

## **APPEAL PROCEDURES FOR CHILD AND ADULT CARE FOOD PROGRAMS**

In accordance with the 7 CFR Part 226.6 (k), the Alabama State Department of Education (SDE), Child Nutrition Programs, has established the following procedures which should be used by an appellant (sponsor and responsible principals/individuals) requesting a review of administrative action taken by the Alabama State Department of Education (SDE). These procedures are hereby provided annually to all institutions and responsible principals/individuals at the time of notification of an administrative action and any other time as requested.

### **ADMINISTRATIVE ACTIONS WHICH MAY BE APPEALED**

1. Denial of a new or renewing institution's application.
2. Denial of a sponsored facility application (site application).
3. Notice of proposed termination of an institution's agreement.
4. Notice of proposed disqualification of a responsible principal/individual.
5. Suspension of an institution's participation due to health or safety reasons or submission of false or fraudulent claim.
6. 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)).
7. Denial of institution application for start-up or expansion funds.
8. 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.
9. Demand for the remittance of an overpayment.
10. Any other action of the state agency affecting the participation of an institution in the program or the institution's claim for reimbursement (including, but not limited to denial of an institution's Program budget or any portion of the Program budget, Alabama State Department of Education Child Nutrition Program's determination of an unallowable program cost, etc.).
11. Any other action of the State agency affecting an institution's participation or its claim for reimbursement.

### **NOTICE OF ADMINISTRATIVE ACTION**

1. The institution or responsible principals or individuals will be advised in writing of the grounds upon which the Alabama Department of Education based the action.
2. The notice of action, which shall be sent by certified mail, return receipt requested, will include a full description of the basis for the action, and the procedures under which the sponsor and the responsible principals or individuals may request an administrative review of the action.
3. The institution will be advised in writing that the request for the review must be made no later than fifteen (15) days from the date of receipt of the notice of action.

### **ADDITIONAL CONDITIONS**

1. **Abbreviated Administrative Review:** Pursuant to 7CFR 226.6 (k)(9), the state agency must limit 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 institutions agreement because: a) in information on the application was false, b)

the institution or one of its sponsored facilities, or one of the principals of the institutions or its facilities is on the National Disqualified List, is ineligible to participate in any other publicly funded program by reason of violation of the requirement of the Program, or has been convicted for any activity that indicates a lack of business integrity.

2. The State agency will maintain records of all administrative review and their disposition per 7 CFR 226.6 (k)(7);
3. The State agency will provide guidance to participants of the opportunity to hold combined administrative reviews for an institution and its responsible principals and individuals per 7 CFR 226.6 (k)(8).

### **PROCEDURE FOR FILING REQUEST FOR APPEAL**

1. Request for an appeal by an institution and responsible principals/individuals must be **submitted in writing and received no later than fifteen (15) days from the date of receipt of action**. If the notice of action is undeliverable, it is considered received by the institution, responsible principal and responsible individual five days after being sent to the last known mailing address. A request for an appeal shall be mailed or filed in person with:

Hearing Officer  
Alabama Department of Education  
Room 5103 Gordon Persons Building  
50 North Ripley Street - 36104  
P.O. Box 302101  
Montgomery, AL 36130-2101

2. **Contents of Written Request for an Appeal:**

The institution and responsible principals/individuals may refute the findings contained in the notice of action in person at a hearing, or by submitting written documentation to the Hearing Officer, or both. If the institution and responsible principals/individuals wish to submit information and documentation that supports the request for an appeal by showing grounds on which the appeal is being sought from the administrative action, this information and documentation must be **submitted to the Hearing Officer no later than thirty (30) days from receipt of the notice of action. Therefore, the sponsor may not simply request a hearing and appear for the hearing with no documentation to support the basis for their appeal.**

- 2.1 The institution and responsible principals/individuals must submit a written request for an appeal that clearly identifies:
  - a) The administrative action or actions that are being appealed
  - b) The basis for filing an appeal
  - c) The specific reasons why an appeal is being filed.
- 2.2 The institution must submit in writing to the Hearing Officer:
  - a) All documentation to support the basis for the appeal.
  - b) Documentation that supports the sponsor's position for requesting and filing an appeal.
- 2.3 **The institution MUST submit documentation and information in support of the appeal to be considered by the Hearing Officer. The documentation must be**

**attached to the original request for a hearing or the institution must state in the request that the documentation will be submitted at a later date, but not to exceed the above thirty-day deadline.**

3. The SDE will acknowledge the receipt of the request for an appeal within ten (10) days of its receipt of the request.
4. Any information on which the SDE's administrative action was based is available to the institution and responsible principals/individuals for inspection from the date of receipt of the request for an appeal.
5. The Hearing Officer will review any documentation submitted and make a determination if any relief may be granted without a hearing.
6. A hearing will be held by the Hearing Officer in addition to, or in lieu of, a review of written information **only if the institution and the responsible principals/individuals request a hearing in the written request for an appeal.**
7. If the institution's representative, or the responsible principals/individuals or their representative, fail to appear at a scheduled hearing, they waive the right to a personal appearance before the Hearing Officer unless the Hearing Officer agrees to reschedule the hearing.
8. A representative of SDE will be allowed to attend the hearing to respond to the testimony of the institution and the responsible principals/individuals, and to answer questions posed by the Hearing Officer.
9. If a hearing is scheduled, the institution, the responsible principals/individuals and the SDE will be provided with at least ten (10) days advance notice of the time and place of the hearing.
10. The institution and responsible principals/individuals may retain legal counsel, or may be represented by another person at the hearing. If so, the institution must notify the Hearing Officer prior to hearing so that the Hearing Officer will know who has permission to represent the sponsor/institution and/or responsible principals and individuals.
11. **If the Institution fails to submit the written request for an appeal within the time frames or fails to submit the written documentation within the time frame, the Sponsor's appeal rights will expire.**

### **REVIEW OFFICIAL DETERMINATION**

1. The Hearing Officer shall be independent and impartial and not involved in the action that is the subject of the appeal, or have a direct personal or financial interest in the outcome of the appeal.
2. The institution and the responsible principals/individuals are permitted to contact the Hearing Officer directly, if they so desire.
3. The Hearing Officer shall make a determination based on:
  - a)
  - b) Federal and state laws, regulations, policies, and procedures governing the Program;
  - c) Information submitted by the Child Nutrition Programs
  - d) Information submitted by the institution and responsible principals/individuals in support of their position.

4. Within sixty (60) days of the SDE's receipt of the request for an appeal, the Hearing Officer must inform the SDE Child Nutrition Programs, the institution's executive director, chairman of the board of directors and responsible principals/individuals of the outcome of the hearing.
5. The determination made by the Hearing Officer is the final administrative determination to be afforded the institution and the responsible principals.
6. The Hearing Officer will notify the SDE Child Nutrition Programs and the institution and responsible principals/individuals of the outcome of the hearing in writing within the time frames identified above. Depending upon the outcome of the hearing and the instructions provided by the Hearing Official, the SDE Child Nutrition Program will proceed to resolve the action(s) cited against the institution and responsible principals/individuals and/or close the file as necessary.
7. Institutions and sites may continue to operate under the program during an appeal process and receive reimbursements unless the institution has been suspended by due process as a result of imminent threat or dangers to the health or welfare of participants or due to the submission of a false or fraudulent claim for reimbursement.

### **USDA Non-Discrimination Statement**

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotope, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter 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;
- (2) Fax: (202) 690-7442; or
- (3) Email: [program.intake@usda.gov](mailto:program.intake@usda.gov)

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