

ATTACHMENT R

ADMINISTRATIVE APPEAL REVIEW PROCEDURES

1) Application denial and proposed disqualification

The State Agency (SA) will notify the Local Education Agency (LEA) that the LEA's application has been denied. The notice will also specify:

- A) That the LEA's application has been denied and the SA is proposing to terminate the agreement ;
- B) The basis for the actions;
- C) That, if the LEA voluntarily terminates its agreement after receiving the notice of the proposed termination, the LEA will be disqualified;
- D) The procedures for seeking an administrative review of the application denial and proposed disqualifications; and
- E) That the LEA may continue to participate in the Program and receive Program reimbursement for eligible meals served and allowable administrative costs incurred until its administrative review is completed.

2) Program payments and extended agreements

If the renewing LEA's agreement expires before the end of the time allotted for corrective action, and/or the conclusion of any administrative review requested by the renewing LEA:

- A) The SA will temporarily extend its current agreement with the renewing LEA and continue to pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative expenses incurred; and
- B) The above actions will be taken either until the application is corrected or until the LEA'S agreement is terminated, including the period of any administrative review.

3) Administrative review definition

Administrative review means the initial comprehensive on-site evaluation of all LEA's participating in the Program in accordance with the provisions of 7 CFR Section 210.18. The term "administrative review" is used to reflect a review of both critical and general areas in accordance with paragraphs 210.18(g) and 210.18(h).

4) Agreement termination and disqualification

When the time for requesting an administrative review expires or when the administrative review official upholds the SA's denial of the LEA's application, the proposed termination, and the proposed disqualifications, the Department will notify the LEA that the temporarily-extended agreement has been terminated and that the LEA has been disqualified;

5) Actions subject to administrative review

The SA will offer administrative reviews for the following actions:

- A) Denial of a new or renewing LEA's application for participation;
- B) Proposed termination of an LEA's agreement;
- C) Proposed disqualification of a LEA;
- D) Suspension of an LEA's participation;
- E) Denial of all or a part of an LEA's claim for reimbursement (except for a denial based on a late submission);

- F) Decision by the SA not to forward to FNS an exception request by an LEA for payment of a late claim, or a request for an upward adjustment to a claim;
- G) Demand for the remittance of an overpayment; and,
- H) Any other action of the SA affecting an LEA's participation or its claim for reimbursement.

6) Actions not subject to administrative review

The SA will not offer administrative reviews of the following actions:

- A) A decision by FNS to deny an exception request by an LEA for payment of a late claim, or for an upward adjustment to a claim;
- B) Termination of a participating LEA's agreement, including termination of a participating LEA's agreement based on the disqualification of the LEA by another State agency or FNS.

7) Provision of administrative review procedures to LEA's

The SA's administrative review procedures are provided:

- A) Annually to all LEA's;
- B) To a LEA when the SA takes any action subject to an administrative review; and,
- C) Any other time upon request.

8) Resolving contested decisions

Prior to initiating a formal appeal, every effort should be made to resolve the contested decision with the appropriate administrative appointee.

9) Procedures for administrative reviews

The SA will follow the procedures described here when an LEA appeals any action subject to administrative review as described in this policy.

- A) Notice of action. The LEA's will be given notice of the action being taken or proposed, the basis for the action, and the procedures under which the LEA may request an administrative review of the action.
- B) Return receipt mail. The notice of action will be sent by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax or email.
- C) Time to request administrative review. The request for administrative review must be submitted in writing not later than 15 days after the date the notice of action is received. The request shall be addressed to the State Board of Education in care of the Department of Education. Requests must include the following:
 - i) Name, address and telephone number of the person making the request; ii) The circumstances of the dispute and an identification of the appointed or elected education officials who made the decision being appealed;
 - iii) The law, rule or local policy which was the basis for the decision being challenged; iv) How the LEA has been adversely affected by the decision; and,
 - v) Any other information the LEA deems relevant to the speedy resolution of the matter.

D) Receipt of Request.

- i) The SA will acknowledge the receipt of the request for an administrative review within 10 days of its receipt of the request.
- ii) The SA will assign the case to a hearing officer who shall represent the Board in accordance with RSA 186:10a.
- iii) Within 10 days the hearing officer shall recommend in writing an alternative dispute resolution procedure with the parties, including neutral evaluation and mediation as outlined in ED 220.
iv) 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. Parties will be notified of the time, date and place of the conference. Notification will be sent by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax or email.

E) Settlements.

- i) Upon agreement 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.
- ii) 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.
- iii) 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.

F) Representation.

- i) The LEA may retain legal counsel, or may be represented by another person.

G) Review of record.

- i) Any information on which the SA's action was based will be available to the LEA for inspection from the date of receipt of the request for an administrative review.

H) Opposition.

- i) The LEA may refute the findings contained in the notice of action in person or by submitting written documentation to the administrative review official. In order to be considered, written documentation must be submitted to the administrative review official not later than 30 days after receipt of the notice of action.

I) Hearing.

- i) A hearing will be held by the administrative review official in addition to, or in lieu of, a review of written information only if the LEA requests a hearing in the written request for an administrative review.
- ii) Notification of the hearing will be sent by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax or email.
- iii) A LEA shall appear in a proceeding through the attendance of a representative appointed by the LEA;
- iv) LEA's may appoint a representative who is either an attorney-at-law licensed in New Hampshire or is a person knowledgeable about the subject matter of the appeal;
- v) Parties shall retain counsel at their own expense and requests for appointment of counsel shall not be entertained;
- vi) If the LEA's representative fail to appear at a scheduled hearing, they waive the right to a personal appearance before the administrative review official, unless the administrative review official agrees to reschedule the hearing.

- vii) A representative of the SA must be allowed to attend the hearing to respond to the testimony of the LEA representative and to answer questions posed by the administrative review official.
- viii) If a hearing is requested, the LEA, and the SA must be provided with at least 10 days advance notice of the time and place of the hearing.

B. Administrative review official.

- i) The administrative review official must be independent and impartial. This means that, although the administrative review official may be an employee of the SA, he/she must not have been involved in the action that is the subject of the administrative review, or have a direct personal or financial interest in the outcome of the administrative review. The LEA must be permitted to contact the administrative review official directly if they so desire.

C. Basis for decision.

- i) The administrative review official must make a determination based solely on the information provided by the SA and LEA and based on Federal and State laws, regulations, policies, and procedures governing the Program.
- ii) Proposed decisions will be presented to all parties within 45 days of the hearing.
- iii) Within prescribed timeframes, 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.
- iv) E. Final decision.
- ii) Within 60 days of the SA's receipt of the request for an administrative review, the administrative review official must inform the SA and the LEA's of the administrative review's outcome.
- iii) This timeframe is an administrative requirement for the SA and may not be used as a basis for overturning the SA's action if a decision is not made within the specified timeframe.
- iv) The determination made by the administrative review official is the final administrative determination to be afforded the institution and the responsible principals and responsible individuals.

F. Appeals of final board decisions

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

- iii) Any person aggrieved by a decision may request an alternative dispute resolution, including, but not limited to, neutral evaluation and mediation as methods of resolving the matter.
- iv) Suggested, but not limited to, methods of resolution are:
 - (a) Neutral evaluation;
 - (b) Mediation; and
 - (c) Non-binding arbitration.

10) Record of result of administrative reviews

The SA must maintain searchable records of all administrative reviews and their disposition.

11) Abbreviated administrative review

The SA will limit the administrative review to a review of written submissions concerning the accuracy of the SA's determination if the application was denied or the SA proposes to terminate the LEA's agreement because:

- A. The information submitted on the application was false;
- B. The LEA is ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program; or
- C. The LEA has been convicted for any activity that indicates a lack of business integrity.

12) Effect of State Agency action

The SA's action will remain in effect during the administrative review. The effect of this requirement on particular SA actions is as follows.

- A. Overpayment demand. During the period of the administrative review, the SA will not take action to collect or offset the overpayment. However, the SA will assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review unless the administrative review official overturns the SA's action.
- B. Program payments. The availability of Program payments during an administrative review dependent on the circumstances of the LEA. Each circumstance is described below.
 - ii) New LEA's. No claims for reimbursement from a *new LEA* for eligible meals served or allowable administrative expenses incurred will be paid until the SA has approved the LEA's application and the LEA and SA have signed a Program agreement.
 - iii) Proposed suspension and termination. Unless participation has been suspended, the SA will pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative expenses incurred until the problem is corrected or the LEA's agreement is terminated, including the period of the administrative review.
 - iv) Suspension. The SA will not pay any claims for reimbursement from a suspended LEA. However, if the suspended LEA prevails in the administrative review of the proposed termination, the SA will pay any claims for reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.
 - v) False or fraudulent claims. The SA will not pay any claims for reimbursement submitted by a suspended LEA. If the suspended LEA prevails in the administrative review of the proposed termination, the SA will pay any valid unpaid claims for reimbursement for eligible meals served during the suspension period.