

**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION  
APPEAL PROCEDURES**

**CHILD AND ADULT CARE FOOD PROGRAM**

In accordance with 7 CFR 226.6(k), the Office of the State Superintendent of Education (OSSE) has established the following procedures for an institution, responsible principal, and responsible individual to appeal certain OSSE actions under the Child and Adult Care Food Program.

**I. Actions Subject to Administrative Review (Appeal):**

Institutions, responsible principals, and responsible individuals participating in the program may request review of the following actions:

- Denial of a new or renewing institution's application for participation (refer to 226.6(b), dealing with State Agency review of an institution's application; and 226.6(c)(1) and (c)(2), dealing with State Agency denial of a new or renewing institution's application);
- Denial of an application submitted by a sponsoring organization on behalf of a facility;
- Proposed termination of an institution's agreement (refer to 226.6(c)(2)(iii)(C), (c)(3)(iii)(C), and (c)(5)(i)(B), dealing with proposed termination of agreements with renewing institutions, participating institutions, and participating institutions suspended for health or safety violations);
- Proposed disqualification of a responsible principal or responsible individual (refer to 226.6(c)(1)(iii)(C), (c)(2)(iii)(C), (c)(3)(iii)(C), and (c)(5)(i)(B), dealing with proposed disqualification of responsible principals or responsible individuals in new, renewing, and participating institutions, and participating institutions suspended for health or safety violations);
- Suspension of an institution's participation (refer to 226.6(c)(5)(i)(B) and (c)(5)(ii)(D), dealing with suspension for health or safety reasons or submission of a false or fraudulent claim);
- Denial of an institution's application for start-up or expansion payments (refer to 226.7(h));
- Denial of a request for an advance payment (refer to 226.10(b));
- Recovery of all or part of an advance in excess of the claim for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments (refer to 226.10(b)(3));
- Denial of all or a part of an institution's claim for reimbursement (except for a denial based on a late submission under 226.10(e)) (refer to 226.10(f) and 226.14(a));
- 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 (refer to 226.10(e));
- Demand for the remittance of an overpayment (refer to 226.14(a)); and
- Any other action of the State agency affecting an institution's participation or its claim for reimbursement.

All other actions, including but not limited to the following specifically identified by CACFP regulations, are not subject to appeal to OSSE:

- A decision by FNS to deny an exception request by an institution for payment of a late claim, or for an upward adjustment to a claim (refer to 226.10(e));
- A determination that an institution is seriously deficient (refer to 226.6(c)(1)(iii)(A), (c)(2)(iii)(A), (c)(3)(iii)(A), and (c)(5)(i)(B), dealing with proposed disqualification of responsible principals or responsible individuals in new, renewing, and participating institutions, and participating institutions suspended for health or safety violations);
- A determination by the State agency that the corrective action taken by an institution or by a responsible principal or individual does not completely and permanently correct a serious deficiency;
- Disqualification of an institution or a responsible principal or responsible individual, and the subsequent placement on the State agency list and the National disqualified list (refer to 226.6(c)(1)(iii)(E), (c)(2)(iii)(E), (c)(3)(iii)(E), and (c)(5)(i)(C), dealing with proposals to disqualify related to new, renewing, and participating institutions, and in institutions suspended for health or safety violations);
- Termination of a participating institution's agreement, including termination of a participating institution's agreement based on the disqualification of the institution by another State agency or FNS (refer to 226.6(c)(3)(i) and (c)(7)(ii));
- A determination, by either the State agency or by FNS, that the corrective action taken by an institution or a responsible principal or individual is not adequate to warrant the removal of the institution or the responsible principal or individual from the National disqualified list;
- The State agency's refusal to consider an institution's application when either the institution or one of its principals is on the National disqualified list, or the State agency's refusal to consider an institution's submission of an application on behalf of a facility when either the facility or one of its principals is on the National disqualified list.

## **II. Appeal Procedure**

### **1. Notice of Action**

When OSSE performs any of the appealable actions listed in Section I, OSSE provides notice of the action to the institution's executive director, the institution's chairman of the board of directors, and the responsible principals and responsible individuals. The notice must include the action being taken, the basis for the action, a statement that the institution and responsible principals and individuals have the right to appeal, and these appeal procedures.

The notice is considered to be received by the institution or responsible principals and individuals when it is delivered by certified mail, return receipt, or by email. If the notice is undeliverable, it is considered to be received by the institution or responsible principals and individuals five days after being sent to the addressee's last known mailing address or email address.

### **2. Appeal Request and Deadline**

An institution and responsible principals and individuals wishing to appeal an appealable action must submit a written request for an appeal to OSSE's Office of General Counsel via fax to (202) 299-2134 and certified mail, return receipt requested, to:

Office of the State Superintendent of Education  
Office of the General Counsel  
3<sup>rd</sup> Floor  
1050 First Street NE  
Washington, D.C. 20002

The written request for an appeal must be postmarked within 15 calendar days of the date the appellant received the notice of the denial of all or part of a claim for reimbursement or withholding of payment.

The appellant's written request must include:

- The name of the appellant(s) against which the action is being taken;
- Name, address, telephone number and, if available, email address for the person authorized to represent the appellant(s);
- The date on which the appellant(s) received the notice of action;
- A statement of the relief being requested (i.e., the specific findings being contested or action being appealed); and
- A specific request for either:
  - An in-person hearing, if one is desired; or
  - A review of only written documentation; and
- Signature of authorized representative and date of submission.

OSSE will acknowledge the receipt of an appeal request within 10 calendar days after its receipt of the request by certified mail, return receipt requested.

OSSE's action must remain in effect during the administrative review. The effect of this requirement on particular OSSE actions is as follows.

Overpayment Demand - During the period of the administrative review, OSSE is prohibited from taking action to collect or offset the overpayment. However, OSSE must assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review unless the Administrative Review Official overturns OSSE's action.

Recovery of Advances - During the administrative review, OSSE must continue its efforts to recover advances in excess of the claim for reimbursement for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments.

Program Payments - The availability of Program payments during an administrative review of the denial of a new institution's application, denial of a renewing institution's

application, proposed termination of a participating institution's agreement, and suspension of an institution are addressed in 226.6(c)(1)(iii)(D), (c)(2)(iii)(D), (c)(3)(iii)(D), (c)(5)(i)(D), and (c)(5)(ii)(E), respectively.

### **3. Appeal**

An appellant has the right to refute the findings contained in the notice of action either in person, if a hearing was requested in the appellant's written request for an appeal, or by submitting written documentation. Regardless of the appeal method, an appellant is entitled to a fair and impartial process and may retain legal counsel, or may be represented by another person.

#### **a. Review of Written Documentation**

To be considered, written documentation must be submitted to the review official not later than 30 calendar days after the appellant received the notice of action.

In accordance with 7 CFR 226.6(k)(9), OSSE must limit an appeal to a review of written documentation concerning the accuracy of OSSE's determination if the application was denied or OSSE proposes to terminate the institution's agreement because:

- The information submitted on the application was false;
- The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the national disqualified list;
- 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
- 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.

In these scenarios, a request for a hearing will not be granted.

#### **b. Hearing**

A hearing shall be held by the review official in addition to, or in lieu of, a review of written documentation submitted by an appellant only if the appellant specifies in its written request for an appeal. If an appellant has requested a hearing, the appellant shall be provided with at least 10 calendar days advance written notice, sent by certified mail-return receipt requested, of the time, date, place, and procedures of the hearing.

Failure of an appellant's representative, or the responsible principals or responsible individuals, to appear at a scheduled hearing shall constitute the appellant's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. An OSSE representative shall be allowed to attend the hearing to respond to an appellant's testimony and to answer questions posed by the review official.

OSSE must conduct the appeal of the proposed disqualification of the responsible principals and responsible individuals as part of the appeal of the application denial, proposed termination, and/or proposed disqualification of the institution with which the responsible principals or responsible individuals are associated. However, at the administrative review official's discretion, separate administrative reviews may be held if the institution does not request an administrative review or if either the institution or the responsible principal or responsible individual demonstrates that their interests conflict.

#### **4. Review of Record**

Any information on which OSSE's action was based shall be available to an appellant for inspection from the date of OSSE's receipt of the appeal request. OSSE will make such record available upon request for inspection from an appellant.

#### **5. Review Official**

The review official will be an independent and impartial official. The review official will not be, and will not be accountable to, any person authorized to make decisions that are subject to appeal under the provisions of these procedures. The review official must also not have a direct personal or financial interest in the outcome of the administrative review. An appellant may contact the review official if they so desire; however, OSSE must be copied on all communications.

#### **6. Review Official's Determination**

The review official will make a determination based solely on the information provided by an appellant, information provided by OSSE, federal and District laws, regulations and policies and procedures governing the program.

Within 60 calendar days of OSSE's receipt of the appeal request, the review official must make a determination based on a full review of the administrative record and inform the parties, including the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, of the determination of the review by certified mail, return receipt requested. This timeframe is an administrative requirement for OSSE and may not be used as a basis for overturning OSSE's action if a decision is not made within the specified timeframe.

The determination by the review official is the final administrative determination afforded to an appellant.