



OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION SUMMER FOOD SERVICE PROGRAM Appeal Rights and Procedure

These appeal procedures allow sponsors participating in the Summer Food Service Program (SFSP) an avenue of appeal when the Office of Superintendent of Public Instruction (OSPI), Child Nutrition Services (CNS) takes an adverse administrative action.

ADMINISTRATIVE ACTIONS THAT MAY BE APPEALED

In accordance with 7 CFR 225.13(a), the administrative actions which may be appealed include:

1. A denial of an application for participation.
2. A denial of a sponsor's request for an advance payment.
3. A denial of a sponsor's claim for reimbursement (except for late submission under 7 CFR 225.9(d)(5)).
4. A refusal to forward to the Food and Nutrition Services (FNS) of the United States Department of Agriculture (USDA) an exception request by the sponsor for payment of a late claim or a request for an upward adjustment to a claim.
5. A claim against a sponsor for remittance of a payment.
6. The termination of the sponsor or a site.
7. A denial of a sponsor's application for a site.
8. A denial of a food service management company's (FSMC) application for registration, if applicable.
9. The revocation of a food service management company's registration, if applicable.

ADMINISTRATIVE ACTIONS THAT MAY NOT BE APPEALED

In accordance with 7 CFR 225.9(d)(5), appeals will not be allowed on decisions made by FNS with respect to late claims or upward adjustments.

PROCEDURE

In accordance with 7 CFR 225.13(b), the following procedure is to be used when OSPI takes an action that may affect the participation of a sponsor in the program or FSMC/Food Vendor or notifies the sponsor that program funds must be remitted.

1. OSPI will inform the sponsor or FSMC/Food Vendor in writing of the grounds upon which the action was based and the right to appeal the action. It will be sent by certified mail, return receipt requested.
2. The sponsor or FSMC/Food Vendor will be advised in writing that the appeal must be made not less than one week nor more than two weeks from the date on which the notice of action is received. The request for an appeal must be sent to:

LEGAL SERVICES – CHILD NUTRITION SERVICES
OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION
OLD CAPITOL BUILDING
PO BOX 47200
OLYMPIA, WA 98504-7200

Legal Services will forward the original copy to the Office of Administrative Hearings for assignment to an Administrative Law Judge (ALJ). Legal Services will also forward a copy to the director of Child Nutrition Services. The Office of Administrative Hearings must acknowledge the receipt of the request for an administrative review within ten days of its receipt of the request.

3. The sponsor or FSMC/Food Vendor (the appellant) will be allowed the opportunity to review any information upon which the action was based.
4. The appellant may refute the charges contained in the notice of action either in person or by filing written documentation with the review official. To be considered, written documentation must be submitted by the appellant within seven days of submitting the appeal, must clearly identify the action being appealed and must include a photocopy of the notice of action issued by OSPI.
5. A hearing will 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 appealing the action. The appellant may retain legal counsel or may be represented by another person. 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 review official, unless the review official agrees to reschedule the hearing. An OSPI representative shall be allowed to attend the hearing to respond to the appellant's testimony and written information and to answer questions from the review official.
6. If the appellant has requested a hearing, the appellant and OSPI will be provided with at least five days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing.
7. The hearing will be held within 14 days of the date the receipt of the request for review, but, where applicable, not before the appellant's written documentation is received in accordance with items 4 and 5 above.
8. The review official will be independent of the original decision-making process.
9. The review official shall make a determination based on information provided by OSPI, the appellant, and on program regulations.
10. Within five working days after the appellant's hearing, or within five working days after receipt of written documentation if no hearing is held, the reviewing official will make a determination based on a full review of the administrative record and inform the appellant of the determination of the review by certified mail, return receipt requested.
11. OSPI's action will remain in effect during the appeal process. However, participating sponsors and sites may continue to operate the program during an appeal of termination, and if the appeal results in overturning OSPI's decision, reimbursement shall be paid for meals served during the appeal process. However, such continued program operation will not be allowed if OSPI's action is based on imminent dangers to the health or welfare of children. If the sponsor or site has been terminated for this reason, OSPI will specify this in its notice of action.
12. The determination by the State review official is the final administrative determination to be afforded to the appellant.
13. OSPI will send written notification of the complete appeal procedures and of the actions which are appealable, as specified in 7 CFR 225.13(a), to each potential sponsor applying to participate and to each food service management company applying to register in accordance with 7 CFR 225.6(g).
14. A record regarding each review shall be kept by OSPI, as required under 7 CFR 225.8(a). The record shall document OSPI's compliance with these regulations and shall include the basis for its decision.

Procedures for the conduct of administrative hearings before OSPI are found in chapter 392-101 Washington Administrative Code (WAC) and are incorporated by this reference.

The review effort was designed to provide consistency in review procedures between OSPI, USDA, and FNS staff. In the event a review is independently conducted by FNS staff, with no assistance provided by OSPI staff, the appeal process will be handled by FNS.

If you have any questions regarding this policy or these procedures, please contact the Summer Food Service Program Supervisor at 360-725-6200. The agency TTY number is 360-664-3631.