



State of New Jersey

DEPARTMENT OF AGRICULTURE
DIVISION OF FOOD AND NUTRITION
PO BOX 334
TRENTON NJ 08625-0334

CHILD AND ADULT CARE FOOD PROGRAM APPEAL PROCEDURES

A. PURPOSE: TO ALLOW ANY APPLICANT/PARTICIPATING INSTITUTION IN THE NEW JERSEY DEPARTMENT OF AGRICULTURE CHILD AND ADULT CARE FOOD PROGRAM (NJDA CACFP or STATE AGENCY) AN AVENUE OF APPEAL WHEN THE FOLLOWING ACTIONS OCCUR:

1. Application Denial: Denial of a new or renewing institution's application for participation (see 7 CFR 226.6 (b), on State Agency review of an institution's application; and 7 CFR 226.6 (c)(1) and (c)(2), on State Agency denial of a new or renewing institution's application);
2. Denial of Sponsored Facility Application: Denial of an application for participation submitted by a sponsoring organization on behalf of a facility;
3. Notice of Proposed Termination: Proposed termination of an institution's agreement (see 7 CFR 226.6 (c)(2)(iii)(C), (c)(3)(iii)(C), and (c)(5)(i)(B), dealing with proposed termination of agreements with renewing institutions, participating institutions, and participating institutions suspended for health or safety violations);
4. Notice of Proposed Disqualification of a Responsible Principal or Responsible Individual: Proposed disqualification of a responsible principal or responsible individual (7 CFR 226.6 (c)(1)(iii)(C), (c)(2)(iii)(C), (c)(3)(iii)(C), and (c)(5)(i)(B), 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);
5. Suspension of Participation: Suspension of an institution's participation (see 7 CFR 226.6(c)(5)(i)(B) and (c)(5)(ii)(D), dealing with suspension for health or safety reasons or submission of a false or fraudulent claim);
6. Start-up or Expansion Funds Denial: Denial of an institution's application for start-up or expansion payments (see 7 CFR 226.7(h));
7. Claim Denial: Denial of all or a part of an institution's claim for reimbursement (except for a denial based on a late submission under 7 CFR 226.10 (e)) (see 7 CFR 226.10(f) and 7 CFR 226.14(a));
8. Claim Deadline Exceptions and Requests for Upward Adjustments to a Claim: Decision by the State Agency not to forward to the USDA-FNS an exception request by an institution for payment of a late claim or a request for an upward adjustment to a claim (see 7 CFR 226.10 (e));
9. Overpayment demand: Demand for remittance of an overpayment (see 7 CFR 226.14 (a)); and
10. Other actions: Any other action of the State Agency affecting the participation of an institution in the CACFP or the institution's claim for reimbursement.

THE FOLLOWING ACTIONS ARE NOT SUBJECT TO APPEAL:

1. FNS Decisions on Claim Deadline Exceptions and Requests for Upward Adjustments to a Claim: A decision by the USDA-FNS to deny an exception request by an institution for payment of a late claim, or for an upward adjustment to a claim (see 7 CFR 226.10 (e));

2. **Determination of Serious Deficiency:** A determination that an institution is seriously deficient (see 7 CFR 226.6 (c)(1)(iii)(A), (c)(2)(iii)(A), (c)(3)(iii)(A), and (c)(5)(i)(B), 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);
3. **State Agency Determination that Corrective Action is Inadequate:** A determination by the State Agency that the corrective action taken by an institution or by a responsible principal or individual does not completely and permanently correct a serious deficiency;
4. **Disqualification and Placement on State Agency List and National Disqualified List:** Disqualification of an institution or a responsible principal or responsible individual, and the subsequent placement on the State Agency list and the National disqualified list (see 7 CFR 226.6 (c)(1)(iii)(E), (c)(2)(iii)(E), (c)(3)(iii)(E), and (c)(5)(i)(C) dealing with proposals to disqualify related to new, renewing, and participating institutions, and in institutions suspended for health or safety violations);
5. **State Agency or USDA-FNS Decision Regarding Removal from the National Disqualified List:** A determination, by either the State Agency or by the USDA-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 National disqualified list;
6. **State Agency's Refusal to Consider an Application Submitted by an Institution or Facility on the National Disqualified List:** The State Agency's refusal to consider an institution's application when either the institution or one of its principals is on the National disqualified list, 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 National disqualified list; and
7. **Termination:** 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 the USDA-FNS (see 7 CFR 226.6(c) (3) (i) and (c) (7) (ii)).

B. METHOD: THE APPEAL WILL BE FORWARDED TO THE NEW JERSEY OFFICE OF ADMINISTRATIVE LAW FOR AN ADMINISTRATIVE HEARING. THE ADMINISTRATIVE LAW JUDGE (REVIEW OFFICIAL) ASSIGNED TO THE APPEAL WILL BE SOLELY RESPONSIBLE FOR MAKING A FINAL DETERMINATION. THIS ADMINISTRATIVE LAW JUDGE WILL BE IMPARTIAL AND INDEPENDENT OF THE ORIGINAL DECISION-MAKING PROCESS.

C. PROCEDURE:

1. Whenever NJDA CACFP takes an appealable action specified in section A above, NJDA CACFP will inform the applicant/participating institution in writing of the action being taken or proposed and the grounds upon which the action is based. This notice of action will be sent to the institution's executive director, chairman of the board of directors, and the responsible principals and responsible individuals. All notices will be faxed or e-mailed and sent by regular mail and certified mail, return receipt requested, to the last known addresses filed by the institution. Notices sent by fax will be considered received on the date that they are sent. If a notice is undeliverable, it will be considered to have been received by the institution, responsible principal or responsible individual five (5) days after it was sent to the addressee's last known mailing address or fax number that was filed with the State Agency.

2. Upon receipt of the State Agency's notice of action, the applicant/participating institution (hereinafter, the Appellant" must submit to NJDA CACFP a written request for an appeal no later than fifteen (15) calendar days from the date on which the notice of action was received. Written correspondence must clearly indicate if both the institution and the listed responsible principals/individuals are included in the request for appeal; if the institution or responsible principals/individuals will be represented by another person or retain legal counsel or if the listed responsible principals/individuals will exercise their right to self-representation. All listed responsible principals/individuals must be copied on the request for appeal. The request for appeal must also include the name, address, e-mail, title and signature of the person requesting the appeal and should include the telephone and fax numbers; a copy of the State Agency letter in which the action being appealed is described; the date the letter was received; and a statement of the relief being requested. If any party decides to appeal NJDA CACFP's actions, these appeal procedures must be followed. Failure to do so may result in the denial of the request for an appeal.

3. All requests for appeal must be sent via certified mail to the Legal Specialist/Administrative Practices Officer and a copy must be sent to the Director, Division of Food and Nutrition.

ALL REQUESTS FOR APPEAL MUST BE SENT **VIA CERTIFIED MAIL TO:**

LEGAL SPECIALIST/ADMINISTRATIVE PRACTICES OFFICER
THIRD FLOOR-OFFICE OF THE SECRETARY
NEW JERSEY DEPARTMENT OF AGRICULTURE
JOHN FITCH PLAZA
MARKET AND NEW WARREN STREETS
P.O. BOX 330
TRENTON, NJ 08625-0330

ALL COPIES OF REQUESTS FOR APPEAL MUST BE SENT **BY U.S. MAIL TO:**

DIRECTOR
DIVISION OF FOOD AND NUTRITION
NEW JERSEY DEPARTMENT OF AGRICULTURE
P.O. BOX 334
TRENTON, NJ 08625-0334

OR

BY OVERNIGHT DELIVERY TO:

DIRECTOR
DIVISION OF FOOD AND NUTRITION
NEW JERSEY DEPARTMENT OF AGRICULTURE
22 S. CLINTON AVE., BLDG 4, 3RD FLOOR
TRENTON, NEW JERSEY 08609-1212

4. The State Agency will acknowledge the receipt of the request for appeal and any other documents submitted by Appellant refuting the charges contained in the notice of action within ten (10) calendar days of its receipt of the request.
5. Any information on which the State Agency's action was based will be available to the Appellant for inspection and review any time after the date on which the request for appeal is received.
6. Upon receipt of the request for appeal and any other documents submitted by Appellant refuting the charges contained in the notice of action, the State Agency will forward the matter to the Office of Administrative Law for an administrative hearing. Upon receipt of transmittal of the matter from the State Agency, the Office of Administrative Law will schedule a hearing.
7. The Appellant may refute the findings contained in the notice of action in person at a hearing or by submitting written documentation to the review official and requesting a proceeding on the papers for a review of the record.
8. The hearing will be conducted in accordance with the New Jersey Uniform Administrative Procedure Rules. N.J.A.C. 1:1-1 et. seq. and 7 CFR 226.6(k). If a conflict should arise between N.J.A.C. 1:1-1 et. seq. and 7 CFR 226.6(k), the provisions of 7 CFR 226.6(k) will take precedence.
9. The Appellant may itself, retain legal counsel or be represented by a non-lawyer.
10. If the Appellant fails to appear at a scheduled hearing, after receiving timely notice of the proceeding, the Administrative Law Judge may dismiss the appeal.
11. A representative of the State Agency will be allowed to attend the hearing to provide testimony and to respond to the testimony of the institution, the responsible principals, and the responsible individuals, and to answer questions posed by the Administrative Law Judge.
12. The institution, the responsible principals and responsible individuals, and the State Agency will be provided with timely notice, at least ten (10) days when possible, of the time and place of the hearing.
13. The Administrative Law Judge will conduct the hearing of the proposed disqualification of the responsible principals and responsible individuals as part of the appeal of the application denial, proposed termination, and/or proposed disqualification of the institution with which the responsible principals or responsible individuals are associated. If the institution, the responsible principals or the responsible individuals believe that they have conflicting interests, they may request separate proceedings.
14. The State Agency may request that an appeal be limited to a review of written submissions if the application was denied or the State agency proposes to terminate the applicant/participating institution's agreement because:
 - a) the information submitted on the application was false (see 7 CFR 226.6 (c)(1)(ii)(A), (c)(2)(ii)(A), and (c)(3)(ii)(A));

- b) the institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the National Disqualified List (see 7 CFR 226.6(b) (12));
- c) 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 7 CFR 226.6 (b) (13) and (c)(3)(ii)(S)); or
- d) 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 (see 7 CFR 226.6(b) (14) and (c)(3)(ii)(T)).

D. EFFECT OF STATE AGENCY ACTION DURING THE APPEAL PERIOD:

The State Agency's action will remain in effect during the appeal with the following conditions:

Overpayment demand: During the period of the appeal, the State Agency is prohibited from taking action to collect or offset the overpayment. However, the State Agency will assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of appeal unless the review official overturns the State Agency's action.

Program payments: The availability of Program payments during the appeal process for the denial of a new institution's application, denial of a renewing institution's application, proposed termination of a participating institution's agreement, and suspension of an institution will be addressed in accordance with the terms of 7 CFR 226.6 (c)(1)(iii)(D), (c)(2)(iii)(D), (c)(3)(iii)(D), (c)(5)(i)(D), and (c)(5)(ii)(E), respectively.

E. FINAL DETERMINATION:

The Administrative Law Judge will make a determination based solely on the information provided by the State Agency, the applicant/participating institution, and the responsible principals and responsible individuals, and based on Federal and State laws, regulations, policies, and procedures governing the CACFP.

Pursuant to 7 CFR 226.6(k)(5)(ix), the Administrative Law Judge (review official) shall make an administrative determination within sixty (60) days of the State Agency's receipt of the request for an appeal. NJDA CACFP and the Appellant institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals will be notified in writing of that determination.

The determination made by the Office of Administrative Law is the final administrative determination to be afforded the applicant/participating institution, the responsible principals and the responsible individuals.