APPELLANT: Oneida – Herkimer - Madison BOCES
4747 Middle Settlement Road
New Hartford, NY 13413-0070

RESPONDENT: New York State Education Department
Child Nutrition Program Administration
99 Washington Avenue, Room 1623
Albany, NY 12234

STATE: New York; County of Oneida

In the Matter of the Appeal of

ONEIDA – HERKIMER - MADISON BOCES
LEA CODE: 419000000000

from a decision by the New York State Education Department's Child Nutrition Program to reclaim reimbursement funds from its 2011-2012 school year under the National School Lunch Program

DECISION

I find that respondent acted in accordance with the Federal Child Nutrition Program's regulations, specifically those that pertain to the National School Lunch Program found at 7 CFR Part 210, and those that pertain to determining eligibility for free and reduced price meals and free milk in schools found at 7 CFR Part 245, when it reclaimed reimbursement funds from appellant, Oneida-Herkimer-Madison BOCES' 2011-2012 school lunch program in the amount of approximately $3,100 to $3,200.

This Decision is rendered this 30th day of July 2012

Maureen Lavare
Hearing Officer

LIST OF REPRESENTATIVES:

For the Appellant
Thomas Dorr
Assistant Superintendent for Administrative Services
Oneida – Herkimer - Madison BOCES
4747 Middle Settlement Road
New Hartford, NY 13413-0070

For the Respondent
Frances O'Donnell, Coordinator and
Paula – Tyner Doyle, School Food Program Specialist III
New York State Education Department
Child Nutrition Program Administration
99 Washington Avenue, Room 1623
Albany, NY 12234

DOCUMENTS SUBMITTED AND REVIEWED

For the Appellant

1) June 12, 2012 letter to Hearing Officer Maureen Lavare from Thomas Dorr, Assistant Superintendent for Administrative Services for Oneida – Herkimer - Madison BOCES requesting an appeal in response to the New York State Education Department's Child Nutrition Program's May 1, 2012 letter referencing possible fiscal sanctions
2) May 29, 2012 memorandum from Mary Lourdes Tangorra, Supervising Principal of Alternative Education Programs to Tom Pfisterer, School Food Services regarding lunch application protocol
3) May 1, 2012 letter from Mary Sickler, Assistant with the New York State Education Department's Child Nutrition Program to Howard Mettelman, District Superintendent, Oneida - Herkimer - Madison BOCES regarding fiscal sanctions
4) May 25, 2012 letter from Thomas Dorr, Assistant Superintendent for Administrative Services for Oneida – Herkimer - Madison BOCES to Mary Sickler, Assistant with the New York State Education Department's Child Nutrition Program requesting an appeal of her May 1, 2012 letter
5) June 7, 2012 letter from Frances O'Donnell, Coordinator of the New York State Education Department's Child Nutrition Program to Howard Mettelman, District Superintendent, Oneida – Herkimer - Madison BOCES regarding fiscal sanctions and the estimated amount

For the Respondent

1) July 12, 2012 letter from Paula Tyner-Doyle of the New York State Education Department's Child Nutrition Program to Hearing Officer Maureen Lavare explaining respondent's position
2) March 23, 2012 letter from Mary Sickler, School Food Program Specialist III to Mr. Howard Mettelman District Superintendent, Oneida – Herkimer - Madison BOCES regarding a Coordinated Review Effort that was conducted on March 6, 7 and 8, 2012 with an attached copy of the review summary
3) Copy of 7 CFR §210.2
4) Copy of 7 CFR §210.4 through §210.18
5) Copy of 7 CFR Part 245
6) Copy of the New York State Education Department's Child Nutrition Program Administration's Free and Reduced Price Income Eligibility and Policy Information booklet pages 11-16
7) Copy of 7 CFR §210.18(m) and 210.19(c)
8) June 7, 2012 letter from Frances O'Donnell, Coordinator of the New York State Education Department's Child Nutrition Program to Howard Mettelman, District Superintendent, Oneida – Herkimer - Madison BOCES regarding fiscal sanctions and the estimated amount

For the Hearing Officer

1) June 22, 2012 letter to Thomas Dorr, Assistant Superintendent for Administrative Services for Oneida – Herkimer - Madison BOCES and to Frances O'Donnell, Coordinator of the New York State Education Department's Child Nutrition Program requesting additional documentation from both parties in order to determine if the appeal is timely
2) July 3, 2012 letter to Thomas Dorr, Assistant Superintendent for Administrative Services for Oneida – Herkimer - Madison BOCES and to Frances O'Donnell, Coordinator of the New York State Education Department's Child Nutrition Program finding the appeal request timely and requiring the parties to submit documentation to the hearing officer by July 17, 2012 with a copy to each other

PROCEDURAL BACKGROUND

By letter dated June 12, 2012 and received by my office on June 15, 2012, Thomas Dorr, Assistant Superintendent for Administrative Services of Oneida – Herkimer - Madison BOCES (hereinafter "appellant") requested an appeal of a decision made by the New York State Education Department's Child Nutrition Program (hereinafter "respondent") to reclaim an estimated amount between $3,100 and $3,200 from appellant's 2011-2012 school food service under the National School Lunch Program. Because it was unclear whether the appeal request

was timely, by letter dated June 22, 2012, I directed both parties to submit documentation pertaining to the timeliness of the appeal. After receiving additional information, I decided that the appeal was requested in a timely manner. By letter dated July 3, 2012, I notified the parties of my decision and I required the parties to submit any written documentation it wanted considered as part of the appeal, to my office by July 17, 2012 with a copy to each other. Appellant did not submit additional documentation or information. Respondent submitted a letter dated July 12, 2012 with multiple attachments. Respondent provided appellant with a copy of its letter and attachments.

FACTUAL BACKGROUND

Appellant is a school food authority as that term is defined in the regulations governing the National School Lunch Program (7 CFR §210.2). Appellant operates a National School Lunch Program in its schools. Respondent is required to conduct an administrative review of all school food authorities at least once during each five year review cycle, ensuring that each school food authority is reviewed at least once every six years (7 CFR §210.18[c][1]). In accordance with this requirement, respondent conducted a Coordinated Review Effort (hereinafter "CRE") of appellant's nutrition program on March 6, 7 and 8, 2012 to evaluate its compliance with Parts 210 and 245 of the Code of Federal Regulations as well as any applicable federal or State policy and guidance (respondent # 2).

Respondent states that during the CRE it found that "meals were claimed under the free meal reimbursement rate for meals served to students who were ineligible for free meals since they did not have a current application on file for the household" (respondent #1). This is documented in the certification and benefit issuance error worksheets (hereinafter "worksheets"), which are part of the school food authority review summary (respondent #2). The worksheets state that there were 25 performance standard 1 violations found at BOCES, 13 at Herkimer Elementary, 9 at Memorial Park Elementary and 14 at Mt. Markham Elementary. By letter dated March 23, 2012 respondent notified appellant that during the CRE it found that all applications were not approved correctly (respondent #2).

Although 61 performance standard 1 violations were found during the CRE, it appears from appellant's and respondent's submissions that this appeal specifically addresses respondent's finding that the determination of eligibility for benefits using administrative prerogative for 25 students, was not made in accordance with 7 CFR Part 245 (respondent #1)[1].

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[1] Respondent's March 23, 2012 post-CRE letter to appellant states under "critical areas – [A]ll applications were not approved correctly; the errors occurred in all four buildings" (respondent #2). Respondent's May 1, 2012 letter to appellant states "the critical area of noncompliance found on the review regarding eligibility certification will result in fiscal sanctions being assessed" (appellant #3). The letter proceeds to mistakenly reference the summer food service program (appellant #3). The June 7, 2012 letter to appellant simply states that fiscal sanctions are being taken for "application errors" (appellant #5, respondent #8). Thus, it is unclear from the documents submitted, which of the performance standard 1 violations respondent is citing to reclaim up to $3,200. I note, however, that both parties only discussed the prerogative for 25 students in their submissions to me, therefore I decline to address the other 36 performance standard 1 violations. I remind respondent of its obligation to be specific in its notice to

This is a performance standard 1, critical area of non-compliance[2]. Performance standards 1 and 2 comprise the "critical areas" which serve as measurements of compliance with the National School Lunch Program's regulations (7 CFR §210.18[b][2]). Performance standard 1 violations are defined as requiring that "all free reduced price and paid lunches claimed for reimbursement are served only to children eligible for free, reduced price and paid lunches respectively..." (7 CFR §210.18[b][2][i] and see 7 CFR §210.18[g][1] for a listing of school food authority review requirements under performance standard 1). Respondent required appellant to submit a letter by April 23, 2012 stating what corrective action it had taken to address the cited noncompliance (respondent #2). On April 16, 2012 appellant submitted a corrective action response (copy not submitted but referenced in appellant #5, respondent # 8). By letter dated June 7, 2012 respondent notified appellant that it intended to reclaim between $3,100 and $3,200 of National School Lunch Program reimbursements for the "application errors" documented at the CRE (appellant #5, respondent # 8). This appeal ensued.

ARGUMENTS MADE ON APPEAL

On appeal appellant asserts that significant efforts were undertaken to secure free/reduced price applications from households during September and October, 2011 and again in March 2012 (appellant #1). Appellant asserts that the violation was "not directly linked to the actual feeding of children" (appellant #1).

Respondent argues that appellant's determination of eligibility for those students from households who failed to apply for program benefits was not in accordance with 7 CFR Part 245 and State issued guidance (respondent #1). Further, in accordance with 7 CFR §210.18(m) respondent states that it is required to take fiscal action for performance standard 1 violations (respondent #1).

FINDINGS

The regulations for the National School Lunch Program are found at 7 CFR Part 210. The regulations to determine eligibility for free and reduced price meals and free milk in schools

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school food authorities as to what violations resulted in a reclaim and to specify what portions of the CRE apply to the alleged violations when submitting such documentation for a hearing officer's review.

[2] Respondent's March 23, 2012 letter places the noncompliance under the heading "critical area" and not "performance standard 1" (respondent #2). Additionally, its CRE review summary and the March 23, 2012 cover letter specifically state that there were "no findings" under performance standard 1(respondent #2). I find this mischaracterization to be harmless error since the March 23, 2012 letter to appellant specifically states that "as a result [of applications being approved incorrectly] 788 free and reduced price lunches were claimed incorrectly," putting appellant on notice of the specific violation, which clearly falls within the definition of performance standard 1. Appellant was also made aware of the priority of these violations since the "certification and benefit issuance error worksheets", included in the CRE, contain a box that states "#of students with PS1 violation," obviously "PS1" refers to performance standard 1. Further, performance standard 1 and standard 2 violations are defined as being "critical areas of review" in 7 CFR §210.18(b) and (g).

are found at 7 CFR Part 245. No child may participate in the National School Lunch, the School Breakfast or the Special Milk Program for Children unless the required documentation is collected by the school food authority (7 CFR §§245.1, 245.2). Unfortunately, there are occasions when a family fails to return a completed application so that the child may participate in these programs. When that occurs, and the child is obviously at an economic disadvantage, the federal regulations allow

> "the local education agency to [shall] complete and file an application for such child setting forth the basis of determining the child's eligibility. When a local educational agency has obtained a determination of individual family income and family-size data from other sources, it need not require the submission of an application for any child from a family whose income would qualify for free or reduced price meals or for free milk under the local educational agency's established criteria" (7 CFR §245.6[d]).

Further, respondent's 2011-2012 Free and Reduced Price Income Eligibility and Policy Information memorandum, issued June 2011, addresses these situations on page 11, section O, entitled "Administrative Prerogative." This section states that:

> [T]o exercise this option properly, an application must be completed on behalf of the student, based on the best family size and income information available. The source of this information must be noted on the application. Exhaustive prior efforts must be made by the SFA [school food authority] to obtain a completed application from the parent or guardian and efforts must be documented."

Appellants state in their June 12, 2012 letter and attached May 29, 2012 internal memorandum that they made significant efforts to secure signed applications, including letters home, phone calls and contact to service providers. It appears, however, that respondent does not dispute that appellant complied with this requirement of the administrative prerogative. Rather, respondent alleges that appellant failed to maintain family income and family size data, from other sources, as required in accordance with 7 CFR §245.6(d) and as described in respondent's guidance, cited above (respondent #1, page 4). In its May 29, 2012 memorandum, appellant states that it did investigate the children's family background and proved that these families were eligible for free or reduced price meals. In spite of this statement, no further documentation on what investigation was undertaken and what information was used to document the families' qualifications for free and reduced price meals was submitted as part of appellant's appeal. Therefore, I find that respondent's determination that the documentation it reviewed during the CRE was inadequate, and not in compliance with the requirements of 7 CFR §245.6(d), to be reasonable.

Fiscal action is required for all Performance Standard 1 and 2 violations (7 CFR §210.18[m]). Respondent is therefore required to take fiscal action for the Performance Standard 1 violations found during the March 6, 7 and 8, 2012 CRE. Further, the federal National School Lunch Program regulations state that "fiscal action should be extended back to the beginning of the school year or that point in time during the current school year when the infraction first incurred, as applicable" (CFR §210.19[c][2][ii]). Appellant states that the violation was "not directly linked to the actual feeding of children" (appellant #1). While it is true that this violation does not involve the food itself or the actual meal elements (such a violation would be a performance standard 2 violation, see 7 CFR §210.18[b][2][ii]), it is nonetheless a requirement that fiscal action be taken. Further, while it is disconcerting to reclaim funds from a school food authority or local education agency seeking to ensure that students in need receive meals, these actions are a necessity in order to ensure the integrity of the National School Lunch Program and that this important funding stream from the federal government continues in New York State. Therefore, while I sympathize with appellant's actions in this matter, based on the information submitted in this appeal, I find that respondent's determination to reclaim an amount up to $3,200 is reasonable.

CONCLUSION

I find that respondent acted in accordance with the Federal Child Nutrition Program's regulations, specifically those that pertain to the National School Lunch Program found at 7 CFR Part 210, and those that pertain to determining eligibility for free and reduced price meals and free milk in schools found at 7 CFR Part 245, when it reclaimed reimbursement funds from appellant, Oneida-Herkimer-Madison BOCES' 2011-2012 school lunch program in the amount of approximately $3,100 to $3,200.