

**BRIGHT FROM THE START:
GEORGIA DEPARTMENT OF EARLY CARE AND LEARNING
ABBREVIATED (ADMINISTRATIVE REVIEW) APPEAL PROCEDURES
CHILD AND ADULT CARE FOOD PROGRAM**

These abbreviated appeal procedures are issued pursuant to 7 Code of Federal Regulations (CFR) Section 226.6(k) and (k)(9).

DEFINITIONS

“Abbreviated Administrative Review” means an administrative review that is limited to a review of written submissions by the appellant and may not include an in-person hearing.

"Act" means the National School Lunch Act, as amended.

"Administrative law judge" means the independent and impartial review official that is employed or appointed by the Office of State Administrative Hearings.

"Adverse Actions subject to an abbreviated appeal" means an application denial or proposed termination of an institution's agreement because:

- The information submitted on the application was false;
- The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the National Disqualified List (NDL);
- 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 public funded program by reason of violation of the requirements of the program; or
- 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.

"Actions not subject to an appeal," means:

- 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;
- A determination by DECAL that the corrective action taken by an institution or by a responsible principal or individual does not completely and permanently correct a serious deficiency;
- Disqualification of an institution or a responsible principal or responsible individual, and the subsequent placement on the Georgia Disqualified List (GDL) and the National Disqualified List (NDL);
- 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 collection notice or a collection claim against an institution for remittance of payment, inclusive of debts due to the CACFP resulting from an institution's failure to appeal;
- A determination, by either DECAL or by the United States Department of Agriculture Food and Nutrition Services (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; and
- DECAL's refusal to consider an institution's application when either the institution or one of its principals has been placed on the NDL, or DECAL's refusal to consider a sponsoring organization's submission of an application on behalf of a facility when either the facility or one of its principals is listed on the NDL.

"Appellant" means the institution requesting an appeal of the state agency's adverse action.

"Days" means calendar days.

"Institution" means a sponsoring organization, a child care center, outside-school-hours care center or adult day care center which enters into an agreement with the state agency for participation in the program.

"Office of State Administrative Hearings" (OSAH) means the executive state agency responsible for the administration of the Georgia Administrative Procedure Act. OSAH is not accountable to the management of the CACFP or the state agency.

"Program" means the Child and Adult Care Food Program (CACFP).

"State agency" means Bright from the Start: Georgia Department of Early Care and Learning (DECAL).

"USDA" means the United States Department of Agriculture.

PURPOSE

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:

- The information submitted on the application was false; or
- The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the national disqualified list; or
- 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; or
- The institution or 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.

POLICY

The Georgia Administrative Procedure Act, O.C.G.A. Section 50-13-1 et seq., governs the appeal procedures for institutions.

Notice of Adverse Action

Notices of adverse action shall be issued by the state agency in writing and shall state the type of action, the cause for the action, and if applicable, the financial effects. Notices shall also describe the institution's right to appeal the action and these procedures.

Appeal Request

Institutions that appeal an adverse action as defined in these procedures are limited by 7 CFR §226.6(k)(9) to a review of the record/written submission. The request for a review of written record/written submissions must be received by DECAL's General Counsel located at 2 Martin Luther King Jr. Drive, SE, Suite 754, East Tower, Atlanta, GA 30334, within fifteen (15) days following the date of receipt of DECAL's notice of adverse action(s). The Appeal request must identify the name, address and telephone number of the Appellant's attorney, if the Appellant has one at the time of the appeal request. The Appeal Request must state the specific adverse action(s) the Appellant wishes to appeal, and the reason(s) why the state's decision should be overturned. One of the Attorneys within DECAL's Office of General Counsel must acknowledge the receipt of the Appeal Request for an administrative review within ten (10) days of its receipt of Appellant's request.

Written Review of Record

Once an appeal request is received, DECAL will prepare the required OSAH documents and forward to the OSAH Court for assignment of an Administrative Review Official.

While awaiting assignment, Appellant must prepare and file his/her written documentation with the OSAH Court within thirty (30) calendar days of issuance of Notice of Findings/Action(s) and receipt of Appeal Procedures. Appellant must also send to DECAL's General Counsel's Office a copy of the written documentation filed with the Court. The Appellant must include in its written documentation: the adverse action(s) the Appellant wishes to appeal, the reason(s) why the state's decision should be overturned.

Counting of time

Thirty (30) calendar days after Appellant receives their Notice of DECAL Findings the Appellant must submit their written documentation, records, and argument to the OSAH Court and send a copy to DECAL.

Claims for Reimbursement

The adverse action shall remain in effect while the appeal process is ongoing. During this timeframe, the Appellant may continue to submit claims for reimbursement under the CACFP until the OSAH Administrative Law Judge issues a Final Decision; provided, however, that claims may not be submitted for payment by an institution in any situation in which the underlying adverse action is based on a serious health and safety violation, an imminent threat to the health and safety or welfare of the participants, or fraud (7 CFR 226.6 (c)(5)). If the Appellant has been terminated for this reason, the Appellant shall be notified in writing. In all other instances, institutions shall be reimbursed for any meals served that are supported by appropriate documentation.

Final Decision

In accordance with the federal regulations (7 CFR 226.6(k)(5)), within 60 days of DECAL's receipt of the request for an administrative review, the OSAH Administrative Law Judge shall inform DECAL, the institution's executive director, chairman of the board of directors, and the responsible principals and responsible individuals, of the final decision. This timeframe is an administrative requirement for DECAL 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. Final Decisions will be issued via certified mail, return receipt.

OSAH's Administrative Law Judge will issue a Final Decision based on information provided by DECAL and the Appellant on Federal and State laws, regulations, policies, and procedures governing the Program. The Administrative Law Judge's final decision shall be consistent with Program regulations and policy.

The Appellant may seek judicial review of the Final Decision by filing a petition with either the Fulton County Superior Court or the superior court of the Appellant's county of residence. As of the date on which a Final Decision is issued by an Administrative Law Judge affirming a determination by the State agency to terminate an institution from the CACFP, DECAL will no longer pay any claims for reimbursement unless it is otherwise ordered to do so.

PROCEDURES

1. Notices of adverse action are issued by the State agency in writing and indicate the type of action, the cause for the action, and if applicable, the financial effects. Notices are sent by certified mail, return receipt requested (or the equivalent private delivery service), by facsimile, or by email. If the notice is undeliverable, it is considered to be received by the institution five (5) calendar days after being sent to the addressee's last known mailing address, facsimile number, or email address. The notice states institution has the right to appeal the action and these procedures. The institution is allowed the opportunity to review any information upon which the action was based.
2. Appellants are allowed to refute the adverse action(s) by requesting a written review of the record. All appeal requests must be submitted in writing to the attention of DECAL General Counsel, DECAL, 2 Martin Luther King, Jr. Drive, SE, Suite 754, East Tower, Atlanta, Georgia 30334 or by email to Ira.Sudman@decalfga.gov. Such written requests must be received by DECAL within fifteen (15) calendar days following the day of receipt of DECAL's notice of adverse action. Requests postmarked but not received within fifteen (15) days of DECAL's notice will not be considered. DECAL will forward the appeal request to OSAH and provide the Appellant with a copy of this transmittal.
 - The state agency must acknowledge the receipt of the request for an administrative review within ten (10) days of its receipt of the request. The request must identify the name, address and telephone number of the Appellant's attorney, if the Appellant has one at the time of the appeal request, and the specific adverse action(s) the Appellant wishes to appeal and the reason(s) why the state's decision should be overturned.
3. The Appellant must then submit written documentation in opposition to DECAL's decision to OSAH. In order to be considered, the written documentation, inclusive of argument why DECAL's decision should be overturned must be submitted to the OSAH Administrative

Review Official not later than 30 days after receipt of the notice of action. A copy of all Court submissions must be sent to DECAL's General Counsel. Documentation not received by the Court in a timely manner will not be considered unless the Administrative Law Judge presiding over the matter for OSAH determines that extraordinary circumstances prevented its timely submission.

4. OSAH will conduct the written review of record of the proposed disqualification of the responsible principals and responsible individuals as part of the 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 Law Judge's discretion, separate administrative reviews may be held if the institution does not request an appeal or if either the institution or the responsible principal or responsible individual demonstrates that their interests conflict.
5. The Administrative Law Judge is independent of the original decision-making process. This Final Decision will be based solely on the documentation and evidence presented by the DECAL and the Appellant in accordance with federal regulations 7 CFR 226.6(k)(5)(iv) through (x). The Administrative Law Judge's final decision shall be consistent with Program regulations and policy.
6. In accordance with the federal regulations (7 CFR 226.6(k)(5)), within 60 days of DECAL's receipt of the request for an administrative review, the OSAH Administrative Law Judge shall inform DECAL, the institution's executive director, chairman of the board of directors, and the responsible principals and responsible individuals, of the final decision. This timeframe is an administrative requirement for DECAL 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. Final Decisions will be issued via certified mail, return receipt.
7. The Appellant may seek judicial review of the Final Decision by filing a petition with either the Fulton County Superior Court or the superior court of the Appellant's county of residence within thirty (30) calendar days after service of the Final Decision. In accordance with O.C.G.A. 50-13-19(d)(1), the filing of the petition for judicial review in superior court does not itself stay enforcement of the agency decision. Except as otherwise provided in this subsection, the agency may grant, or the reviewing court may order, a stay upon appropriate terms for good cause shown.
8. The adverse action shall remain in effect during the period of the administrative review. However, the Appellant may continue to operate the Program during an appeal of termination, and if the state agency's decision is overturned, reimbursement shall be paid for eligible meals served during the appeal process. However, such continued Program operation shall not be allowed if the adverse action is based on imminent danger to the health or welfare of children. If the Appellant has been terminated for this reason, the Appellant shall be notified in writing.
9. Unless participation has been suspended, DECAL will continue to pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative expenses incurred until the institution's agreement is terminated, including the period of any administrative review.
10. During the period of the administrative review, DECAL is prohibited from taking action to collect or offset the overpayment. However, DECAL shall 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 DECAL's action.

11. During the administrative review, DECAL will 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.

DECAL shall maintain records of all administrative reviews and their disposition. If you have any questions concerning this policy, please direct them to DECAL's General Counsel.

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