



Child & Adult Care Food Program

Administrative Review (Appeal) Procedures

*Child Nutrition Programs
Finance & Support Services
P.O. Box 110500
Juneau, Alaska 99811-0500
Phone (907) 465-8711*

IMPORTANT NOTICE OF RIGHTS

If you disagree with a decision rendered by the Department of Education and Early Development, you have the right to request an administrative review of that decision by an impartial Administrative Review (Hearing) Official for the reasons of the denial of all or part of a Claim for Reimbursement or withholding payment arising from an administrative review (initial or follow-up).

In order to arrange for a review, you must file a written request within 15 calendar days of receipt of the notice of the decision. The request should state the reasons why you feel the decision or action is wrong and if you want an in-person hearing. Your request must be addressed to the following office:

**Office of the Commissioner
Department of Education & Early Development
PO Box 110500
Juneau, Alaska 99811**

I. State Agency Responsibility

- 1) Send written notice of reason for action to agency and responsible parties
- 2) Inform agency & responsible parties of appeal rights

II. Appellant Responsibility

- 1) Request administrative review – not later than 15 calendar days (in writing) from date of receipt of notice (earliest form of transmission), specify if in-person review is requested
 - 2) Submit written documentation or evidence within 30 days of receipt of notice
- or-
- 3) Be present at hearing (may represent self, retain legal counsel, or may be represented by another person)

III. Administrative Review (Hearing) Official Responsibility

- 1) Acknowledge receipt of administrative review request within 10 calendar days of receipt
- 2) Notify appellant and State Agency of Hearing location and time 10 calendar days in advance (if applicable)
- 3) Make a determination based on information provided by State Agency and the appellant
- 4) Notify appellant and State Agency within 60 calendar days of receipt of request for administrative review

The administrative review process is governed by 7 Code of Federal Regulations § 226.6(k), set out below. Paragraph (k)(2) lists the actions that are subject to administrative review. Paragraph (k)(3) lists the actions that are not subject to administrative review. Paragraph (k)(5) describes the administrative review procedures. If you seek an administrative review, you must follow these procedural requirements.

7 Code of Federal Regulations § 226.6(k):

(k) Administrative reviews for institutions and responsible principals and responsible individuals —

(1) General. The State agency must develop procedures for offering administrative reviews to institutions and responsible principals and responsible individuals. The procedures must be consistent with [paragraph \(k\)](#) of this section.

(2) Actions subject to administrative review. Except as provided in [§ 226.8\(g\)](#), the State agency must offer an administrative review for the following actions:

(i) Application denial. Denial of a new or renewing institution's application for participation (see [paragraph \(b\)](#) of this section, on State agency review of an institution's application; and [paragraphs \(c\)\(1\)](#) and [\(c\)\(2\)](#) of this section, on State agency denial of a new or renewing institution's application);

(ii) Denial of sponsored facility application. Denial of an application submitted by a sponsoring organization on behalf of a facility;

(iii) Notice of proposed termination. Proposed termination of an institution's agreement (see [paragraphs \(c\)\(2\)\(iii\)\(C\)](#), [\(c\)\(3\)\(iii\)\(C\)](#), and [\(c\)\(5\)\(i\)\(B\)](#) of this section, dealing with proposed termination of agreements with renewing institutions, participating institutions, and participating institutions suspended for health or safety violations);

(iv) Notice of proposed disqualification of a responsible principal or responsible individual. Proposed disqualification of a responsible principal or responsible individual (see [paragraphs \(c\)\(1\)\(iii\)\(C\)](#), [\(c\)\(2\)\(iii\)\(C\)](#), [\(c\)\(3\)\(iii\)\(C\)](#), and [\(c\)\(5\)\(i\)\(B\)](#) of this section, dealing with proposed disqualification of responsible principals or responsible individuals in new, renewing, and participating institutions, and participating institutions suspended for health or safety violations);

(v) Suspension of participation. Suspension of an institution's participation (see [paragraphs \(c\)\(5\)\(i\)\(B\)](#) and [\(c\)\(5\)\(ii\)\(D\)](#) of this section, dealing with suspension for health or safety reasons or submission of a false or fraudulent claim);

(vi) Start-up or expansion funds denial. Denial of an institution's application for start-up or expansion payments (see [§ 226.7\(h\)](#));

(vii) Advance denial. Denial of a request for an advance payment (see [§ 226.10\(b\)](#));

(viii) Recovery of advances. 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 (see [§ 226.10\(b\)\(3\)](#));

(ix) Claim denial. 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\(e\)](#)) (see [§§ 226.10\(f\)](#) and [226.14\(a\)](#));

(x) Claim deadline exceptions and requests for upward adjustments to a claim.

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 (see [§ 226.10\(e\)](#));

(xi) Overpayment demand. Demand for the remittance of an overpayment (see [§ 226.14\(a\)](#)); and

(xii) Other actions. Any other action of the State agency affecting an institution's participation or its claim for reimbursement.

(3) Actions not subject to administrative review. The State agency is prohibited from offering administrative reviews of the following actions:

(i) FNS decisions on claim deadline exceptions and requests for upward adjustments to a claim. A decision by FNS to deny an exception request by an institution for payment of a late claim, or for an upward adjustment to a claim (see [§ 226.10\(e\)](#));

(ii) Determination of serious deficiency. A determination that an institution is seriously deficient (see [paragraphs \(c\)\(1\)\(iii\)\(A\), \(c\)\(2\)\(iii\)\(A\), \(c\)\(3\)\(iii\)\(A\), and \(c\)\(5\)\(i\)\(B\)](#) of this section, dealing with proposed disqualification of responsible principals or responsible individuals in new, renewing, and participating institutions, and participating institutions suspended for health or safety violations);

(iii) State agency determination that corrective action is inadequate. A determination by the State agency that the corrective action taken by an institution or by a responsible principal or individual does not completely and permanently correct a serious deficiency;

(iv) Disqualification and placement on State agency list and National disqualified list. Disqualification of an institution or a responsible principal or responsible individual, and the subsequent placement on the State agency list and the National disqualified list (see [paragraphs \(c\)\(1\)\(iii\)\(E\), \(c\)\(2\)\(iii\)\(E\), \(c\)\(3\)\(iii\)\(E\), and \(c\)\(5\)\(i\)\(C\)](#) of this section, dealing with proposals to disqualify related to new, renewing, and participating institutions, and in institutions suspended for health or safety violations);

(v) Termination. 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 (see [paragraphs \(c\)\(3\)\(i\) and \(c\)\(7\)\(ii\)](#) of this section);

(vi) State agency or FNS decision regarding removal from the National disqualified list. A determination, by either the State agency or by FNS, that the corrective action taken by an institution or a responsible principal or individual is not adequate to warrant the removal of the institution or the responsible principal or individual from the National disqualified list; or

(vii) State agency's refusal to consider an application submitted by an institution or facility on the National disqualified list. The State agency's refusal to consider an institution's application when either the institution or one of its principals is on the National disqualified list, or the State agency's refusal to consider an institution's submission of an application on behalf of a facility when either the facility or one of its principals is on the National disqualified list.

(4) Provision of administrative review procedures to institutions and responsible principals and responsible individuals. The State agency's administrative review procedures must be provided:

- (i) Annually to all institutions;
- (ii) To an institution and to each responsible principal and responsible individual when the State agency takes any action subject to an administrative review as described in [paragraph \(k\)\(2\)](#) of this section; and
- (iii) Any other time upon request.

(5) Procedures. Except as described in [paragraph \(k\)\(9\)](#) of this section, which sets forth the circumstances under which an abbreviated administrative review is held, the State agency must follow the procedures in this [paragraph \(k\)\(5\)](#) when an institution or a responsible principal or responsible individual appeals any action subject to administrative review as described in [paragraph \(k\)\(2\)](#) of this section.

(i) Notice of action. 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 of the action.

(ii) Time to request administrative review. The request for administrative review must be submitted in writing not later than 15 days after the date the notice of action is received, and the State agency must acknowledge the receipt of the request for an administrative review within 10 days of its receipt of the request. The State agency must provide a copy of the written request for an administrative review, including the date of receipt of the request to FNS within 10 days of its receipt of the request.

(iii) Representation. The institution and the responsible principals and responsible individuals may retain legal counsel, or may be represented by another person.

(iv) Review of record. Any information on which the State agency's action was based must 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.

(v) Opposition. 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 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.

(vi) Hearing. A hearing must be held by the administrative review official in addition to, or in lieu of, a review of written information only if the institution or the responsible principals and responsible individuals request a hearing in the written request for an administrative review. 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.

(vii) Administrative review official. The administrative review official must be independent and impartial. This means that, although the administrative review official may be an employee of the State 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.

(viii) Basis for decision. The administrative review official must make a determination based solely on the information provided by the State agency, the institution, and the responsible principals and responsible individuals, and based on Federal and State laws, regulations, policies, and procedures governing the Program.

(ix) Time for issuing a decision. Within 60 days of the State agency's receipt of the request for an administrative review, 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 administrative review's outcome. This timeframe is an administrative requirement for the State agency and may not be used as a basis for overturning the State agency's action if a decision is not made within the specified timeframe. State agencies failing to meet the timeframe set forth in this paragraph are liable for all valid claims for reimbursement to aggrieved institutions, as specified in [paragraph \(k\)\(11\)\(i\)](#) of this section.

(x) 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.

(6) Federal audit findings. FNS may assert a claim against the State agency, in accordance with the procedures set forth in [§ 226.14\(c\)](#), when an administrative review results in the dismissal of a claim against an institution asserted by the State agency based upon Federal audit findings.

(7) Record of result of administrative reviews. The State agency must maintain searchable records of all administrative reviews and their disposition.

(8) Combined administrative reviews for responsible principals and responsible individuals. The State agency must conduct the administrative review of the proposed disqualification of the responsible principals and responsible individuals as part of the administrative review 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 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.

(9) Abbreviated administrative review. 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 institution's agreement because:

(i) The information submitted on the application was false (see [paragraphs \(c\)\(1\)\(ii\)\(A\), \(c\)\(2\)\(ii\)\(A\), and \(c\)\(3\)\(ii\)\(A\)](#) of this section);

(ii) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the national disqualified list (see [paragraph \(b\)\(12\)](#) of this section);

(iii) 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 (see [paragraph \(b\)\(13\)](#) and [\(c\)\(3\)\(ii\)\(S\)](#) of this section); or

(iv) 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 (see [paragraphs \(b\)\(14\)](#) and [\(c\)\(3\)\(ii\)\(T\)](#) of this section).

(10) Effect of State agency action. The State agency's action must remain in effect during the administrative review. The effect of this requirement on particular State agency actions is as follows.

(i) Overpayment demand. During the period of the administrative review, the State agency is prohibited from taking action to collect or offset the overpayment. However, the State agency must assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review unless the administrative review official overturns the State agency's action.

(ii) Recovery of advances. During the administrative review, 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.

(iii) Program payments. The availability of Program payments during an administrative review 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 are addressed in paragraphs (c)(1)(iii)(D), (c)(2)(iii)(D), (c)(3)(iii)(D), (c)(5)(i)(D), and (c)(5)(ii)(E), respectively, of this section.

(11) State liability for payments.

(i) A State agency that fails to meet the 60-day timeframe set forth in [paragraph \(k\)\(5\)\(ix\)](#) of this section must pay, from non-Federal sources, all valid claims for reimbursement to the institution during the period beginning on the 61st day and ending on the date on which the hearing determination is made, unless FNS determines that an exception should be granted.

(ii) FNS will notify the State agency of its liability for reimbursement at least 30 days before liability is imposed. The timeframe for written notice from FNS is an administrative requirement and may not be used to dispute the State's liability for reimbursement.

(iii) The State agency may submit, for FNS review, information supporting a request for a reduction in the State's liability, a reconsideration of the State's liability, or an exception to the 60-day deadline, for exceptional circumstances. After review of this information, FNS will recover any improperly paid Federal funds.

In accordance with federal civil rights law and USDA civil rights regulations and policies, the USDA, its agencies, offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

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 state or local agency that administers the program or contact USDA through the Telecommunications Relay Service at 711 (voice and TTY). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, [AD-3027](#), found online at How to File a Program Discrimination Complaint 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, Mail Stop 9410, Washington, D.C. 20250-9410;
2. **Fax:** (202) 690-7442; or
3. **Email:** program.intake@usda.gov.

This institution is an equal opportunity provider.