

## CHILD AND ADULT CARE FOOD PROGRAM ADMINISTRATIVE REVIEW PROCEDURES

The regulations and guidelines of the Child and Adult Care Food Program (CACFP or Program) under the Food and Nutrition Service (FNS) of the United States Department of Agriculture (USDA) provide for administrative review of certain actions taken by the Massachusetts Department of Elementary and Secondary Education (Department). The regulations governing administrative review can be found at 7 CFR 226.6(k). The administrative review process is also discussed in a handbook entitled “Serious Deficiency, Suspension, & Appeals for State Agencies & Sponsoring Organizations” found at [http://www.fns.usda.gov/sites/default/files/CACFP\\_Serious\\_Deficiency\\_Handbook.pdf](http://www.fns.usda.gov/sites/default/files/CACFP_Serious_Deficiency_Handbook.pdf). Please refer to this handbook for additional explanations and information.

### **Definitions**

Administrative Review refers to the process required by 7 CFR 226 for challenging certain actions of the Department in the Program, sometimes referred to as an “appeal.”

CACFP refers to the Child and Adult Care Food Program authorized by section 17 of the National School Lunch Act.

Center refers to a child care center, at-risk after school care center, an adult day care center, an emergency shelter, or an outside-school-hours care center.

CFR refers to the Code of Federal Regulations.

Commissioner refers to the Massachusetts Commissioner of Elementary and Secondary Education.

Corrective Action refers to action taken and changes made to correct a Program violation or serious deficiency.

Corrective Action Plan (CAP) refers to a plan to correct a Program violation or serious deficiency.

Day refers to a calendar day unless otherwise specified.

Day Care Home (DCH) or provider refers to organized nonresidential child care programs for children enrolled in a private home, licensed or approved as a family or group day care home, that participate in CACFP and receive CACFP funds through a Sponsor.

Department refers to the Massachusetts Department of Elementary and Secondary Education.

Facility refers to a DCH or center that enters into an agreement with a sponsoring organization.

FNS refers to the Food and Nutrition Service of the United States Department of Agriculture.

Institution refers to an independent center or a sponsoring organization that enters into agreements with the Department to receive CACFP funds.

National Disqualified List (NDL) refers to the list, maintained by the USDA, of Institutions, Responsible Principals and Responsible Individuals, and Day Care Homes disqualified from participation in the Program.

Program refers to the CACFP program.

Responsible Individual (RI) refers to any non-principal associated with the institution's operation of the Program and who have been directly involved in the Program violation(s).

Responsible Principal (RP) refers to the institution official(s) who, by virtue of their management position, bear responsibility for any serious deficiency of the institution.

RP/I refers to Responsible Principal and Responsible Individual.

Serious Deficiency refers to the status of an Institution or DCH that the Department has determined to be non-compliant in one or more aspects under the Program.

Sponsor refers to a sponsoring organization that enters into an agreement with the Department to receive CACFP funds. The sponsor oversees the Facility and provides funding under the Program to the Facilities that it sponsors.

USDA refers to the United States Department of Agriculture.

### **Administrative Review**

Administrative Review is available in response to certain actions taken by the Department.

**Administrative Review may be sought** in response to the following actions:

1. Denial of an Institution's application for participation.
2. Denial of an application submitted by a Sponsor on behalf of a Facility.
3. Notice of proposed termination of an Institution's agreement.
4. Notice of proposed disqualification of a RP/I.
5. Suspension of an Institution's participation dealing with suspension 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. 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.
8. Denial of a request for an advance payment.
9. Denial of all or part of the claim for reimbursement, except for late submission under 7 CFR 226.10(e).

10. Failure of the Department to forward to FNS an exception requested by the institution for payment of a late claim or a request for an upward adjustment to the claim after the 60-day deadline.
11. Demand for the remittance of any overpayment.
12. Any other action of the Department affecting the participation of an Institution or the Institution's claim for reimbursement.<sup>1</sup>

In contrast, **Administrative Review is NOT available** in response to the following actions:

1. FNS decisions on claim deadline exceptions and requests for upward adjustments to claims.
2. Determination of Serious Deficiency.
3. Termination of a participating Institution's agreement, including termination of a participating Institution's agreement based upon the disqualification of the Institution by another state agency or by FNS.<sup>2</sup>
4. Disqualification and placement on the NDL.<sup>3</sup>
5. Determination that corrective action taken or change made was not complete and permanent.
6. Decision by the Department or FNS that an Institution's corrective action taken or change made is inadequate and removal from the NDL is denied.
7. Refusal to consider an Institution's application to participate when either the Institution or one of its principals is on the NDL, or refusal to consider an Institution's application to participate submitted by Sponsor on behalf of a Facility that is on the NDL.

### **Procedure for Administrative Review**

1. Notice of Action

When the Department takes or proposes an action for which an Administrative Review is permitted according to program regulations at 7 CFR 226, the Department sends notice. Notice is sent to the Institution; its executive director; chairman of the Institution's board of directors, if any; and all RP/I. Notice includes notice of the action, the grounds upon which the action is based, and the procedures under which Administrative Review may be requested. Notice is sent by certified mail, return receipt requested. Notice is considered received five days after sent to the addressee's last known mailing address, telecopier number, or e-mail address, absent a confirmation receipt indicating an earlier date; the earliest date of receipt will control. In its notice, the Department advises the addressee of the right to seek Administrative Review of the action taken or proposed.

---

<sup>1</sup> With the exception of actions not subject to Administrative Review.

<sup>2</sup> "Notice" precedes the actual termination and is subject to Administrative Review.

<sup>3</sup> "Notice" precedes the actual disqualification and is subject to Administrative Review.

## 2. Request for Administrative Review

An Institution and RP/I may seek Administrative Review of the Department's action by submitting a request in writing not later than 15 days after the earliest date that notice was received. A request for Administrative Review should be directed to:

Commissioner  
Department of Elementary and Secondary Education  
75 Pleasant Street  
Malden, MA 02148

The Department will acknowledge the receipt of request for Administrative Review within 10 days of receipt.

The Institution's and RP/I's requests for administrative review must include the following information:

- a. A description of the action or actions on which administrative review is sought;
- b. Name, address, telephone number, and e-mail address for the person authorized to represent the Institution; the name, address, telephone number, and e-mail address of each RP/I; and, if relevant, the name, address, telephone number, and e-mail address person authorized to represent each RP/I.
- c. An indication whether the Institution and RP/I are requesting that a hearing be held in addition to, or in lieu of, a review of written information. If the Institution and the RP/I do not request a hearing specifically, the Administrative Review will be based upon a review of written information.
- d. The request for Administrative Review must be signed and dated.

The Department recommends that the Institution and RP/I send requests for Administrative Review, and any other documentation, in a manner that provides with proof of receipt such as certified mail, return receipt requested.

Following receipt of a request for Administrative Review, e-mail will be the primary form of communication used, including the issuing of orders.

## 3. Representation

The Institution and RP/I may retain legal counsel or be represented by another authorized person.

## 4. Review of Record

The Department will make available, from the date that it receives a request for Administrative Review, all information upon which the Department based its action. For a Notice of Proposed Termination and Disqualification, the Department will provide, in detail with applicable attachments, all information upon which it based its action.

## 5. Opposition and Submission of Written Documentation

The Institution and RP/I may refute the findings contained in the notice of action either in person, if a hearing is requested, or by submitting written documentation to the hearing official. The Institution and RP/I may request Administrative Review of written materials only, an in-person hearing only, or both.

For the hearing official to consider written documentation, however, all written documentation must be submitted no later than **30 days** after receipt of the Notice of Action and must be submitted **PRIOR** to the beginning of any hearing. Once the hearing begins, no further documentation may be submitted by any party. A copy of all communications, submissions, and documents must be provided to the other parties at the same time and using the same method that is used to transmit them to the hearing official.

## 6. Hearing

If a hearing is requested, the hearing must be held with at least 10 days notice to the Institution, RP/I, and the Department of the time and place of the hearing. The hearing must be scheduled to permit a decision to be rendered within 60 days of the original request for Administrative Review. If requests for Administrative Review are received from the Institution and RP/I, the hearing official may consolidate requests for Administrative Review based upon the same Notice of Action. Hearings occur under federal law and not under G.L. c. 30A.

During the hearing, the Institution and RP/I bear the burden of proof in refuting the findings contained in the Notice of Action and, during a hearing, present evidence and argument first. Department representatives shall be allowed to attend the hearing to respond to evidence and to answer questions from the hearing official.

If the authorized representative of the Institution, the RP/I or their representatives fail to appear at a scheduled hearing, they waive the right to an in-person hearing unless the hearing official can and does reschedule the hearing to a date that still permits a decision to be rendered within 60 days of the original request for Administrative Review.

## 7. Decision Without a Hearing

No hearing will be held and the hearing official will base a decision on a full review of the written submissions if the Institution or RP/I

- did not request a hearing in accordance with the requirements in Section 2 of this procedure, or
- waived the right to a hearing by failing to appear at a scheduled hearing as described in Section 6 of this procedure.

## 8. Hearing Official

The Commissioner will appoint someone to serve as the hearing official as required by 7 CFR 226.13(b). The person appointed as the hearing official will be independent and impartial. The hearing official will 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 appeal. If the person is an employee of the Department, he or she may not occupy a position in which he or she is potentially subject to undue influence from the person responsible for the Department's decision or occupy a position in which he or she may exercise undue influence over the person responsible for the Department's decision. The Institution and RP/I may contact the hearing official if they so desire.

## 9. Decision

The hearing official will make a determination based solely upon the information provided by the Institution, RP/I, and the Department, and in Program statute, regulations, policies, and procedures.

Within 60 days of the Department's receipt of a request for administrative review, the hearing official must inform the Department; the Institution; its executive director; chairman of the Institution's board of directors, if any; and the RP/I of the outcome of the administrative review. This timeframe is a Program requirement of FNS to which it holds the Department accountable; failure to meet the timeframe does not provide a basis for challenging a decision and is not a ground on which a decision may be overturned. The decision of the hearing official is the final determination and is not subject to further review.

The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal and, where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or if all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at [program.intake@usda.gov](mailto:program.intake@usda.gov).

Individuals who are deaf, hard of hearing, or have speech disabilities and wish to file either an EEO or program complaint please contact USDA through the Federal Relay Service at (800) 877-8339 or (800) 845-6136 (in Spanish).

Persons with disabilities, who wish to file a program complaint, please see information above on how to contact us by mail directly or by email. If you require alternative means of communication for program information (e.g., Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). USDA is an equal opportunity provider and employer.