

Office of Superintendent of Public Instruction Summer Food Service Program Appeal Procedure

These appeal procedures allow sponsors participating in the Summer Food Service Program (SFSP) an avenue of appeal when the Office of Superintendent of Public Instruction (OSPI), Child Nutrition Services (CNS) takes an adverse administrative action.

Administrative Actions Which May Be Appealed

In accordance with 7 CFR 225.13(a), the administrative actions which may be appealed include:

1. Denial of an application for participation.
2. Denial of a sponsor's request for an advance payment.
3. Denial of a sponsor's claim for reimbursement (except for late submission under 7 CFR 225.9(d)(5)).
4. A refusal to forward to the Food and Nutrition Services (FNS) of the U.S. Department of Agriculture (USDA) an exception request by the sponsor for payment of a late claim or a request for an upward adjustment to a claim.
5. A claim against a sponsor for remittance of payment.
6. The termination of the sponsor or a site.
7. Denial of a sponsor's application for a site.
8. Denial of a food service management company's (FSMC) application for registration, if applicable.
9. The revocation of a food service management company's registration, if applicable.

Administrative Actions Which May Not Be Appealed

In accordance with 7 CFR 225.9(d)(5), appeals will not be allowed on decisions made by FNS with respect to late claims or upward adjustments.

Procedure

In accordance with 7 CFR 225.13(b), the following procedure is to be used when OSPI takes an action that may affect the participation of a sponsor in the program or FSMC or notifies the sponsor that program funds must be remitted.



1. OSPI will inform the sponsor or FSMC 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 sponsor or FSMC will be advised in writing that the appeal must be made not less than one week nor more than two weeks from the date on which the notice of action is received. The request for an appeal must be sent to:

**OFFICE OF LEGAL SERVICES
ADMINISTRATIVE RESOURCE 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

3. Any information on which CNS action was based must be made available to the sponsor or FSMC for inspection from the date of receipt of the request for an administrative review.
4. The appellant may refute the charges contained in the notice of action either in person or by filing written documentation with the review official. To be considered, written documentation must be submitted by the appellant within seven days of submitting the appeal, must clearly identify the action being appealed and must include a photocopy of the notice of action issued by OSPI.
5. A hearing will be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter appealing the action. The appellant may retain legal counsel or may be represented by another person. Failure of the appellant's representative 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.
6. If a hearing is requested, the Office of Administrative Hearings shall set the time and place of the hearing and provide at least five days advance written notice to the appellant, and CNS. The notice will be sent certified mail, return receipt requested.

7. 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.
8. The hearing will be held within 14 days of the date the receipt of the request for review, but, where applicable, not before the appellant's written documentation is received in accordance with items 4 and 5 above.
9. The review official will be independent of the original decision-making process.
10. The review official shall make a determination based on information provided by OSPI, the appellant, and on program regulations.
11. Within five working days after the appellant's hearing, or within five working days after receipt of written documentation if no hearing is held, the reviewing official will make a determination based on a full review of the administrative record and inform the appellant of the determination of the review by certified mail, return receipt requested.
12. CNS action must remain in effect during the administrative review. Sponsors and sites may continue to operate during an appeal 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.
13. The determination by the State review official is the final administrative determination to be afforded to the appellant.
14. OSPI will send written notification of the complete appeal procedures and of the actions which are appealable, as specified in 7 CFR 225.13(a), to each potential sponsor applying to participate and to each food service management company applying to register in accordance with 7 CFR 225.6(g).
15. A record regarding each review shall be kept by OSPI, as required under 7 CFR 225.8(a). The record shall document OSPI's compliance with these regulations and shall include the basis for its decision.

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.

The review effort was designed to provide consistency in review procedures between OSPI, USDA, and FNS staff. In the event a review is independently conducted by FNS staff, with no assistance provided by OSPI staff, the appeal process will be handled by FNS.

If you have questions regarding these procedures, please contact the Summer Food Service 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.