



School Food Authority Appeal Procedure for the Administrative Review

The following NSLP Administrative Review procedures include notification, request, and procedure for a hearing in accordance with Federal regulation.

A. PURPOSE

School Food Authorities (SFAs) of the NSLP may request a review of Administrative Review findings that result in:

- The denial of all or part of a claim for reimbursement;

or

- Withholding of reimbursement payments arising from initial or follow-up Administrative Review activity.

B. PROCEDURE

Notification, request, and procedure for hearing:

1. Whenever the New Mexico Public Education Department (NMPED) takes action that is subject to review as described in (A) above, NMPED will provide the SFA a written notice that details the action and the basis for the action and advise the SFA of its right to an appeal.
2. A written request for review must be submitted to NMPED no later than 15 calendar days from the date the SFA return receipt requested.

**Director of Student Success and Wellness
STATE OF NEW MEXICO
PUBLIC EDUCATION DEPARTMENT
300 DON GASPAR
SANTA FE, NEW MEXICO 87501-2786**

The program Director will forward the request to the review official.

3. NMPED shall acknowledge receipt of the request for an appeal within 10 calendar days after receipt.
4. The SFA may refute the action specified in the notice, described in Section (B)(1), in person and by written documentation. To be considered, written documentation must be filed by the SFA and NMPED with the review official and must be exchanged between NMPED and the SFA no later than 30 calendar days after the SFA receives the notice. Written documentation must clearly identify the NMPED action being reviewed and must include a photocopy of the notice of action issued by NMPED.

5. The SFA may retain legal counsel or may be represented by another person. A representative of NMPED and legal counsel, if desired, must be allowed to attend the hearing to respond to the testimony presented by the SFA and to answer questions posed by the review official.
6. The review official will hold a hearing in addition to, or instead of, a review of written information submitted by the SFA only if the SFA requests a hearing in the written request for review. Failure to appear at a scheduled hearing will constitute the SFA's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing.
7. If a hearing is requested, the SFA and NMPED must be provided with at least 10 calendar days advance written notice of the time, date, and place of the hearing. The notice to the SFA must be sent by certified mail, return receipt requested.
8. Any information on which NMPED's action was based will be available to the SFA for inspection from the date of receipt of the request for review.
9. The review official shall be independent and impartial, but may be an employee of NMPED, although he/she must not have been involved in the action that is the subject of the appeal or be accountable to any person authorized to make decisions that are subject to review as described in Section (A). The SFA is permitted to contact the review official directly if so desired.
10. The review official must make a determination based solely on information provided by NMPED, the SFA, and based on Federal and State laws, regulations, policies, and procedures governing the program. The review official will not base the decision on arguments made by legal counsel or the SFA's representative, nor may legal counsel offer testimony on behalf of the SFA or NMPED.
11. Within 60 calendar days from the date NMPED receives a request for review, the review official must inform NMPED and the SFA of the review determination. The final decision shall be sent to the SFA by certified mail, return receipt requested. The final determination shall take effect upon the SFA's receipt of the written notice of the final decision. The 60-day deadline may be extended for good cause at the discretion of the review official, but the final decision must be made within 120 calendar days from the date NMPED receives a request for review.
12. NMPED's action will remain in effect during the review process. The determination by the state review official is the final administrative determination to be afforded to the SFA.

Appeal procedures are included in 7 CFR 210.18(p). The Code of Federal Regulations should be consulted for additional rules regarding the Administrative Review process.

If you have questions regarding these procedures, please contact NMPED Student Success and Wellness.

7. 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 review official will 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;

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

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

10. NMPED 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 SFA applying to participate and to each food service management company applying to register in accordance with
§ 225.6(g).

11. A record regarding each review shall be kept by NMPED, as required under § 225.8(a). The record shall document NMPED's compliance with these regulations and shall include the basis for its decision. Appeal procedures are included in 7 CFR § 225.13(a). The Code of Federal Regulations should be consulted for additional rules regarding the administrative review process.

Appeal procedures are included in 7 CFR 210.18(p). The Code of Federal Regulations should be consulted for additional rules regarding the Administrative Review process.

If you have questions regarding these procedures, please contact NMPED Student Success and Wellness.

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/ad-3027.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

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