

## SUMMER FOOD SERVICE PROGRAM APPEAL PROCEDURES

The Sponsor will 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 Sponsor of its rights to appeal. A notice is considered received by the Sponsor or Responsible Principal or Responsible Individual (RPI's) **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 Sponsor 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 Sponsor 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 more than seven calendar days from the date the Sponsor receives the notice of action. The seven days begin on the first day after the notice of action is received. A hearing must be held by the ALJ in addition to, or in lieu of, a review of written information **only if** the Sponsor 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 2 business days.

3. The Sponsor and the (RPI's) may refute the information contained in the notice of action in person or by written documentation presented to the ALJ. In order to be considered, written documentation must be filed with the ALJ **within seven calendar days of submitting the appeal**; it must clearly identify the State agency action being appealed and must include a photocopy of the notice of action issued by the SDE. The Sponsor is allowed the opportunity to review any information upon which the action(s) was based. The Sponsor may be represented by legal counsel or another person. The following applies to the two methods for the appeal process:

a. Review of Records

- Upon receipt of an appeal requesting a review of records, the ALJ must notify the Sponsor of the timelines for submission of records.
- Records submitted that were not available during the review or audit shall not be considered unless the documentation is accepted by the ALJ.

- Failure to submit written documentation to refute the action taken by the SDE within the seven-day time period must constitute the Sponsor's waiver of the appeal, resulting in the action taken by the SDE being upheld.
- 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 Sponsor of the timeline for submission of records.
  - Written documentation submitted after the seven-day time period will not be considered at any point during the appeal process, including the hearing.
  - If the Sponsor chooses to be represented by legal counsel, the Sponsor will notify the Child Nutrition Programs, Executive Director of the counsel's name and address.
  - The Sponsor will be notified by certified mail, return receipt requested, or email of the time, date and place of the hearing.
  - Failure of the Sponsor or its representative(s) to appear at a scheduled hearing will constitute the Sponsor'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 at the hearing who may provide information and documentation supporting the action(s) taken.
  - The review official will be an ALJ from the Oklahoma Attorney General's Office.
4. The hearing will be held within 14 days of the date of the receipt of the request for review, but where applicable, not before the Sponsor's written documentation is received in accordance with Item 3 on the previous page.
  5. Documents and information relating to the Sponsor and the action(s) taken will be available for inspection and duplication pursuant to the Open Records Fee Schedule at the Office of Child Nutrition Programs.
  6. The ALJ must make a determination based on information provided by the SDE, the Sponsor, the RPI's and the laws and regulations governing the Summer Food Service Program.
  7. Within five working days after the Sponsor's hearing, or within five working days after receipt of the written documentation if no hearing is held, the ALJ must make a determination and inform the Sponsor and the SDE of the determination of the review by certified mail return receipt requested or email.

8. Participating Sponsor's and sites may continue to operate under the program during an appeal of termination unless the action(s) is based on imminent danger to the health or welfare of children. If the Sponsor or site has been terminated for this reason, the SDE must so specify in its notice of action.
9. The determination of the ALJ is the final administrative determination to be afforded the Sponsor.
10. Pursuant to federal regulations, appeals will not be allowed on decisions made by the Food Nutrition Services on requests for exceptions to the claims submission deadlines or requests for upward adjustments to claims.