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shall be given as to the time and place of the hearing;

(v) An opportunity to present oral or documentary evidence and arguments supporting a position without undue interference;

(vi) An opportunity to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses;

(vii) That the hearing shall be conducted and the decision made by a hearing official who did not participate in making the decision under appeal or in any previously held conference;

(viii) That the decision of the hearing official shall be based on the oral and documentary evidence presented at the hearing and made a part of the hearing record;

(ix) That the parties concerned and any designated representative shall be notified in writing of the decision of the hearing official;

(x) That a written record shall be prepared with respect to each hearing, which shall include the challenge or the decision under appeal, any documentary evidence and a summary of any oral testimony presented at the hearing, the decision of the hearing official, including the reasons therefor, and a copy of the notification to the parties concerned of the decision of the hearing official; and

(xi) That the written record of each hearing shall be preserved for a period of 3 years and shall be available for examination by the parties concerned or their representatives at any reasonable time and place during that period.

(b) *Continuation of benefits.* When a household disagrees with an adverse action which affects its benefits and requests a fair hearing, benefits shall be continued as follows while the household awaits the hearing and decision:

(1) Households that have been approved for benefits and that are subject to a reduction or termination of benefits later in the same school year shall receive continued benefits if they appeal the adverse action within the 10 day advance notice period; and

(2) Households that are denied benefits upon application shall not receive benefits.

(44 U.S.C. 3506; sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

[Amdt. 6, 39 FR 30339, Aug. 22, 1974, as amended at 47 FR 746, Jan. 7, 1982; 48 FR 12511, Mar. 25, 1983]

§ 245.8 **Nondiscrimination practices for children eligible to receive free and reduced price meals and free milk.**

School Food Authorities of schools participating in the National School Lunch Program, School Breakfast Program or Special Milk Program or of commodity only schools shall take all actions that are necessary to insure compliance with the following nondiscrimination practices for children eligible to receive free and reduced price meals or free milk:

(a) The names of the children shall not be published, posted or announced in any manner;

(b) There shall be no overt identification of any of the children by the use of special tokens or tickets or by any other means;

(c) The children shall not be required to work for their meals or milk;

(d) The children shall not be required to use a separate dining area, go through a separate serving line, enter the dining area through a separate entrance or consume their meals or milk at a different time;

(e) When more than one lunch or breakfast or type of milk is offered which meets the requirements prescribed in § 210.10, § 210.15a, § 220.8 or § 215.2(1) of this chapter, the children shall have the same choice of meals or milk that is available to those children who pay the full price for their meal or milk.

[Amdt. 6, 39 FR 30339, Aug. 22, 1974]

§ 245.9 **Special assistance certification and reimbursement alternatives.**

(a) A School Food Authority of a school having at least 80 percent of its enrolled children determined eligible for free or reduced price meals may, at

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its option, authorize the school to reduce annual certification and public notification for those children eligible for *free meals* to once every two consecutive school years. This alternative shall be known as provision 1 and the following requirements shall apply:

(1) A School Food Authority of a school operating under provision 1 requirements shall publicly notify in accordance with §245.5, parents of enrolled children who are receiving free meals once every two consecutive school years, and shall publicly notify in accordance with §245.5, parents of all other enrolled children on an annual basis.

(2) The 80 percent enrollment eligibility for this alternative shall be based on the school's March enrollment data of the previous school year, or on other comparable data.

(3) A School Food Authority of a school operating under provision 1, shall count the number of free, reduced price and paid meals served to children in that school as the basis for monthly reimbursement claims.

(b) A School Food Authority of a school which serves all enrolled children in that school free meals may publicly notify and certify children in accordance with §245.5 for free and reduced price meals for up to three consecutive school years; provided that eligibility determinations shall be in accordance with §245.3, during the first school year. This alternative shall be known as provision 2 and the following requirements shall apply:

(1) Except for assistance properly made available under parts 210, 220, 240, and 250 and by other legislation, a School Food Authority of a school operating under provision 2 requirements agrees to pay with funds from other than Federal sources for:

(i) Meals served to children not eligible, as determined by §245.3, for free or reduced price meals, and

(ii) The differential between the per meal cost and Federal reimbursement received for each free or reduced price meal, respectively, served to children eligible to receive such meals under applicable program regulations.

(2) For the purpose of calculating reimbursement claims in the second and third consecutive school years the

monthly meal counts of the actual number of meals served by type—free, reduced price, and paid—shall be converted each month to percentages for each meal type. These percentages shall be derived by dividing the monthly total number of meals served of one meal type (e.g. free meals) by the total number of meals served in the same month for all meal types (free, reduced price and paid meals). The percentages for the reduced price meal and paid meal types shall be calculated exactly as the above example for free meals. These three percentages calculated at the end of each month of the first school year, shall be multiplied by the corresponding monthly meal count total of all meal types served in the second and third consecutive school years in order to calculate reimbursement claims for free, reduced price and paid meals each month.

(c) A School Food Authority shall submit a list of all schools participating in either provision 1 or provision 2 and the initial year of implementation in their Free and Reduced Price Meal Policy Statement. This Statement shall include certification of meeting the eligibility requirements as set forth in paragraph (a) or (b) of this section.

(d) The School Food Authority upon request shall make documentation including enrollment data, participation data or other data available for monitoring purposes.

(e) A School Food Authority may return to standard notification and application procedures in the following school year if standard procedures better suit the school's program needs.

(f) Puerto Rico and the Virgin Islands, where a statistical survey procedure is permitted in lieu of eligibility determinations for each child, may either maintain their standard procedures in accordance with §245.4, or may opt for these provisions provided the eligibility requirements as set forth in paragraphs (a) and (b) of this section are met.

(g) Schools currently operating under provision 1 or provision 2 of the Special Assistance interim rule published May 18, 1979 (44 FR 29027), may complete their second or third consecutive

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school year under the interim requirements, after which, §245.9 shall be in effect. For all other schools, the final rule shall be effective upon publication.

(Sec. 9, Pub. L. 95-166, 91 Stat. 1336 (42 U.S.C. 1759a); secs. 805, and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1773))

[Amdt. 19, 45 FR 67287, Oct. 10, 1980, as amended by Amdt. 23, 47 FR 14135, Apr. 2, 1982]

§ 245.10 Action by School Food Authorities.

(a) Each School Food Authority of a school desiring to participate in the National School Lunch Program, School Breakfast Program, or to provide free milk under the Special Milk Program, or to become a commodity-only school shall submit for approval to the State agency a free and reduced price policy statement. Once approved, the policy statement shall be a permanent document which may be amended as necessary, except as specified in paragraph (c) of this section. Such policy statement, as a minimum, shall contain the following:

(1) The official or officials designated by the school food authority to make eligibility determinations on its behalf for free and reduced price meals or for free milk;

(2) An assurance that for children who are not categorically eligible for free and reduced price benefits the school food authority will determine eligibility for free and reduced price meals or free milk in accordance with the current Income Eligibility Guidelines.

(3) The specific procedures the school food authority will use in accepting applications from families for free and reduced price meals or for free milk. Additionally, if the school food authority has opted to determine eligibility for children from food stamp, FDPIR or TANF households based on documentation obtained from the State or local agency responsible for the Food Stamp, FDPIR or TANF Program, in lieu of an application, the school food authority shall include the specific procedures it will use to obtain the required documentation. Additionally, school food authorities that have implemented di-

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rect certification and that must provide households a notice of eligibility, as specified in §245.6(b), must also include in their policy statement a copy of the notice to households regarding their children's eligibility under the direct certification provision.

(4) A description of the method or methods to be used to collect payments from those children paying the full price of the meal or milk, or a reduced price of a meal, which will prevent the overt identification of the children receiving a free meal or free milk or a reduced price meal, and

(5) An assurance that the school will abide by the hearing procedure set forth in §245.7 and the nondiscrimination practices set forth in §245.8.

(b) The policy statement submitted by each school food authority shall be accompanied by a copy of the application form to be used by the school and of the proposed letter or notice to parents.

(c) Each school food authority shall amend its permanent free and reduced price policy statement to reflect substantive changes. Any amendment to a policy shall be approved by the State agency prior to implementation, or as provided in paragraph (e) of this section. Each year, if a School Food Authority does not have its policy statement approved by the State agency, or FNSRO where applicable, by October 15, reimbursement shall be suspended for any meals or milk served until such time as the School Food Authority's free and reduced price policy statement has been approved by the State agency, or FNSRO where applicable. Furthermore, no commodities donated by the Department shall be used in any school after October 15, until such time as the School Food Authority's free and reduced price policy statement has been approved by the State agency, or FNSRO where applicable. Once the School Food Authority's free and reduced price policy statement has been approved, reimbursement may be allowed, at the discretion of the State agency, or FNSRO where applicable, for eligible meals and milk served during the period of suspension.

(d) If any free and reduced price policy statement submitted for approval by any School Food Authority to the