

Office of Superintendent of Public Instruction Child and Adult Care Food Program Appeal Procedure

These appeal procedures allow institutions, responsible principals, and responsible individuals participating in the CACFP an avenue of appeal when the Office of Superintendent of Public Instruction (OSPI), Child Nutrition Services (CNS) takes an adverse administrative action as required by the regulations at 7 CFR 226.6(k). These appeal procedures do not apply to home providers or unaffiliated sites. OSPI has elected to require the sponsoring organizations of home providers and unaffiliated sites to conduct the appeals of their providers and/or sites that appeal actions taken by the sponsor that are subject to administrative review, as provided for at 7 CFR 226.6(l)(1).

Administrative Actions Which May Be Appealed

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. Notice of proposed termination of an institution's agreement.
4. Notice of proposed disqualification of a responsible principal or responsible individual.
5. Suspension of participation for health or safety reasons or submission of a false or fraudulent claim.
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 part of an institution's claim for reimbursement (except for a denial based on a late submission under §226.10(e)).
10. Decision by CNS not to forward to Food and Nutrition Services (FNS) U.S. Department of Agriculture, an exception request by an institution for payment of a late claim, or request for an upward adjustment to a claim.
11. Demand for the remittance of an overpayment.
12. Any other action by CNS affecting an institution's participation or its claim for reimbursement.



Administrative Actions Which May Not Be Appealed

1. FNS decisions on claim deadline exceptions and requests for upward adjustments to a claim.
2. Determination of serious deficiency.
3. State agency determination that corrective action is inadequate.
4. Disqualification and placement on State agency list and National disqualified list.
5. Termination.
6. State agency or FNS decision regarding removal from the National disqualified list.
7. State agency's refusal to consider an application submitted by an institution or facility on the National disqualified list.

Procedure

Notification, request, and procedure for hearing:

1. OSPI will inform the sponsor in writing of the grounds on which the action was based and the right to appeal the action. It will be sent via certified mail return receipt requested.
2. The institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, must be given notice of the action being taken or proposed, the basis for the action, and the procedures under which the institution and the responsible principals or responsible individuals may request an administrative review (appeal) of the action. The notice of action will be sent in writing, return receipt requested.
3. The request for an administrative review (appeal) must be submitted in writing not later than fifteen (15) calendar days after the date the notice of action is received. The request must be sent to:

**LEGAL SERVICES – CHILD NUTRITION
SERVICES
OFFICE OF SUPERINTENDENT OF PUBLIC
INSTRUCTION
PO BOX 47200
OLYMPIA WA 98504-7200**

The Office of Legal Services will forward the request to the Office of Administrative Hearings for assignment to an Administrative Law Judge (ALJ). The Office of Legal Services will also forward a copy to the director of Child Nutrition Services. The Office of

Administrative Hearings must acknowledge the receipt of the request for an administrative review within ten (10) days of its receipt of the request

4. The institution and the responsible principals and responsible individuals may represent themselves, may retain legal counsel, or may be represented by another person.
5. Any information on which CNS action was based must be made available to the institution and the responsible principals and responsible individuals for inspection from the date of receipt of the request for an administrative review.
6. The institution and the responsible principals and responsible individuals may refute the findings contained in the notice of action in person or by submitting written documentation to the ALJ. In order to be considered, written documentation must be submitted to the ALJ not later than thirty (30) days after receipt of the notice of action.
7. A hearing must be held by the ALJ in addition to, or in lieu of, a review of written information only if the institution or responsible principals and responsible individuals request a hearing in the written request for an administrative review.
8. If the institution's representative, or the responsible principals or responsible individuals, or their representatives fail to appear at a scheduled hearing, they will waive the right to a personal appearance before the ALJ, unless the ALJ agrees to reschedule the hearing.
9. A representative of CNS must be allowed to attend the hearing to respond to the testimony of the institution and the responsible principals and responsible individuals and to answer questions posed by the ALJ.
10. If a hearing is requested, the Office of Administrative Hearings shall set the time and place of the hearing and provide at least ten (10) days advance written notice to the institution, the responsible principals and responsible individuals, and CNS. The notice will be sent certified mail, return receipt requested.
11. The ALJ must be independent and impartial. The institution and the responsible principals and responsible individuals will be permitted to contact the ALJ directly if they so desire. The ALJ must make a determination based solely on information provided by CNS, the institution, and the responsible principals and responsible individuals, and based on federal and state laws, regulations, policies and procedures governing the Program.
12. Within sixty (60) calendar days from the date of CNS's receipt of the request for an administrative review, the ALJ must inform CNS, the institution's executive director and the chairman of the board of directors, and the responsible principals and responsible individuals, in writing of the ALJ's final review outcome.
13. The determination made by the ALJ is the final administrative determination to be afforded to the institution and the responsible principals and responsible individuals.

14. CNS will maintain searchable records of all administrative reviews and their disposition.
15. CNS action must remain in effect during the administrative review. Institutions and their facilities may continue to operate during an administrative review of termination unless the health or welfare of the children is deemed to be endangered. The effects of this requirement on particular CNS actions is as follow:
 - a. During the period of the administrative review, CNS is prohibited from taking action to collect or offset the over payment.
 - b. During the administrative review, CNS must continue its efforts to recover advances in excess of the claim for reimbursement for the applicable period.

PROCEDURE – SPECIAL CONDITIONS

16. CNS must conduct the administrative review of the proposed disqualification of the responsible principals and responsible individuals as part of the administrative review of application denial, proposed termination, and/or proposed disqualification of the institution with which the responsible principals or individuals are associated.

However, at the ALJ'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.

17. CNS must limit the administrative review to a review of written submissions concerning the accuracy of CNS's determination if the application was denied or CNS 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 institutions 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 that program.
 - 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.

PROCEDURE – PROGRAM PAYMENTS

18. During the administrative review of the proposed termination of a participating institution's application, payments for any valid unpaid claims for reimbursement for eligible meals served or allowable expenses incurred will continue until the institution's

agreement is terminated.

19. If the suspended institution prevails in the administrative review of the proposed termination, payments will be made for any valid unpaid claims for reimbursement for eligible meals served or allowable expenses incurred during the suspension period. 7 CFR 226.6(c)(5)(i)(D)
20. During the administrative review of the suspension of a participating institution's application, payments will not be made to the institution. However, if the institution suspended for the submission of false or fraudulent claims is a sponsoring organization, sponsored facilities will continue to receive reimbursement for eligible meals served. 7 CFR 226.6 (c)(5)(ii)(E)

Procedures for the conduct of administrative hearings before OSPI are found in chapter 392-101 Washington Administrative Code (WAC) and are incorporated by this reference.

If you have questions regarding these procedures, please contact the Child and Adult Care Food Program supervisor at 360-725-6200. The agency TTY is 360-664-3631.

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotope, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

1. **mail:**
U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410; or
2. **fax:**
(833) 256-1665 or (202) 690-7442; or
3. **email:**
program.intake@usda.gov

This institution is an equal opportunity provider.