



Indiana Department of Education

Dr. Katie Jenner, Secretary of Education

APPEAL PROCEDURES

Child and Adult Care Food Program (CACFP)

The following appeal (administrative review) procedures established in accordance with 7 CFR 226.6(k) of the CACFP regulations will be followed by an institution, responsible principals, or responsible individuals requesting a review of:

- A denial of a new or renewing institution's application for participation;
- A denial of an application submitted by a sponsoring organization on behalf of a facility;
- A proposed termination of an institution's agreement (dealing with proposed termination of agreements with renewing institutions, participating institutions, and participating institutions suspended for health or safety violations);
- A proposed disqualification of a responsible principal or responsible individual (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);
- A suspension of an institution's participation because of health or safety;
- A denial of all or part of an institution's claim for reimbursement unless the denial is based on a late claim submission;
- A decision by the Indiana Department of Education (IDOE) not to forward to The US Department of Agriculture – Food and 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; and
- A demand for the remittance of an overpayment, and any other action of IDOE affecting an agency's participation or its claim for reimbursement.

Actions not subject to an administrative review include:

- 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;
- A determination that an institution is seriously deficient;
- Disqualification of an institution or a responsible principal or responsible individual, and the subsequent placement on IDOE's list and the National disqualified list (NDL);
- A 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;
- A determination by IDOE that the corrective action taken by an institution or by a responsible principal or individual does not completely and permanently correct a serious deficiency;
- A determination, by either IDOE 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 NDL; or

- IDOE's refusal to consider an institution's application when either the institution or one of its principals is on the NDL, 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 NDL.

Procedure:

- 1) The institution shall be advised in writing of the action being proposed or taken and the basis for the action. The notice will include a statement indicating that the institution has the right to appeal the action. The notice shall be sent by certified regular U.S. mail, return receipt (or the equivalent private delivery service) by facsimile, or by email, and is considered to be received by the institution when it is delivered, sent by facsimile, or sent by email. If the notice is undeliverable, it is considered to be received by the institution, responsible principal or responsible individual five days after being sent to the addressee's last known mailing address, facsimile number, or email address.
- 2) Any request for an appeal shall be submitted in writing by the appellant not later than 15 calendar days from the date the appellant received the notice of action.
 - a) The request must be submitted through the Office of Administrative Law Proceedings (OALP): www.in.gov/oalp/file-a-petition-for-review/individuals-or-entities-file-a-petition-for-review/.
 - b) Any request for an appeal must specify who is filing the request.
 - i. The request must be submitted through the Office of Administrative Law Proceedings (OALP): www.in.gov/oalp/file-a-petition-for-review/individuals-or-entities-file-a-petition-for-review/.
 - ii. Any request for an appeal must specify who is filing the request. For example, request is filed on behalf of [institution name], and [Authorized Representative name] and [Owner or Board President Name].
 - c) Your request for an appeal must identify any contested issues of fact that you have with the IDOE's determinations. You must identify which facts contained in the notice of action you are disputing and you must identify what evidence you have to dispute those facts. If you fail to specifically dispute any facts, the hearing official may find that you have admitted to the facts.
 - d) If you wish to have an in-person hearing, you must specifically request one in your request for an appeal. Only if the appellant/s specifically requests an in-person hearing in appeal request, will the review official hold a hearing in addition to, or in lieu of, a review of written information submitted by the appellant/s.
 - e) 7 CFR 226.6(k)(9) identifies these actions for which only a review of written submissions may be granted, concerning the accuracy of IDOE's determination if the application was denied or IDOE proposes to terminate the institution's agreement because:
 - i. The information submitted on the application was false;
 - ii. The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the NDL;
 - 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;

- 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.
- 3) OALP will acknowledge the receipt of the request for appeal within 10 calendar days from the date of the department receipt of the request.
- 4) The appellant/s may refute the findings contained in the notice of action in person and/or by written documentation to the review official.
 - a. In order to be considered, written documentation must be filed with the review official not later than 30 calendar days after the appellant/s received the notice of action.
 - b. Failure of the appellant institution's representative or the responsible principals and responsible individuals or their representative to appear at a scheduled hearing shall constitute the appellant institution's and responsible principals and responsible individuals' waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing.
 - c. A representative of IDOE shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official.
 - d. The appellant may retain legal counsel or may be represented by another person.
- 5) If the appellant/s has requested a hearing, IDOE and the appellant/s shall be provided with at least 10 calendar days advance written notice of the time and place of the hearing. Notice may be provided by e-mail.
- 6) Any information on which IDOE's action was based shall be available to the appellant/s for inspection from the date of receipt of the appeal request.
- 7) The review official shall be an independent and impartial official who was not involved in the action that is the subject of the appeal, or have a direct personal or financial interest in the outcome of the appeal.
- 8) The review official shall make a determination based solely on information provided by IDOE and the appellant/s and on Federal and State laws, regulations, policies and procedures governing the Program.
- 9) Within 60 calendar days of IDOE's receipt of the request for the administrative review, the review official shall inform IDOE and the institution's executive director and chairman of the board of directors, and responsible principals and responsible individuals of the determination of the appeal.
- 10) IDOE's action shall remain in effect during the appeal process. The effect of this requirement on particular IDOE actions is as follows:
 - a. During the period of the administrative review, IDOE is prohibited from taking action to collect or offset the overpayment. However, IDOE 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 IDOE's action.

- b. The availability of Program payments during an administrative review are as follow:
 - i. For the denial of a new institution's application, IDOE is prohibited from paying any claims for reimbursement from a new institution for eligible meals services or allowable administrative expenses incurred;
 - ii. For the denial of a renewing institution's application, that institution may continue to participate in the Program and receive Program reimbursement for eligible meals served and allowable administrative costs incurred until the administrative review is complete.
 - iii. For the proposed termination of a participating institution's agreement, if the participating institution must renew its application, before the end of the time allotted for corrective action and/or the conclusion of any administrative review requested by the participating institution, IDOE must temporarily extend its current agreement with the participating institution and continue to pay any valid unpaid claims for reimbursement for eligible meals services and allowable administrative expenses incurred.
 - iv. For the suspension of an institution, IDOE is prohibited from paying 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, IDOE must 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, IDOE must pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

Participating institutions and facilities may continue to operate under the Program during an appeal of termination unless the action is based on imminent dangers to health or safety. Institutions electing to continue operating while appealing terminations shall not be reimbursed for any meals served during the period of the appeal if IDOE's action is upheld.

- 10) The determination by the State review official is the final administrative determination to be afforded to the appellant.

NONDISCRIMINATION STATEMENT

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, audiotape, 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/ad-3027.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.

Updated October 2023