

**Child and Adult Care Food Program  
APPEAL PROCEDURE  
7 CFR 226.6(k)**

The appeal procedures below are a summary of the federal regulations found at 7 CFR 226.6. If any contradiction exists between the procedures summarized below and the regulations at 7 CFR 226.6, the federal regulations control.

The following procedures apply<sup>1</sup> to appeals of:

- A denial of a new or renewing application for participation;
- A denial of an application submitted by a sponsoring organization on behalf of a facility;
- The proposed termination of an institution's agreement;
- A notice of proposed disqualification of a responsible principal or individual;
- The suspension of an institution's participation;
- A denial of an institution's application for start-up or expansion payments;
- A denial of a request for an advance payment;
- The recovery of an advance payment in excess of the amount claimed for the relevant period;
- A denial of all or a part of an institution's claim for reimbursement;
- 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;
- A demand for the remittance of an overpayment; and
- Any other action of the State agency affecting an institution's participation or its claim for reimbursement.

Appeal procedures [7 CFR 226.6(k)(5)]:

- (1) The institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals (Appellants) must be notified in writing of the grounds upon which the State agency based its action. The notice must also state the procedures for requesting an appeal of the action. *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 a State agency or FNS with regard to an institution's Program reimbursement or participation. 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.

The State agency limits 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 institution's agreement because:

- (i) The information submitted on the application was false,

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<sup>1</sup> State agencies are not required to provide a hearing for State actions taken because of a federal audit determination. If a State agency does not provide a hearing in such situations, FNS will provide a hearing, upon request, in accordance with procedures set forth in Federal regulations. 7 CFR 226.8(g).

- (ii) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the national disqualified list,
  - (iii) 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
  - (iv) 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.
- (2) A request for appeal must be in writing and may be submitted by responsible principals and responsible individuals. The Oregon Department of Education (ODE) must receive the request for appeal no later than 15 calendar days from the date the Appellant received the notice of State agency action. ODE will acknowledge the receipt of the request for an appeal within 10 days of receipt of the request.
  - (3) Information upon which the State agency based its action must be available to the Appellant for inspection.
  - (4) 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.
  - (5) 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 State agency 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.
  - (6) 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 paragraphs (4) and (5) above.
  - (7) The review official must be independent and impartial. The review official may be an employee of the State agency, but s/he must be independent of the original decision-making process. Appellant may contact the review official directly if they so desire.
  - (8) 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 State agency and the Appellant.
  - (9) The review official must make a determination and inform the State agency and Appellant of that determination within 60 days of the State agency's receipt of Appellant's written request for an appeal.

- (10) The review official's determination is the final administrative determination granted to the Appellant.
- (11) The State agency'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 State agency's action, reimbursement must be paid for qualified meals served during the appeal process. Program operation must cease if the State agency's action is based on imminent dangers to the health or welfare of children. If this is the reason for the State agency action, it will be specified in the notice of action. 7 CFR 226.6(c)(5)(i)(B).

Send written requests for appeals to:

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