

OKLAHOMA STATE DEPARTMENT OF EDUCATION

CHILD NUTRITION PROGRAMS (CNP) SUMMER FOOD SERVICE PROGRAM (SFSP)

APPEAL PROCEDURES

In accordance with the United States Department of Agriculture (USDA) Summer Food Service Program (SFSP) regulations 7 CFR Part 225.13 (b), the Oklahoma State Department of Education (SOE) uses the following procedures for appeals:

1. A sponsor or food service management company (FSMC) shall be notified in writing by certified mail, *return receipt requested*, of the grounds upon which the SDE based its action. The notice must inform the sponsor of its right to appeal. Two methods for appeal procedures are authorized:
 - a. The sponsor may request a review of the records. Upon receipt of such a request, the SDE shall appoint a review official to conduct the review.

OR

- b. The sponsor may request a hearing. Upon receipt of a request for a hearing, the SDE must contract with an administrative law judge to conduct the hearing.
2. The written request for a review of records or for a hearing must be filed by the sponsor no more than one week (seven days) from the date the sponsor receives the notice of the action. A hearing must be held by the review official in addition to, or in lieu of, a review of written information submitted by the sponsor *only if* the sponsor so specified in the letter requesting the appeal. Therefore, the written request *must specify* which type of appeal is requested. Mail written request to Oklahoma State Department of Education, Child Nutrition Programs, Suite 310, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.
3. The sponsor may refute the information contained in the notice of action in person or by written documentation presented to the review official. In order to be considered, written documentation must be filed with the review official *within seven days of submitting the appeal*, must clearly identify the State Agency action being appealed, and must include a photocopy of the notice of action issued by the State Agency. The sponsor may be represented by legal counsel or another person. The following applies to the two methods for the appeal process:
 - a. Review of Records
 - Upon receipt of an appeal requesting a review of records, the review official must notify the sponsor of the timelines for submission of documents.

- The sponsor, either in person or by filing written documentation, can request a review of the records. To be considered, written documentation must be submitted within *seven days* of submitting the appeal, must clearly identify the SDE action being appealed, and must include a photocopy of the notice of action issued by the SDE.
- Records submitted that were not available during the review or audit will not be considered, resulting in the action taken by the SDE being upheld.
- The review official shall be an employee of the CNP Section of the SDE but shall not have been involved with the specific actions being appealed.

b. Hearing

- Upon receipt of an appeal requesting a hearing, the SDE must notify the sponsor of the time-lines for submission of documents.
- Written documentation submitted after the seven-day time period will not be considered at any point during the appeal process, including the hearing.
- Records submitted that were not available during the review or audit will not be considered, resulting in the action taken by the SDE being upheld.
- If the sponsor chooses to be represented by legal counsel, the sponsor shall notify the CNP Executive Director of the counsel's name and address.
- The sponsor and SDE shall be notified by certified mail of the time, date, and place of the hearing. The notice must be provided at least five calendar days prior to the hearing.
- Failure of the sponsor or the sponsor's representative to appear at a scheduled hearing will constitute the sponsor's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing.
- The SDE shall have representatives in attendance at the hearing that may provide information and documentation supporting the action taken.
- The review official shall be an administrative law judge, an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal.

4. The hearing will be held within 14 days of the date of the receipt of the request for review but, where applicable, not before the sponsor's written documentation is received in accordance with paragraph 3.

5. Documents and information relating to the sponsor and the action taken will be available for inspection and duplication pursuant to Open Records Fee Schedule at the office of CNP.
6. The review official must make a determination based on information provided by the SDE, the sponsor, and the laws and regulations governing the SFSP.
7. Within five working days after the applicant's hearing, or within five working days after receipt of written documentation if no hearing is held, the review official shall make a determination based on a full review of the administrative record and inform the applicant and the SDE of the determination of the review by certified mail.
8. The SDE's action will remain in effect during the appeal process. However, participating sponsors and sites may continue to operate under the Program during an appeal of termination, unless the action is based on imminent danger to the health or welfare of Program participants. If the sponsor or site has been terminated for this reason, the SDE shall so specify in its notice of action. Sponsors electing to continue operation while appealing termination shall not be reimbursed for any meals served during the period of the appeal if the SDE's action is upheld.
9. The determination of the review official is the final administrative determination to be afforded the sponsor.
10. Pursuant to the federal regulations, appeals will not be allowed on decisions made by Food and Nutrition Service (FNS) on requests for exceptions to the claims submission deadlines or requests for upward adjustments to claims.

Section 225.6(a)(4)(i) of Program regulations:

The criminal penalties and provisions established in section 12(g) of the National School Lunch Act (42 U.S.C. 1760[g]) that gives substantially: Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a group or other form of assistance under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such funds, assets, or property to personal use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of \$100 or more, be fined not more than \$25,000 or imprisoned not more than five years, or both or such funds, assets, or property are of a value of less than \$100, shall be fined not more than \$1,000 or imprisoned for not more than one year or both.