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Child and Adult Care Food Program (CACFP)  
Appeal Procedures  
(Revised March 2019)

Federal Regulations on Institution Appeal Procedures

The West Virginia Department of Education (WVDE) Office of Child Nutrition (OCN) is required by federal regulations to establish administrative review procedures to be followed by an institution, a responsible principal, or a responsible individual. WVDE serves as the State Agency (or Agency). WVDE will refer to the administrative review process used as the “appeal” or “appeal procedures” from this point forward.

Laws and regulations that support the basis for these policies and procedures include:

- 7 CFR §226.6(k):
- 7CFR 226.6(c)(1)(iii)(D), (c)(2)(iii)(D), (c)(3)(iii)(D), (c)(5)(i)(B), (c)(5)(i)(D), and (c)(5)(ii)(E)

**Actions Subject to Appeal:**

- Denial of a new or renewing institution’s application for participation
- Denial of an application submitted by a sponsoring organization on behalf of a facility
- Proposed termination of an institution’s agreement
- Proposed disqualification of a responsible principal or responsible individual
- Suspension of an institution’s participation
- Denial of an institution’s application for start-up or expansion payments
- Denial of an institution’s request of an advance payment
- Denial of all or a part of an institution’s claim for reimbursement (except for a denial based on a late submission under 7CFR 226.10(e))
- Decision by the State Agency not to forward to USDA’s Food & Nutrition Service (FNS) an exception request by an institution for payment of a late claim, or a request for an upward adjustment to a claim
- Demand for remittance of an overpayment
- Any other action of the State Agency affecting an institution’s participation or its claim for reimbursement.

**Actions Not Subject to Appeal:**

- USDA FNS decisions on claim exceptions and requests for upward adjustments to claims. A decision by FNS to deny any exception request by an institution for payment of a late claim, or for an upward adjustment to a claim.
- A determination that an institution is seriously deficient
- State Agency determination that corrective action is inadequate



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- Disqualification of an institution's responsible principal or responsible individual, and the subsequent placement on the State Agency's Seriously Deficient List and the National Disqualified List
- 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.
- State Agency or FNS decision regarding removal from the National disqualified list.
- State agency's refusal to consider an application submitted by an institution or facility on the National disqualified list.

### **Appeal Procedures:**

Appeal procedures will be made available to institutions, responsible principals, or responsible individuals as follows:

- Annually (institutions only)
- At time of adverse action
- Upon request

Except for instances of an abbreviated appeal (as described below) the following describes the process for an appeal by an institution or a responsible principal or responsible individual:

1. **Notice of action:** The institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, will 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 of the action.
2. **Return receipt mail:** The notice of action will be sent by certified mail/return receipt, an equivalent private delivery service (such as FedEx), fax or email.
3. **Time to request administrative review:** Written request for review shall be filed with the hearing official named in the notice no later than fifteen (15) calendar days from the date the appellant received notice of action.
4. **Representation:** The institution and the responsible principals and responsible individuals may retain legal counsel or may be represented by another person.
5. **Review of record:** Any information on which the Agency's action was based will be 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. **Opposition:** The institution and the responsible principals and responsible individuals



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may refute the findings contained in the notice of action in person or by submitting written documentation to the administrative review official. In order to be considered, written documentation must be submitted to the administrative review official not later than 30 days after receipt of the notice of action.

7. **Hearing:** A hearing must be held by the hearing authority in addition to or in lieu of review of written documentation submitted by the appellant only if the appellant so specifies in the letter request of review. The appellant may retain legal counsel or may be representative by another person. If the institution's representative, or the responsible principals or responsible individuals or their representative, fail to appear at a scheduled hearing, they waive the right to a personal appearance before the administrative review official, unless the administrative review official agrees to reschedule the hearing. A representative of the State Agency 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 administrative review official. If a hearing is requested, the institution, the responsible principals and responsible individuals and the state agency must be provided with at least 10 days advance notice of the time and place of the hearing. In the event a hearing is scheduled, it shall be the responsibility of the hearing authority to notify the parties of their hearing rights.
8. **Availability of information:** Any information on which the Department's action was based shall be available to the appellant for inspection as of the date of receipt of the request for review.
9. **Administrative review official:** The administrative review official (for the purposes of the appeal) must be independent and impartial. This means that, although the administrative review official may be an employee of the Agency, he/she must not have been involved in the action that is the subject of the administrative review, or have a direct personal or financial interest in the outcome of the administrative review. The institution and the responsible principals and responsible individuals must be permitted to contact the administrative review official directly if they so desire.
10. **Basis for decision:** The administrative review official must make a determination based solely on the information provided by the Agency, the institution, and the responsible principals and responsible individuals, and based on Federal and State laws, regulations, policies, and procedures governing the Program.

**Time for issuing a decision:** Within 60 days of the Agency's receipt of the request for an administrative review, the administrative review official must inform the Agency, the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, of the administrative review's outcome. This timeframe is an administrative requirement for the Agency and may not be used as a basis for overturning the Agency's action if a decision is not made within the specified timeframe.



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11. **Final decision:** The determination made by the administrative review official is the final administrative determination to be afforded the institution and the responsible principals and responsible individuals.

**Combined appeals for responsible principals and responsible individuals.** The State agency will 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 appeals may be held if the institution does not request an appeal or if either the institution or the responsible principal or responsible individual demonstrates that their interests conflict.

**Record Retention of the Appeal:** WVDE will maintain searchable records of all appeals and their disposition.

**Abbreviated Appeal Process:** The State Agency will limit the appeal to a review of written submissions concerning the accuracy

1. The information submitted on the application was false;
2. The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the national disqualified list;
3. 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
4. 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.

**Impact of State Agency Action:** The State Agency's action will remain in effect during the appeal process. However, participating institutions and facilities may continue to operate under the program during an appeal process of termination unless the action is based on imminent dangers to health and welfare of children. The effect of this requirement on particular State Agency action is as follows:

- Overpayment demand – During the period of the appeal, the State Agency will not take action to collect or offset the overpayment. However, the State Agency will assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of the appeal unless the administrative review official overturns the State Agency's action.



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- Recovery of advances – During the appeal, the State Agency 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 appeal 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.
- New institutions – No claims for reimbursement from a new institution for eligible meals served or allowable administrative expenses incurred will be paid until the State Agency has approved the institution’s application and the institution and State Agency have signed a program agreement.
- Serious deficiency – Valid claims for reimbursement for eligible meals served and allowable expenses will continue to be paid until the conclusion of any appeal.
- Proposed suspension and termination – Unless participation has been suspended, the State Agency will pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative expenses incurred until the serious deficiency (ies) is/are corrected or the institution’s agreement is terminated, including the period of the appeal.
- Suspension: The State Agency will not pay any claims for reimbursement from a suspended institution. However, if the suspended institution prevails in the administrative review of the proposed termination, the State Agency will pay any claims for reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.
- False or fraudulent claims: The State Agency will not pay any claims for reimbursement submitted by a suspended institution. However, if the institution suspended for the submission of false or fraudulent claims is a sponsoring organization, the State Agency will ensure that sponsored facilities continue to receive reimbursement for eligible meals served during the suspension period. If the suspended institution prevails in the administrative review of the proposed termination, the State Agency will pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.



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**Family Day Care Home Provider Appeal Process:** The WVDE OCN has elected to require the Sponsoring Organization (SO) to manage the administrative review process for day care home providers. The WVDE OCN will ensure that, when a sponsoring organization proposes to terminate its Program agreement with a day care home provider for cause and disqualify participation in the FDCH program, all day care home providers are given an opportunity for an administrative review of the proposed termination and disqualification. The WVDE OCN will oversee the written communication from the SO to FDCH providers to ensure providers have the right to appeal that termination and disqualification and request an administrative review appeal. The SO is responsible for securing an impartial hearing official for the administrative review. The administrative review official will review information provided by the provider and the SO to determine if FDCH procedures were followed and were within the federal and state laws, regulations, policies, and procedures governing the Family Day Care Home program. The administrative review official will adhere to the time lines detailed above.

### **How do I file for an appeal?**

**First, read these instructions and the procedures outlined above completely and thoroughly. Any failure to comply with these procedures may result in the loss of your appeal rights.**

The written request for review shall be filed by the appellant not later than 15 calendar days from the date the appellant received the notice of action from the WVDE, Office of Child Nutrition. The written request to appeal should be sent via certified mail, return receipt requested, and addressed to:

Director, Office of Child Nutrition  
West Virginia Department of Education  
Building 6, Room 750  
1900 Kanawha Boulevard, East  
Charleston, WV 25305  
Telephone: (304) 558-3396





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**IMPORTANT NOTE:** Your request must include the following elements:

- Name
- Address
- Title and signature of the person requesting the appeal
- Telephone and FAX numbers, if available
- Specific request for a face-to-face hearing (otherwise an administrative review of the records will be conducted); and
- A statement of the facts constituting the basis for the controversy or adverse action.
- A statement of the relief sought or desired from the State agency.

If your request is determined to be timely (within the 15 calendar day period), you will receive written acknowledgment from the Office of Child Nutrition. If your request is determined to be not timely filed, you will be notified that no review will be conducted and that the original determination has become final.

**What are your rights?**

You have a right to a review of the record upon which the determination was based with the right to file written information, and a hearing which you and/or your attorney may attend in person. However, if you wish to exercise the right to attend in person, you must indicate in your letter requesting the review or by default no hearing will be held and a review of the record will take place based upon written submissions only.

If you request a hearing you will be given at least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the date, time and place of the hearing.

If you have not requested a hearing, then from the date of receipt of the request for review or the receipt of the information upon which the determination was based, whichever is later, you will have up to 30 days to post mark your written reply and associated documentation. Appellants are assured of a fair and impartial review or hearing before an independent official. Determinations will be made within 60 days. You may be represented by legal counsel. A representative of the State agency shall be allowed but not required to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official. In cases involving OIG Audits, a representative of the appropriate OIG Audit Office shall also be allowed but not required to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official.

You also have the right to contact the Administrative Review Officer assigned to the case for any questions you may have. Please feel free to ask questions and seek clarification of issues as you may require.



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### **What are your responsibilities?**

By virtue of your successful application for and receipt of financial benefits from the program you have demonstrated sufficient familiarity with the program regulations and agreed to be bound by those regulations. The determination by the Administrative Review Officer is the final administrative determination to be afforded to you.

As such, you should put forward your best efforts to present compelling arguments supported by evidence, comprehensive and extensive documentation, and regulatory citations which support your contentions.

### **Appeal Time Line**

- The petition to appeal must be submitted to the OCN within 15 calendar days following receipt of notice of adverse action.
- If an appeal is filed by the petitioner, the OCN must acknowledge receipt of the appeal in writing within 10 calendar days to both the institution and the State Superintendent of Schools.
- The petitioner must submit written documentation refuting the adverse action to the administrative review official not later than 30 calendar days after receipt of the written report from the OCN.
- A final decision will be rendered by the administrative review official within 60 calendar days.
- If a hearing is requested, the petitioner will be notified of the time, date and location at least 10 calendar days prior to the hearing date.

### **Determination of the Administrative Review Officer:**

**The appeal review must be held within sixty, (60) days of receipt of the sponsor's request for an appeal. The administrative review official must inform the State Agency, the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, of the appeal's outcome within 60 calendar days of the appeal request. The Administrative Review Officer (ARO) will make a determination based upon:**

- Written information submitted by the WVDE OCN;
- Written information submitted by the Institution in support of its position;
- Additional written information as may be obtained by the administrative review officer from any other person or persons having relevant and pertinent information, and;
- Information presented orally at a hearing and supported with subsequent documentation as directed by the ARO.





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This determination is the Department's final decision on the matter. It is not subject to further appeal or reconsideration. The determination will be sent via certified mail - return receipt requested and will take effect immediately upon receipt by the appellant institution or its representative.

If you have any questions, or need clarification of any issue, please feel free to contact the Administrative Review Officer who is assigned to the case. If you are unsure of the ARO assigned to your case, contact the OCN for additional information.