



## **APPEAL PROCEDURES**

### **Child and Adult Care Food Program (CACFP)**

The following appeal (administrative review) procedures established in accordance with Section 226.6(k) of the Child and Adult Care Food Program regulations will be followed by an institution requesting a review of a denial of a new or renewing institution's application for participation, a denial of an application submitted by a sponsoring organization on behalf of a facility, a proposed termination of an institution's agreement due to health or safety violations, a proposed disqualification of a responsible principal or responsible individual due to health or safety violations, a suspension of an institution's participation because of health or safety violations or submission of a false or fraudulent claim, a denial of an agency's application for start-up or expansion payments, a denial of all or a part of an institution's claim for reimbursement unless the denial is based on a late claim submission, a decision by the IDOE 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, a demand for the remittance of an overpayment, and any other action of the IDOE affecting an agency's participation or its claim for reimbursement.

Actions not subject to an administrative review include:

- A FNS decision on claim deadline exceptions and requests for upward adjustments to a claim;
- A determination of seriously deficient;
- A disqualification and placement on State agency list and National disqualified list;
- A termination of a participating institution's agreement;
- State Agency determination that corrective action is inadequate;
- State Agency or FNS decision regarding removal from the National disqualified list; and
- State Agency's refusal to consider an application submitted by an institution or facility on the National disqualified list.

Procedure:

- 1) The institution shall be advised in writing of the action being proposed or taken and the basis for the action. The notice will include a statement indicating that the institution has the right to appeal the action. The notice shall be sent by certified regular U.S. mail, by facsimile, or by email, and is considered to be received by the institution 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 five days after being sent to the addressee's last known mailing address, facsimile number, or email address.
- 2) Any request for an appeal shall be submitted by the appellant not later than 15 calendar days from the date the appellant received the notice of action.
  - a) The request must be submitted through the Office of Administrative Law Proceedings (OALP): [www.in.gov/oalp/file-a-petition-for-review/individuals-or-entities-file-a-petition-for-review/](http://www.in.gov/oalp/file-a-petition-for-review/individuals-or-entities-file-a-petition-for-review/).
  - b) Any request for an appeal must specify who is filing the request. For example, request is filed on behalf of *[institution name]*, and *[Authorized Representative name]* and *[Owner or Board President Name]*.
  - c) Your request for an appeal must identify any contested issues of fact that you have with the IDOE's determinations. You must identify which facts contained in the notice of action you are disputing and you must identify what evidence you have to dispute those facts. If you fail to specifically dispute any facts, the hearing official may find that you have admitted to the facts.

d) If you wish to have an in-person hearing, you must specifically request one in your request for an appeal. Only if the appellant specifically requests an in-person hearing in appeal request, will the review official hold a hearing in addition to, or in lieu of, a review of written information submitted by the appellant.

e) 226.6(k)(9) identifies these actions for which only a review of written submissions may be granted:

- i. The information submitted on the application was false;
- 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;
- 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.

3) The State will acknowledge the receipt of the request for appeal within 10 calendar days from the date of the department receipt of the request.

4) The appellant may refute the charges contained in the notice of action in person and/or by written documentation to the review official.

- a) In order to be considered, written documentation must be filed with the review official not later than 30 calendar days after the appellant received the notice of action.
- b) Failure of the appellant institution's representative to appear at a scheduled hearing shall constitute the appellant institution's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing.
- c) A representative of the State Agency shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official.
- d) The appellant may retain legal counsel or may be represented by another person.

5) If the appellant has requested a hearing, the appellant shall be provided with at least 10 calendar days advance written notice of the time and place of the hearing. Notice may be provided by e-mail.

6) Any information on which the State Agency's action was based shall be available to the appellant for inspection from the date of receipt of the appeal request.

7) The review official shall be an independent and impartial official that was not involved in the action that is the subject of the appeal.

8) The review official shall make a determination based on information provided by the State Agency and the appellant and on federal and state laws, regulations, policies and procedures governing the Program.

9) Within 60 calendar days of the State Agency's receipt of the request for review, the review official shall inform the State Agency and the appellant of the determination of the appeal.

10) The State Agency's action shall remain in effect during the appeal process. However, participating institutions and facilities may continue to operate under the Program during an appeal of termination unless the action is based on imminent dangers to health or safety. Institutions electing to continue operating while appealing terminations shall not be reimbursed for any meals served during the period of the appeal if the State Agency's action is upheld.

11) The determination by the State review official is the final administrative determination to be afforded to the appellant.