



PUBLIC SCHOOLS OF NORTH CAROLINA

DEPARTMENT OF PUBLIC INSTRUCTION | June St. Clair Atkinson, Ed.D., *State Superintendent*

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July 9, 2015

Ms. Julie Brewer
Child Nutrition Policy and Program Development Division
Food and Nutrition Service
U.S. Department of Agriculture
3101 Park Center Drive, Room 1212
Alexandria, VA 22302-1594

Dear Ms. Brewer:

The School Nutrition Division of the North Carolina Department of Public Instruction (NCDPI) appreciates the opportunity to submit comments on the Proposed Rule, *Administrative Reviews in the School Nutrition Programs*. Like many State agencies that oversee the Federally-funded School Nutrition Programs, the NCDPI has implemented the new Administrative Review (AR) Process since July, 2013. These comments are based on actual experiences and lessons learned from State agency Consultants and Specialists as well as School Nutrition Directors and staff that administer the programs in their local education agencies.

The NCDPI's comments are as follows.

Technical Assistance during the Administrative Review

While the NCDPI appreciates the extensive work that went into the development of the AR and recognizes the US Department of Agriculture's (USDA) attempt to standardize the AR throughout the country to ensure a minimum level of accountability in all States, the current AR lowered accountability standards that were previously established in North Carolina (NC) while simultaneously limiting the department's capacity to provide meaningful on-site technical assistance and consultation to School Food Authorities (SFAs) and Local Education Agencies (LEAs). Prior to the release of the newly-revised AR procedures and forms in March, 2013, the NCDPI conducted a comprehensive Coordinated Review Effort (CRE) and School Meal Initiative (SMI) review in all SFAs every five years as required. The CRE included a comprehensive financial and resource management review, an extensive procurement review, and included reviews of all programs operated by the SFA, including the breakfast, lunch, after school snack, seamless summer and the fresh fruit and vegetable programs. The SMI review included an on-site comprehensive review of menus, recipes, production records, food

SCHOOL NUTRITION SERVICES

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labels and included a nutrient analysis for all SFAs. In the four years between the CRE and SMI Reviews, the department provided on-site technical assistance for all SFAs to (1) teach the regulations in a relaxed, hands-on environment while simultaneously observing employee performance as a means of providing coaching and feedback, (2) help SFA personnel achieve compliance with the regulations in their day-to-day operations, (3) establish an environment where School Nutrition Directors could ask State Consultants/Specialists for feedback on various practices without fear of retribution and (4) to assist SFA personnel in the implementation of School Nutrition best practices.

As the State's "education agency," our philosophy is to "teach first and test second." This organizational philosophy has always been applied in the School Nutrition Division where comprehensive, on-site technical assistance has, for decades, been provided for all SFAs. Such technical assistance prepares SFAs to achieve compliance with the regulations, especially in the critical performance standard areas. As a result of this level of on-site assistance, the State enjoys an administrative error rate of less than one percent. Conducting all Administrative Reviews within a three-year cycle severely limits the agency's capacity to provide meaningful, on-site technical assistance to all SFAs in a timely, productive and solution-oriented manner.

It has been the experience of State Consultants/Specialists whom conduct the ARs that technical assistance provided, on-site, for SFA personnel during an AR may correct a problem on the day it occurs, but the corrective action is seldom sustainable for the long-term, especially where complex errors are concerned. During the AR, SFA personnel are somewhat intimidated by the review process and are anxious about the review outcomes. This intense environment is not conducive to the teaching/learning process. In addition, a thorough review may take four days in a medium-size SFA. As a result, there simply is no time for quality technical assistance that promotes an adequate teaching/learning exchange during an AR.

The NCDPI recommends altering the proposed rule so SFAs with no critical area violations or findings that suggest the unallowable use of Federal funds may return to the five year review cycle and SFAs with critical area violations and/or evidence of unallowable use of funds be required to undergo a review every three years or more frequently depending upon the severity of the review findings. This modified review cycle would enable State Consultants/Specialists to conduct quality technical assistance reviews, on-site in most SFAs on a regular basis. This approach cycle would also help relieve the resource and time consuming burden of administrative reviews for SFAs that have a proven record of no critical or other significant violations; the modified review cycle would also ensure SFAs with critical violations have sufficient support to develop meaningful corrective action that is sustainable and ultimately permanently remedies the critical violations discovered during the ARs. Further, based on the experiences of the NCDPI in conducting the ARs in a three-year cycle, using the simplified tools, including the off-site review component, the cost of conducting the ARs nearly tripled in the first year of implementation. There is concern among State agency personnel that Federal funds will not be sufficient to cover the cost of conducting all reviews within a three-year cycle.

Duplication within the Administrative Review forms

For years, the NCDPI has conducted monitoring and compliance reviews for all School Nutrition Programs, regardless of whether there was a Federally-established monitoring tool. For example, the NCDPI has always conducted a review of the School Breakfast Program given the department's commitment to safeguard Federal funds and ensure these funds are used for allowable purposes only. While the newly developed AR attempts to minimize the paperwork supporting the compliance monitoring process, there remain many areas where the review forms repeat the review questions. Such repetition causes confusion and lengthens the amount of time State Consultants/Specialists must spend in completing the AR forms. If a general review area is addressed in one portion of the AR, it should not be duplicated in another. The same recommendation applies to the special programs such as the Seamless Summer Option (SSO) or the Fresh Fruit and Vegetable Program (FFVP); the forms utilized are duplicative across the programs and should be streamlined for efficiency. AR questions should not be repeated in these individual modules if they are included in the general review questions. Additionally, there is redundancy in verifying performance-based certification, The Healthier US School Challenge, nutrient analysis requirements and more which should be further addressed and simplified. The NCDPI strongly recommends the USDA specifically ask State agency directors to identify areas of duplicity so they may be eliminated from the AR forms before the forms are finalized.

In an effort to reduce the administrative burdens, the NCDPI recommends streamlining the Administrative Review forms, including but not limited to other federal program reviews such as the SSO and FFVP, as a means of eliminating duplication of effort during the AR process. Further, the NCDPI encourages the USDA to ask State agency directors to identify areas of redundancy in the AR forms as a means of increasing the efficiency and effectiveness of the review process.

Transparency Requirement

Under the Proposed Rule, State agencies will be required to report the final results of Administrative Reviews to the public. The rule indicates the USDA will provide additional guidance on appropriate formats. The NCDPI supports the requirement for transparency in the Administrative Review process and also supports a uniform format across all States not only for easing the burden on State agencies, but also for consistency in the information commonly available to the public. However, public reporting of this magnitude will be administratively burdensome to State agencies and increase the requirement for additional staff hours. It is quite possible the development of a "new State agency report" will create a duplication of effort for State agency staff who already have specific procedures for generating AR Reports (Exit letters, Management Letters, Report of Findings, Recommendations and Commendations). There is also concern the reports generated by the State agency may only reveal "errors" or violations in the School Nutrition programs as there is no requirement to report commendations to reflect the many positive contributions of School Nutrition Personnel in the management of their School Nutrition Programs.

For this reason, the NCDPI proposes each SFA publish the results of its AR so it may include the results of the AR in its entirety and include not only the findings, recommendations and corrective actions, but also the commendations, so the public may have a true reflection of the program, not simply the areas that need improvement or correction. Each SFA could be required to notify the State agency when the SFA's AR is made public. The State agency could confirm the public reporting with minimal effort. Having the SFA report its individual Administrative Review would be consistent with other local reports including the requirement to post health inspections and local wellness policies for public knowledge.

Critical Areas of Review

The department appreciates the emphasis on program integrity as indicated by the fiscal action required for errors in benefits issuance, meal counting and claiming and claim consolidation as reflected in Performance Standard 1 (PS1) violations. We support the requirement for fiscal action violations to apply to the entire SFA, including non-reviewed schools in a manner to be determined by the Food and Nutrition Service (FNS) of the USDA. Ideally, FNS would engage State agency personnel making this determination as a means of establishing a process that is achievable within State agencies. The proposal would also prescribe the extent of fiscal action for repeated PS-2 violations.

On repeated violations, the department believes fiscal action should only be taken if there is purposeful intent to circumvent the regulations. If there are violations because the staff is inexperienced, new to their role or other similar circumstances, the department proposes additional technical assistance with adequate follow-up and well-documented corrective action to ensure the regulations are being followed. The department also suggests adjusting the thresholds for fines to address the various sizes of SFAs. The department would also recommend the threshold for disallowances be adjusted to reflect SFA size. The current threshold is \$600; the disallowance threshold applies to SFAs with as few as 100 students to as many as 250,000 students.

While the proposed rule addresses the critical areas of the review (Performance Standards 1 and 2), the proposed rule does not address other areas that directly impact the financial integrity of the School Nutrition Programs in the same manner. The impact of errors or violations in the financial management of the School Nutrition Program can be quite significant. Errors in the assessment of indirect cost, the funding of personnel whom are dually employed within the Local Education Agency (LEA), the assessment of Worker's Compensation premiums/payments and other areas often constitute an unallowable use of Federal funds and should be treated with the same fidelity as PS 1 and 2 violations.

The department recommends the resource management component of the AR be treated similarly to the PS 1 and 2 violations because administrative errors in these areas compromise the integrity of the program to the same degree as the PS 1 and 2 violations. Any situation where SFAs are assessed fees for expenses or other items by that are unallowable under the Federal award constitute a critical violation of

the program's limited resources. Further, the use of Federal School Nutrition funds should be included in the Federal Compliance Supplement used by local independent auditors to ensure Federal funds are used only for allowable purposes. Including resource management in the single audit supports State agencies in achieving the goal that all School Nutrition funds are used in a manner consistent with the Federal award. In addition, the resource management component of the AR should be strengthened to include areas where the program's resources are vulnerable to error, such as validation that any funds due to the non-profit School Nutrition account are actually returned to the account; salaries and benefits for personnel dually-employed by the SFA and other programs within the LEA are pro-rated based on the actual percentage of time devoted to a specific program; and expensing worker's compensation premiums and payments to the School Nutrition account along with other areas that have been previously identified as financial deficiencies.

Risk Indicators

The proposed rule indicates State agencies will use updated tools to conduct the AR. In the case of Risk Assessment Tools, it is the opinion of State Consultants/Specialists that conduct the AR that assessment levels are low and seldom trigger more comprehensive reviews that, if conducted, would reveal areas that require corrective actions.

The department recommends examining the various Risk Assessment Tools to determine whether they establish the desired baseline level of review. The Risk Assessment Tools, when applied in North Carolina, seldom triggered more comprehensive reviews. As a general practice, the department conducts a comprehensive resource management review in all SFAs as part of the AR. As in previous recommendations, it is suggested the USDA communicate directly with State agency directors to determine the relative risk established by the Risk Assessment Tools in order to strengthen the indicators or "trigger factors" within the tools.

Timing of Reviews

The proposed rules would require State agencies to complete an AR within the school year in which the review was begun. This requirement would technically preclude reviews during the months of April, May and June as it is impossible to conduct, analyze, compose, review and issue a Final AR report to a SFA in fewer than 90 days.

The department recommends a provision that allows each State agency to establish an AR timeline that is consistent with their AR procedures, the number of ARs to be conducted and the number of State staff available to conduct ARs. The department also recommends State agencies submit their individual timelines to their respective USDA Regional Offices to apprise them of the State's timeline and procedures. Clearly, the State's timeline should be reasonable and sufficient for SFAs to complete corrective actions in a timely manner.

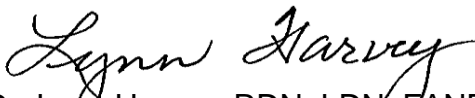
Definition of “Significant Number of Program Meals”

The proposed rule requires the State agency to “observe a significant number of program meals at each serving line” to determine whether all reimbursable meal serving lines *offer* all of the required food components and quantities for the age/grade group being served and to determine whether the meals *selected* by the students contain the required food components and food quantities required for a reimbursable meal. Given the risk for error at the Point of Service/Sale, it is important for the term “significant” to be defined so each State agency is reviewing a consistent number of meals served.

To promote improved integrity in the meal counting and claiming aspects of the School Nutrition Programs, the department recommends the USDA provide a clear definition for the term “significant” as it pertains to the actual number of meals to be observed by reviewers. Ideally, the term “significant” would be consistent with the approach used with the Access, Participation, Eligibility and Certification Study, since the study suggests “significant” erroneous payments based on observations at the Point of Service/Sale.

On behalf of the NCDPI, thank you for the opportunity to comment on the proposed rule. We look forward to working with the USDA on this issue and other important School Nutrition-related matters in a manner that enables SFAs to achieve compliance with the Federal regulations and overall program success. Our goal is to ensure the nutritional, operational and financial integrity of the Federally-funded School Nutrition programs entrusted to us.

Sincerely,



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Chief, School Nutrition Division

- c: Dr. June Atkinson, Superintendent, Public Schools of North Carolina
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