

Ohio Department of Education ~ Office for Child Nutrition
CHILD AND ADULT CARE FOOD PROGRAM
APPEAL PROCEDURES

The Ohio Department of Education (“ODE”), Office for Child Nutrition, is the agency charged with administering the Child and Adult Care Food Program (“CACFP”). Pursuant to 7 CFR 226, ODE may take certain actions to assure a participating institution and/or responsible individual’s past, present and future compliance with the CACFP. Except as provided in Section 226.8(g), the following ODE actions are subject to administrative review (appeal): (1) denial of a new or renewing institution’s application for participation; (2) denial of an application submitted by a sponsoring organization on behalf of a facility; (3) proposed termination of an institution’s agreement; (4) proposed disqualification of a responsible principal or responsible individual; (5) suspension of an institution’s participation; (6) denial of an institution’s application for start-up or expansion payments; (7) denial of a request for an advance payment; (8) recovery of all or part of an advance in excess of the claim for the applicable period; (9) denial of all or a part of an institution’s claim for reimbursement (except late submission under 226.10(e)); (10) decision by the State agency not to forward to FNS an exception request by an institution for payment of a late claim or a request for an upward adjustment to a claim (see Section 226.10(e)); (11) demand for the remittance of an overpayment; and (12) any other action of the State agency affecting an institution’s participation or its claim for reimbursement.

All requests for appeal (“Appeal Request”) by an institution and/or its responsible individual(s) (“Appellant”) must be made in writing and must specifically state whether the Appellant is requesting an actual hearing, or whether the Appellant plans to submit written documentation only. The appeal must be postmarked by the U.S. Postal Service or delivered **no later than fifteen (15) calendar days** following receipt of written notification of action (“Action Letter”). If the fifteenth day falls on a Saturday, Sunday or federal legal holiday, the request may be postmarked or delivered on the next day that is not Saturday, Sunday or a federal legal holiday. All Appeal Requests should be sent to: **Brian Davis, Attorney, Office of Legal Counsel, Ohio Department of Education, 25 South Front Street, Mail Stop 303, Columbus, Ohio 43215-4183.**

ODE will acknowledge receipt of the Appeal Request in writing **no later than ten (10) calendar days** after its receipt. If the tenth day falls on a Saturday, Sunday or federal legal holiday, the request may be postmarked or delivered on the next day that is not Saturday, Sunday or a federal legal holiday. ODE’s letter acknowledging receipt will indicate the date upon which the Appeal Request was received by ODE. Also, upon receipt of the Appeal Request, ODE will assign an independent and impartial administrative review official to conduct an administrative review pursuant to 7CFR 226.6(k). The institution may retain legal counsel or be represented by another person.

The Appellant may refute the charges contained in the Action Letter by submitting written materials to the administrative review official within thirty (30) days after receipt of notice of action.

As stated above, if the Appellant would like an actual hearing to be held, in lieu of, or in addition to a review of the written information, the institution must specifically request a hearing in its written Appeal Request. If a hearing is not requested in the written Appeal Request, the administrative review official will only review and consider written information submitted by each party within thirty (30) days after receipt of notice of action.

If a hearing is requested, the Appellant and ODE shall be given **at least 10 calendar days** advance written notice of the hearing time and place by certified mail, return receipt requested. If the Appellant’s representative(s) fail to appear at a scheduled hearing, the Appellant thereby waives its right to a personal appearance before the administrative review official. Scheduled hearings may be rescheduled if the Appellant institution notifies the administrative review official prior to the hearing date, and the review official agrees to reschedule.

Within **60 calendar days** after ODE receives the Appellant’s request for administrative review, the administrative review official shall inform both ODE and the Appellant of his/her final decision. This timeframe is an administrative requirement for ODE and may not be used as a basis for overturning the State agency’s action if a decision is not made within the specified timeframe.

Additional Conditions

- Any information upon which the ODE Action Letter was based shall be available to the Appellant for inspection from the date ODE receives the Appeal Request.
- An ODE representative may attend the hearing. The ODE representative may respond to testimony and answer questions of the administrative review official.
- The administrative review official shall be an independent and impartial official, not accountable to any person authorized to make decisions subject to appeal under 7CFR 226.6(k)
- The administrative review official shall make a determination based on information provided by ODE, the Appellant and Federal and State laws, regulations, policies, and procedures governing the Program.
- ODE's action shall remain in effect during the appeal process, however, the Appellant institution and its facilities may operate during the appeal of termination. Reimbursement claims for eligible meals and allowable administrative costs will continue to be paid to the Appellant institution, provided that the validity of the claims can be substantiated. Pursuant to 7CFR 226.6 (c)(5), if State or local health or licensing officials have cited an institution for serious health or safety violations, the State agency must immediately suspend the institution's CACFP participation, initiate action to terminate the institution's agreement, and initiate action to disqualify the institution and the responsible principals and responsible individuals prior to any formal action to revoke the institutions licensure or approval. If ODE determines that the Appellant institution or facility poses an imminent threat to the health and safety of its participants, or poses a threat to the health and safety of the public, ODE will immediately suspend the program operation prior to an appeal and without the opportunity for corrective action. Reimbursement will be withheld until the outcome of the administrative review.
- Abbreviated Administrative Review: Pursuant to 7CFR 226.6 (k)(9), the state agency must limit the administrative review to a review of written submissions concerning the accuracy of the State agency's determination if the application was denied or the State agency proposes to terminate the institutions agreement because: a) the information submitted on the application was false, b) the institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the National Disqualified List, is ineligible to participate in any other publicly funded program by reason of violation of the requirement of the Program, or has been convicted for any activity that indicates a lack of business integrity.
- The determination by the administrative review official is the final administrative determination afforded to the Appellant.
- The State agency will maintain records of all administrative reviews and their disposition.

Actions not subject to administrative review or appeal:

- a. FNS decisions on claim deadline exceptions and requests for upward adjustments to a claim;
- b. State agency's (SA) determination of serious deficiency;
- c. The State agency's (SA's) determination that corrective action was not complete and permanent;
- d. Disqualification and placement on the State agency list and the National disqualified list;
- e. Termination of a participating institution's agreement, including termination of a participating institution's agreement based on the disqualification of the institution by another SA or FNS;
- f. The SA or FNS's decision that an institution's corrective action is inadequate to be removed from the National Disqualified List (NDL); and
- g. The SA's refusal to consider an application to participate when either the institution or one of its principals is on the NDL, or the SA's refusal to consider an application submitted by a sponsoring organization on behalf of a sponsored facility that is on the NDL.

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