

**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH
NUTRITION SERVICES BRANCH**

CHILD AND ADULT CARE FOOD PROGRAM

INSTITUTION REVIEW AND APPEAL PROCEDURES

ACTIONS THAT MAY BE APPEALED

Administrative appeals by institutions participating in the Child and Adult Care Food Program (“CACFP”) are governed by 7 C.F.R. § 226.6(k) and Section 130A – 24 and Chapter 150B (the Administrative Procedure Act) of the North Carolina General Statutes. Title 7 C.F.R. § 226.6(k) provides for an appeal by an institution of the following state agency actions:

- ❖ Denial of an institution’s application for participation
- ❖ Denial of an application submitted by a sponsoring organization on behalf of a facility
- ❖ Termination of the participation of an institution or facility
- ❖ Suspension of an institution’s agreement
- ❖ Denial of an institution’s application for start-up or expansion payments
- ❖ Denial of an advance payment
- ❖ Denial of all or part of a claim for reimbursement (except for late submission under § 226.10(e))
- ❖ Demand for the remittance of an overpayment
- ❖ Denial by the state agency to forward to FNS an exception request by the institution or sponsoring organization for payment of a late claim or a request for an upward adjustment to a claim
- ❖ Any other state agency action affecting an institution’s participation in the program or claim for reimbursement

GENERAL OVERVIEW

The state agency will notify the institution in writing of the agency’s intent to take any of the above-listed actions and its reasons for taking such action. The notice will be sent by certified mail, return receipt requested. The institution may: (1) within **fifteen (15) days** of receipt of the state’s notice of intended action, request that an informal conference be scheduled at which the institution may present any information, explanation, or evidence it has regarding the agency’s intended action; or (2) within **thirty (30) days** after receiving the state’s notice of intended action, submit written documentation regarding the intended action without having an informal conference.

The agency will fully consider all information provided by the institution before making a decision on the intended agency action. However, if the agency does not hear from the institution within the times indicated above, it will make a decision based on the information available to it.

Following the informal conference and/or review of written documentation submitted by the institution, the agency will make a decision as to whether it will take action against the institution. Notice of the agency's decision will be sent in writing to the institution by certified mail, return receipt requested. If the agency determines that action should be taken against the institution, the institution may appeal the agency's decision by filing a petition for a contested case with the Office of Administrative Hearings. A contested case hearing will be conducted before an administrative law judge who will render a decision in the case. The final agency decision in the case will be made by the State Health Director.

**** Note:** A meal disallowance and a reduction in the blend rate will become effective thirty days from the date on the disallowance and verification forms unless an informal review is requested or the disallowance or reduced blend rate is appealed. Following informal review, the agency will notify the institution of its decision in writing and of the institution's further appeal rights, in the event the agency's review decision is not satisfactory to the institution. Alternatively, the institution may waive its right to an informal review by filing a formal appeal with the Office of Administrative Hearings ("OAH"). Detailed review and appeal procedures for meal disallowance and a reduced blend rate are on the Allowance/Disallowance of Meals per CACFP Requirements form and the Verification of the Affidavit of Enrollment form.

REQUEST FOR AN INFORMAL CONFERENCE

An institution wishing to request an informal conference must file a written request with the state agency within **fifteen (15) days** of receiving the state agency's notice of intended action. The request must specify:

1. The state agency action for which an informal conference is requested.
2. The name, address and phone number of the contact person handling the informal conference for the institution.

The request for an informal conference should be mailed to:

**Unit Supervisor
Special Nutrition Programs
Nutrition Services Branch
Division of Public Health
1914 Mail Service Center
Raleigh, North Carolina 27699-1914**

The state agency will acknowledge receipt of the written request for an informal conference within **ten (10) days** after receipt.

Any documents that the institution wishes to be considered at the informal conference must be received by the state agency at the above address no later than **five (5) days** prior to the scheduled date of the informal conference.

The institution will be notified by certified mail, return receipt requested, of the informal conference date, time and place at least **ten (10) days** prior to the scheduled conference. Informal conferences will be held at the state or regional offices.

SUBMISSION OF WRITTEN DOCUMENTATION WITHOUT AN INFORMAL CONFERENCE

Within **thirty (30) days** of receipt of the state agency's notice of intended action, the institution may submit, in lieu of an informal conference, written documentation regarding the state agency's intended action. Written documentation should be mailed to:

**Unit Supervisor
Special Nutrition Programs
Nutrition Services Branch
Division of Public Health
1914 Mail Service Center
Raleigh, North Carolina 27699-1914**

The institution must also specify when it submits the documentation:

1. The state agency action for which written documentation is being submitted.
2. The name, address and phone number of the person submitting the documentation on behalf of the institution.

NOTICE OF AGENCY ACTION

The agency will fully consider all information provided by the institution before making a decision on whether to take action against the institution. Notice of the agency's decision will be sent in writing to the institution by certified mail, return receipt requested. If the agency decides to take action against the institution, the institution may appeal the agency's decision by filing a petition with the Office of Administrative Hearings.

APPEAL PROCESS

An institution may appeal the agency's action by filing a petition for a contested case with the Office of Administrative Hearings in accordance with N.C. Gen. Stat. § 130A-24 and N.C. Gen. Stat. § 150B-23(a). The institution may obtain a petition form by calling the Office of Administrative Hearings at (919) 733-0926 or by writing them at the address below.

**Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714**

The petition, both the original and a copy, must be filed with the Office of Administrative Hearings within 30 days of receipt of notice of the agency's action. If a petition is filed, a copy of the petition must also be sent to:

**General Counsel
Department of Health and Human Services, Office of Legal Affairs
2005 Mail Service Center
Raleigh, NC 27699-2005**

and

**Unit Supervisor
Special Nutrition Programs
Nutrition Services Branch
Division of Public Health
1914 Mail Service Center
Raleigh, North Carolina 27699-1914**

The contested case hearing will be conducted before an administrative law judge. The administrative law judge is an independent and impartial official trained in conducting hearings. Institutions may be assisted or represented at the hearing by another party such as an advocate or legal counsel. The institution and the state agency will be given an opportunity to present evidence relevant to the contested agency action at the hearing. The administrative law judge will make a decision in the contested case. The final decision will be made by the State Health Director. Prior to making the final decision, the State Health Director will give both parties an opportunity to file exceptions to the decision of the administrative law judge and to present written arguments. The decision rendered by the State Health Director will be the final agency decision in the case.