

CHILD NUTRITION PROGRAMS APPEAL PROCEDURES

An institution must be notified in writing by certified mail, return receipt requested, email, fax, or private delivery service of the grounds upon which the State Department of Education (SDE) based its action. The notice must inform the institution of its right to appeal. A notice is considered received by the institution or responsible principal or responsible individual **five days** after being sent to the addressee's last known mailing address, fax number, or email address. Any timeframes associated with a given notice start with the **earliest** form of transmission.

1. Two types of appeals are authorized:
 - a. The institution may request a review of the records. Upon receipt of such a request, the SDE must contract with an Administrative Law Judge (ALJ) to conduct the review of records.

OR

- b. The institution may request a hearing. Upon receipt of a request for a hearing, the SDE must contract with an ALJ to conduct the hearing.
2. The written request for a review of records or for a hearing must be received by the State agency no later than 15 calendar days from the date the institution receives the notice of action. The 15 days shall begin on the first day after the notice of action was received. A hearing must be held by the ALJ in addition to, or in lieu of, a review of written information submitted by the institution **only if** the institution so specifies in the letter requesting the appeal. Therefore, the written request **must specify** which type of appeal is requested. The SDE must acknowledge the receipt of the request for appeal within ten calendar days.
3. The institution and the Responsible Principals and Individuals (RPI) may refute the information contained in the notice of action in person and by written documentation. The institution and the RPIs must have the opportunity to review the information on which the SDE based its actions. In order to be considered, written documentation must be filed with the ALJ not later than 30 calendar days after the institution received the notice of action. The 30 days shall begin on the day after the notice of action was received. The institution may be represented by legal counsel or another person. The following applies to the two types of appeals:

a. **Review of Records**

- Upon receipt of an appeal requesting a review of the records, the ALJ must notify the institution of the timelines for submission of documents.
- Failure to submit written documentation to refute the action taken by the SDE within the 30-day time period must constitute the institution's waiver of the appeal, resulting in the action taken by the SDE being upheld.
- Any and all records pertaining to the appeal of the review or audit may be submitted to the ALJ for acceptance.
- The review official shall be an ALJ from the Oklahoma Attorney General's Office.

b. **Hearing**

- Upon receipt of an appeal requesting a hearing, the ALJ must notify the institution of the timelines for submission of documents.
 - Written documentation submitted after the 30-day time period must not be considered at any point during the appeal process, including the hearing.
 - Any and all records pertaining to the appeal of the review or audit may be submitted to the ALJ for acceptance.
 - If the institution chooses to be represented by legal counsel, it must notify the Child Nutrition Programs executive director of the counsel's name and address.
 - The institution must be notified by certified mail of the time, date, and place of the hearing. The notice must be provided at least ten calendar days prior to the hearing.
 - The institution and the RPIs must be permitted to contact the ALJ directly if they so desire.
 - Failure to appear at a scheduled hearing will constitute the institution's waiver of the right to a personal appearance before the ALJ unless the ALJ agrees to reschedule the hearing.
 - The SDE will have representatives in attendance at the hearing who may provide information and documentation supporting the action taken.
 - The review official will be an ALJ, an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal.
4. SDE documents and information relating to the institution and the action taken must be available for inspection and copying pursuant to the Open Records Fee Schedule at the office of Child Nutrition Programs.
 5. The ALJ must make a determination based on information provided by the SDE, the institution, the RPIs and the laws and regulations governing the Child and Adult Care Food Program.
 6. Within 60 calendar days of receipt of the request for review, the ALJ's determination must be delivered to the institution and the SDE.
 7. Participating institutions and facilities may continue to operate under the Program during an appeal of proposed termination, unless the action is based on imminent danger to the health or welfare of participants. If the institution or facility has been terminated for this reason, the SDE must so specify in its notice of action.
 8. The determination by the ALJ is the final administrative determination to be afforded to the institution.
 9. Pursuant to the federal regulations, appeals must not be allowed on decisions made by Food Nutrition Services on requests for exceptions to the claims submission deadlines or requests for upward adjustments to claims.