

**North Dakota Department of Public Instruction
Child and Adult Care Food Program
Institution Appeal Procedures
Revised July 2011**

Notice of Action:

The institution shall be advised in writing of the grounds on which the State Agency based its action. The notice of action will be sent by certified mail, return receipt requested; shall also include a statement indicating that the institution has the right to appeal the action;

Request for Review:

The written request for review shall be filed by the appellant no later than fifteen (15) calendar days from the date the appellant received the notice of action, and the State Agency shall acknowledge the receipt of the request for appeal within ten (10) calendar days. The written request for review must be addressed to:

**Robert Marthaller, Division Manager/Assistant Superintendent
North Dakota Department of Public Instruction
600 East Boulevard Avenue, Dept. 201
Bismarck, ND 58505-0440**

Review of Written Documentation:

The appellant may refute the charges contained in the notice of action in person and by written documentation to the appeal official. In order to be considered, written documentation must be filed with the review official no later than thirty (30) calendar days after the appellant received the notice of action. The appellant may retain legal counsel, or may be represented by another person. A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. Failure of the appellant institution's representative to appear at a scheduled hearing shall constitute the appellant institution's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State Agency shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posted by the review official;

Hearing:

If the appellant has requested a hearing, the appellant and the State Agency shall be provided with at least ten (10) calendar days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing;

Review of Documentation:

Any information on which the State Agency's action was based shall be available to the appellant for inspection from the date of request for review;

Review/Hearing Process:

The review official shall be an independent and impartial official other than, and not accountable to any person authorized to make decisions that are subject to appeal under the provisions of this section;

The review official shall make a determination based on the information provided by the State Agency, the appellant and on program regulations, laws, policy, instruction, and guidance;

Abbreviated administrative review.

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;
- the institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the National disqualified list;
- 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 (see paragraph); 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.

Determination:

Within sixty (60) calendar days of the State Agency's receipt of the request for review, the review official shall inform the State Agency and the appellant of the determination of the review;

The State Agency's action shall remain in effect during the appeal process. However, participating institutions and facilities may continue to operate under the Program during an appeal of termination, unless the action is based on fraudulent submission of claim for reimbursement information or imminent danger to the health or welfare of children or the general public. If the institution or facility has been suspended from operation in the CACFP for either of these reasons, the State Agency shall so specify in its notice of action. Institutions electing to continue Program operations under suspension while appealing the intent to terminate shall be reimbursed for any meals served during the period of the appeal if the appeal is determined to be in favor of the appellant. Adequate and accurate Program records must be maintained during the suspension period for all meals/snacks claimed for reimbursement;

If the review official finds in favor of the institution, the institution will continue participating in the CACFP and receiving reimbursement. If the review official finds in favor of the State Agency, the State Agency will take proper action with regard to overpayment demands, recovery of advances and claims payments after the State Agency has issued a Notice of Proposal to Terminate and Disqualify to an institution.

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

The State Agency must maintain records of all administrative review and their disposition.

CACFP Appealable Actions

1. Denial of an institution's application for participation
2. Denial of an application submitted by a sponsoring organization on behalf of a facility
3. Denial of an institution's application for start-up payments
4. Suspension of Program participation and payments
5. Proposed termination of Program participation
6. Proposed disqualification of the institution and of the responsible principals/responsible individuals
7. Denial of an advance payment
8. Denial of all or part of the claim for reimbursement
9. Denial by the State Agency to forward to FNS an exception request by the facility or organization for payment of a late claim or request for an upward adjustment to a claim
10. Demand for the remittance of an overpayment
11. Any other action of the State Agency affecting the participation of an institution in the Program or the institution's claim for reimbursement

Definitions:

CACFP – Child and Adult Care Food Program

Program – Child and Adult Care Food Program

Institution – All centers that participate in the CACFP

Facility – Center or child care home

Review/Hearing Official – Unbiased individual responsible with reviewing appeal materials, regulations/policy and rendering a determination on outcome of the appeal

State Agency – Department of Public Instruction, Child Nutrition and Food Distribution Programs

FNS – Food and Nutrition Services division of the US Department of Agriculture

Appellant – The individual(s) requesting the appeal

Hearing – when arguments regarding the appeal are stated and reviewed

Suspension – Status when an institution is temporarily ineligible for participation (including Program payments)

Termination – Program participation ceases due to cause or convenience

Disqualification – Final consequence of termination. Institution, responsible principals/individuals are placed on federal listing. All named to listing are ineligible for participation in Program.

Appeal Process Time-Line

Calendar Days	Actual Date	The Institution will...
Day 1		Notice of Action is mailed to Institution.
No later than Day 15		Institution mails or delivers to the State Agency a written Request for Review of written information and/or hearing.
No later than Day 30		Written documentation is provided to the review official.
Calendar Days	Actual Date	The State Agency will...
Day 1		Send the Notice of Action certified mail, return receipt requested.
No later than 10 days from receipt of Request for Review		Confirm to Institution the receipt of Request for Review
Upon receipt of Request for Review		Make available to institution for inspection any information on which the State Agency's Notice of Action was based. .
10 days prior to hearing		Provide the Institution with written notice of hearing time and place.
No later than 60 days from receipt of Request for Review		Official informs the Institution and State Agency of the review/hearing determination.

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