



## Child and Adult Care Food Program (CACFP) Appeal Procedures

The appeal procedures are issued pursuant to 7 Code of Federal Regulations (CFR) Section 226.6(k) and Official Code of Georgia Annotated (O.C.G.A.) Section 50-13-1 *et seq.*

In accordance with 226.6(k)(4), appeal procedures are issued: (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) at any other time upon request.

### PURPOSE

The purpose of the appeal procedures is to provide institutions the opportunity to appeal adverse actions pursuant to the Georgia Administrative Procedure Act.

### DEFINITIONS

"**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**" means:

- denial of new or renewing institution's application for participation in the program;
- denial of an application submitted by a sponsoring organization on behalf of a facility;
- a notice of proposed termination of an institution's agreement;
- a notice of proposed disqualification of a responsible principal or responsible individual;
- proposed disqualification of the participation of an institution or facility;
- the suspension of an institution's participation;

- denial of an institution's application for start-up or expansion payments;
- denial of a request for an advance payment;
- the recovery of advances;
- denial of all or a part of a claim for reimbursement (except for late submission under 7 CFR Section 226.10(e));
- denial of claim deadline exceptions and requests for upward adjustments to a claim request by an institution;
- demand for remittance of an overpayment; and
- any other action of the state agency affecting the participation of an institution in the program or the institution's claim for reimbursement (including, but not limited to denial of an institution's Program budget or any portion of the Program budget, DECAL's determination of an unallowable program cost, etc.).

**"Actions not subject to an appeal"**, per DECAL, 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.

## **POLICY**

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

All institutions participating in the CACFP enter into an Agreement with the Georgia Department of Early Care and Learning (DECAL) and accept final administrative and financial responsibility for Program operations. DECAL may impose an adverse action as a result of an institution's review, complaint investigation, financial review, and/or any other action that results in items as listed under the aforementioned definition of an "adverse action." Once the action is imposed, DECAL is required to provide appeal procedures as set forth in this document and in accordance with 7 CFR 226.6(k).

### **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 include the institution's right to appeal the action and attached thereto appeal procedures. Notices shall be addressed to the institution's executive director, chairman of the board, principals, and responsible individuals.

### **Requesting an Appeal**

Appellants (institutions) are allowed to refute the adverse action(s) cited by DECAL by requesting an Appeal in the form of : (1) an in person evidentiary hearing; or (2) a review of the written record by an Administrative Law Official, not both.

If Appellant does not want to avail themselves of the two appeal options offered pursuant to CACFP federal regulations, appellant may request participation in the DECAL's internal review of the record process.

The request for evidentiary hearing or review of the written record 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.

For appellants' convenience, the enclosed Appeal Request Form may be utilized to submit appeal

requests.

One of the Attorneys within DECAL's Office of General Counsel must acknowledge the receipt of the Appeal Request for an administrative review by hearing or written record within ten (10) days of its receipt of Appellant's request.

## **Documentation Requirements as per Type of Appeal Requested**

### **Written Review of Record**

If the Appellant notifies DECAL that a review of the written record by an Office of State Administrative Hearings Review Official is preferred, 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.

### **In-Person Evidentiary Hearing**

Requests for an evidentiary hearing must be submitted to DECAL's General Counsel and must include the specific adverse action(s) the Appellant wishes to appeal and the reason(s) why the state's decision should be overturned. DECAL will forward all OSAH Forms initiating Appellant's request for an evidentiary hearing to OSAH for docketing along with all pertinent written documentation on which DECAL based the adverse action. A copy of the same documentation will be sent to Appellant for inspection.

#### *Hearing Date and Expectations*

OSAH will give adequate notice to the parties of the place, date, time and procedures of the hearing in accordance with the federal regulations (7 CFR 226.6(k)(5)(iv) through (x)). The hearing will be held in Atlanta, Georgia, at the offices of OSAH pursuant to the Rules and Regulations of the State of Georgia, Chapter 616-1-1, Rules of the Office of State Administrative Hearings. The Appellant and DECAL will be provided with at least ten (10) days advance written notice of the time and place of the hearing.

### **Internal Review by DECAL (Decision not Appealable to OSAH)**

In lieu of CACFP Appeal Procedures, an institution may request a GA DECAL internal review whereby a GA DECAL manager who was not involved in the original review would examine all records provided by the institution and GA DECAL to determine whether the adverse actions issued by GA DECAL were

appropriate. The manager would also review records provided by the institution during the internal review, to include any written arguments. The decision rendered as a result of an internal review is final and is not subject to further review by GA DECAL or an appeal (administrative review) to OSAH. Requests for an internal review by DECAL must be submitted to DECAL's Chief Legal Services Officer and must include the specific adverse action(s) the Appellant wishes to have reviewed and the reason(s) why the state's decision should be overturned.

## **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 indicates 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) in person or 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@dec.al.ga.gov](mailto:Ira.Sudman@dec.al.ga.gov). Such written requests must be received by DECAL within fifteen (15) calendar days following the day of receipt of the DECAL's notice of adverse action. In the written request, Appellants must specify which type of appeal is being requested: (1) an evidentiary hearing, or (2) review of the record, or (3) an internal review by DECAL. 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. If the Appellant notifies DECAL that a review of the record is preferred, 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 the 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. If the Appellant notifies DECAL that an evidentiary hearing is preferred, the Appellant must submit a written request identifying the specific adverse action(s) the Appellant wishes to appeal, the reason(s) why the state's decision should be overturned.
  - The Appellant and DECAL will be provided with at least ten (10) days advance written notice, sent by certified mail, return receipt requested of the time and place of the hearing.
  - The hearing will be held in Atlanta, Georgia, at the offices of OSAH pursuant to the Rules and Regulations of the State of Georgia, Chapter 616-1-1, Rules of the Office of State Administrative Hearings. Where applicable, the hearing will not be scheduled before the appellant's written documentation is received by OSAH.
  - At its own expense, Appellant(s) may retain counsel or be represented by another person to provide legal representation at the hearing, which will be scheduled by OSAH. Failure of the Appellant's legal representation or other representative to appear at the scheduled hearing shall constitute the appellant's waiver of the right to a personal appearance before the OSAH Administrative Law Judge, unless the OSAH Administrative Law Judge agrees to reschedule the hearing.
  - DECAL's legal representative will be available at the hearing to respond to the Appellant's testimony and written information and to address questions from OSAH. A representative of the State agency shall be allowed to attend the hearing to

respond to the Appellant's testimony and written information and to answer questions from the Administrative Law Judge.

5. OSAH will conduct the administrative review 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 a hearing or if either the institution or the responsible principal or responsible individual demonstrates that their interests conflict.
6. The adverse action shall remain in effect during the appeal process. 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.
7. 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.
8. 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.
9. 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.
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.
12. 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 during the period of any administrative review.

## Comments

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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## Attachments

[CACFP Appeal Procedures Form.docx](#)