

OAR 581-051-0120

Applicability of Appeals Procedure and Administrative Procedures Act

- (1) The appeal procedures required by this rule apply to appeals of Department of Education decisions within the Child and Adult Care Food Program regarding:
- (a) A denial of a new or renewing application for participation;
 - (b) A denial of an application submitted by a sponsoring organization on behalf of a facility;
 - (c) The proposed termination of an institution's agreement;
 - (d) A notice of proposed disqualification of a responsible principal or individual;
 - (e) The suspension of an institution's participation;
 - (f) A denial of an institution's application for start-up or expansion payments;
 - (g) A denial of a request for an advance payment;
 - (h) The recovery of an advance payment in excess of the amount claimed for the relevant period;
 - (i) A denial of all or a part of an institution's claim for reimbursement;
 - (j) A decision by the State agency not to forward to FNS an exception request for payment of a late claim, or a request for an upward adjustment to a claim;
 - (k) A demand for the remittance of an overpayment; and
 - (l) Any other action of the State agency affecting an institution's participation or its claim for reimbursement.
- (2) Except as otherwise specified in this rule or OAR 581-051-0125, appeals of actions identify in subsection (1) of this rule shall be conducted as a contested case hearing under ORS 183.411 to 183.471 and the Attorney General's Model Rules of Procedure under the Administrative Procedure Act in effect on January 1, 2012.
- (3) A decision by a review official that is based on an appeal that is limited to a review of written submissions without a hearing shall be considered to be an order in other than contested case under ORS 183.484.

Stat. Auth.: ORS 326.051

Stat. Implemented: ORS 326.051; 7 CFR 226.6(k)

OAR 581-051-0125

Notice and Appeal Procedure for Agency Decisions regarding Child and Adult Care Food Program

- (1) (a) The Oregon Department of Education shall notify the institution's executive director and chairperson of the board of directors, and the responsible principals and responsible individuals (Appellants) in writing of the grounds upon which the Department based its action. The notice must also state the procedures for requesting an appeal of the action.

- (b) Notice means a letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by the Department or FNS with regard to an institution's Program reimbursement or participation.
- (c) The notice is considered to be received by the institution or day care home when it is delivered, sent by facsimile, or sent by email. If the notice is undeliverable, it is considered to be received by the institution, responsible principal or responsible individual, or day care home five days after being sent to the addressee's last known mailing address, facsimile number, or email address.
- (2) The Department limits the administrative review to a review of written submissions concerning the accuracy of the Department's determination if the application was denied or the Department proposes to terminate the institution's 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;
 - (c) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program;
or
 - (d) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities has been convicted for any activity that indicates a lack of business integrity;
- (3) A request for appeal must be in writing and may be submitted by responsible principals and responsible individuals. The Department must receive the request for appeal no later than 15 calendar days from the date the Appellant received the notice of Department action. The Department will acknowledge the receipt of the request for an appeal within 10 days of receipt of the request.

- (4) The Department shall make information upon which the Department based its action available to the Appellant for inspection.
- (5) The Appellant may refute the findings in the notice of action either in person or by submitting written documentation to the review official. The review official will not consider written documentation received more than 30 days after the date the Appellant received the notice of action. Submitted documentation must clearly identify the appealed action.
- (6) An in-person hearing must be held in addition to, or in lieu of, a review of the written documentation *only* if the written request for an appeal specifically requests an in-person hearing. Appellants may be represented by legal counsel or another person. Failure to appear at a scheduled hearing constitutes a waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A Department representative must be allowed to attend the hearing to respond to the Appellant's written documentation and testimony and to answer questions from the review official. At least 10 days advance notice must be provided of the time and place of the hearing; the notice will be sent by certified mail, return receipt requested.
- (7) The hearing must be held within 45 days of the date of the receipt of the request for appeal, but not before Appellant's written documentation is received in accordance with subsections (5) and (6) of this rule.
- (8) The review official shall be designated by the Superintendent of Public Instruction. The review official must be independent and impartial. The review official may be an employee of the Department, but must be independent of the original decision-making process. Appellant may contact the review official directly if they so desire.
- (9) The review official's determination will be consistent with Federal and State laws, regulations, policies, and procedures governing the Program, based solely on the information provided by the Department and the Appellant.

- (10) The review official must make a determination and inform the Department and Appellant of that determination within 60 days of the Department's receipt of Appellant's written request for an appeal.
- (11) The review official's determination is the final administrative determination granted to the Appellant.
- (12) The Department's action will remain in effect during the appeal process. However, participating sponsors and sites may continue to operate the Program during an appeal of a termination of agreement; if the appeal results in overturning the Department's action, reimbursement must be paid for qualified meals served during the appeal process. Program operation must cease if the Department's action is based on imminent dangers to the health or welfare of children. If this is the reason for the Department's action, it will be specified in the notice of action.

Stat. Auth.: ORS 326.051

Stat. Implemented: ORS 326.051; 7 CFR 226.6(k)