



**Georgia Dept  
of Early Care  
and Learning**

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Area **Numbered  
Policies**  
Programs **SFSP**

## Summer Food Service Program (SFSP) Appeal Procedures

These appeal procedures are issued pursuant to 7 Code of Federal Regulations (CFR) Section 225.13 and Official Code of Georgia Annotated (O.C.G.A.) Section 50-13-1 et seq.

### **PURPOSE**

The purpose of the appeal procedures is to provide sponsors or food service management companies 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:

- a denial of a sponsor's application for participation in the program;
- a denial of sponsor's request for an advance payment;
- a denial of sponsor's claim for reimbursement (except for late submission under 7 CFR Section 225.9(d)(6));
- a claim against a sponsor for remittance of a payment;
- a denial of a sponsor's application for a site;
- the termination of the sponsor or a site;
- a denial of a food service management company's application for registration;
- the revocation of a food service management company's registration; and
- a State agency's refusal to forward to the U.S. Department of Agriculture FNS an exception request for 1) payment of a late claim or 2) an upward adjustment to a claim.

- Assessment of a fine when a State agency determines that a sponsor or site has failed to correct severe mismanagement of the Program, disregarded a Program requirement of which the sponsor or its site has been informed, or failed to correct repeated violations of Program requirements.

**"Actions not subject to an appeal,"** means:

- a determination that an institution is seriously deficient;
- a determination that the corrective action taken by the sponsor or by a responsible principal or individual does not completely and permanently correct a serious deficiency;
- disqualification of a Sponsor or its responsible principal or responsible individual, and the subsequent placement on the Georgia Disqualified List (GDL);
- 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;
- restrictions on the number of sponsored sites a Sponsor may operate (unless the site application is denied and a restriction has not been set).
- a collection notice or a collection claim against the Sponsor for remittance of payment, inclusive of debts due to the SFSP resulting from a Sponsor's failure to appeal or an Administrative Law Judge's decision to uphold DECAL's adverse actions on appeal; and
- the final termination of a sponsor or site.
- appeals shall not be allowed on decisions made by FNS with respect to late claims or upward adjustments under 7 CFR 225.9(d)(6).

**"Appellant"** means the sponsor or food service management company requesting an appeal of the state agency's adverse action.

**"Camps"** mean residential summer camps and nonresidential day camps which offer a regularly scheduled food service as part of an organized program for enrolled children. Nonresidential camp sites shall offer a continuous schedule or organized cultural or recreational programs for enrolled children between meal services.

**"Days"** mean calendar days.

**"Food service management company"** means any commercial enterprise or nonprofit organization with which a sponsor may contract for preparing unitized meals, with or without milk, for use in the Program, or for managing a sponsor's food service operations in accordance with the limitations set forth in 7 CFR Section 225.15. Food service management companies may be: (a) Public agencies or entities; (b) Private, nonprofit organizations; or (c) Private, for-profit companies.

**"NYSP"** means the National Youth Sports Program administered by the National Collegiate Athletic Association.

**"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 Summer Food Service Program or the state agency.

**"Program"** means the Summer Food Service Program for Children.

**"School food authority"** means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a lunch program in those schools. In addition, for the purpose of determining the applicability of food service management company registration and bid procedure requirements, "school food authority" also means any college or university which participates in the Program.

**"Site"** means a physical location at which a sponsor provides a food service for children and at which children consume meals in a supervised setting.

**"Sponsor"** means a public or private nonprofit school food authority, a public or private nonprofit residential summer camp, a unit of local, municipal, county or State government, a public or private nonprofit college or university currently participating in the NYSP, or a private nonprofit organization which develops a special summer or other school vacation program providing food service similar to that made available to children during the school year under the National School Lunch and School Breakfast Programs and which is approved to participate in the Program.

**"Sponsor"** may also mean a public or private nonprofit college or university which participates in the NYSP during the months of October through April and is approved to participate in the Program. Sponsors are referred to in the Act as "service institutions."

**"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 50-13-40 et seq., governs the appeal procedures for sponsors and food service management companies.

All sponsors participating in the SFSP 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 a Sponsors 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 225.13. Actions that are "not appealable" are also outlined above.

### **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. The Notice of adverse action shall be 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 sponsor or food service

management company five (5) calendar days being sent to the addressee's last known mailing address, facsimile number, or email address. Such notice shall also state that the sponsor or food service management company has the right to appeal the action and these procedures. A sponsor shall be allowed the opportunity to review any information upon which the action was based.

## **Requesting An Appeal**

Appellants (sponsors or food service management companies) are allowed to refute the adverse action(s) by requesting: (1) an in person (via an evidentiary hearing), or (2) a written review of the record by an Administrative Law Official, not both. 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 ten (10) calendar days following the date of receipt of DECAL's notice of adverse action(s).

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

## **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 (OSAH) Review Official is preferred, the Appellant has seven (7) days to submit to OSAH any written documentation the Appellant desires the Review Official to consider, inclusive of any brief in support of Appellant's opposition. The Appellants 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, and a photocopy of the notice detailing the adverse action(s) issued by DECAL. The Appellant must also send a copy of all written documentation submitted to the OSAH Review Official 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 and a photocopy of the notice detailing the adverse action issued by DECAL. Upon receipt of the request, DECAL will forward the request to OSAH for handling along with all pertinent written documentation that led to the action. DECAL will provide the Appellant with a copy of the documents it transmits to OSAH requesting a hearing on the Appellant's behalf. The Appellant and DECAL will be provided with at least five (5) calendar days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing.

The appellant may retain legal counsel or may be represented by another person, at its own expense. Failure of the appellant's representative to appear at a scheduled hearing shall constitute the appellant's waiver of the right to a personal appearance before the Administrative Law Judge, unless the Administrative Law Judge agrees to reschedule the hearing. A representative of DECAL 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.

### *Hearing Date and Expectations*

Within 14 days of the request, for an administrative review (appeal), 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 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.

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

In lieu of SFSP Appeal Procedures, a sponsor 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, including 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 the Office of State Administrative Hearings (OSAH). Requests for an internal review by DECAL must be submitted to DECAL's General Counsel 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.

### **Final Decision**

OSAH's Administrative Law Judge, independent of the original decision-making process, will issue a Final Decision based on information provided by DECAL and the Appellant on Program regulations. The Administrative Law Judge's final decision shall be consistent with Program regulations and policy and a full review of the administrative record. Final Decisions are issued by OSAH within five (5) working days of receipt of written information or the hearing date. Final Decisions will be issued via certified mail, return receipt.

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.

## **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 sponsor or food service management company five (5) calendar days being sent to the addressee's last known mailing address, facsimile number, or email address. The notice states the sponsor or food service management company has the right to appeal the action and the appellate procedures. The sponsor is allowed the opportunity to review any information upon which the action was based.
2. Appellants (sponsors or food service management companies) 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@decalfga.gov](mailto:Ira.Sudman@decalfga.gov). Such written requests must be received by DECAL within ten (10) calendar days following the day of receipt of 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 ten (10) 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 the transmittal. The enclosed Appeal Request Form may be utilized to submit appeal requests.

3. If the Appellant notifies DECAL that a review of the written record is preferred, the Appellant must be prepared to submit their written documentation in support of its position to OSAH within seven (7) calendar days of submitting the request for review (appeal). A copy of all submissions must be filed with the OSAH Court and served on the DECAL legal services officer assigned to the case and/or DECAL's General Counsel. Documentation not received 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 identify the specific adverse action(s) the Appellant wishes to appeal, the reason(s) why the State agency's decision should be overturned, and a photocopy of the notice detailing the adverse actions issued by DECAL.
  - The Appellant and DECAL will be provided with at least five (5) calendar days advance written notice, sent by certified mail, return receipt requested of the time and place of the hearing.
  - Within 14 days of the request, 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 Administrative Law Judge, unless the 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's Administrative Law Judge is independent of the original decision-making process. The Administrative Law Judge issues a Final Decision based on information provided by DECAL and the Appellant on Program regulations. The Administrative Law Judge's final decision shall be consistent with Program regulations and DECAL policy.
6. In accordance with 7 CFR 225.13(b)(10), Final Decisions are issued by OSAH within five (5)

working days of receipt of written information or the hearing date, or within five (5) working days after receipt of written documentation if no hearing is held. Final Decisions will be issued via certified mail, return receipt. The determination by the State agency review official is the final administrative determination to be afforded to the appellant.

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 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.

## **COMMENTS**

A record regarding each review shall be kept by DECAL, as required under 7 CFR 225.8(a). The record shall document DECAL's compliance with regulations and shall include the basis for its decision.

If you have any questions concerning these procedures, please direct them to DECAL's General Counsel.

05/02/2024 (v.6)

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## **Attachments**

 [SFSP Appeal Procedures Form\\_10-30-23.docx](#)