Final Decision**

- All interested parties shall be notified of the State Board of Education’s final decision in writing and shall be provided with a copy of the decision by certified mail within 10 days after the date such decision is made.

**h. Step 7—Appeals of Final Board Decision**

- All appeals of the state board action shall be taken in accordance with RSA 541.

Any person aggrieved by a decision by an appointed or elected education official or officials may request an alternative dispute resolution, including but not limited to neutral evaluation and mediation as methods of resolving the matter. Suggested, but not limited to, methods of resolution are:

- Neutral evaluation
- Mediation
- Non-binding arbitration
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\*\*\* The complete and official regulations regarding the hearing process are available upon request. Contacting the State Administrative Office and requesting the NH Code of Administrative Rules, Chapter Ed 200, Rules of Practice and Procedure, Part Ed 201-Purpose and Scope---Part Ed 215 Alternative Dispute Resolution