Child and Adult Care Food Program
Appeal Procedure

An institution that participates in the Child and Adult Care Food Program (CACFP), and if applicable the institution's responsible principals and individuals, may appeal actions taken by the MN Department of Education (MDE) in accordance with this procedure. CACFP appeal procedures are authorized at 7 CFR 226.6(k).

To appeal an MDE action:
- Submit your written request for an appeal to: Director of Food and Nutrition Service, Minnesota Department of Education, 1500 Highway 36 West, Roseville, MN 55113. Your request for an appeal must be submitted no later than 15 days after you receive this notice. Your appeal request must include all of the required information listed in section 2 under Appeal Procedural Requirements.
- MDE strongly recommends that an appeal request, and any other written documentation submitted to MDE, be sent in a manner that provides proof of delivery to MDE, such as certified mail – return receipt requested.
- Within 10 days of receipt of your appeal request, MDE will notify you by certified mail – return receipt requested that your request has been received.

DEFINITIONS

Appeal Panel: A three-person panel of independent and impartial MDE staff acting as the administrative review official required in 7 CFR 226.6(k)(5)(vii).

Appellants: The Institution and, if applicable, responsible principals and responsible individuals that have appealed. See definitions of "institution," "principal," and "responsible principal or responsible individual."

Institution (definition from 7 CFR 226.2): A sponsoring organization, child care center, outside-school-hours care center, emergency shelter or adult day care center which enters into an agreement with the State agency to assume final administrative and financial responsibility for Program operations.

Principal (definition from 7 CFR 226.2): Any individual who holds a management position within, or is an officer of, an institution or a sponsored center, including all members of the institution's board of directors or the sponsored center's board of directors.

Responsible Principal or Responsible Individual (definition from 7 CFR 226.2):
(a) A principal, whether compensated or uncompensated, who the State agency or FNS determines to be responsible for an institution's serious deficiency;
(b) Any other individual employed by, or under contract with, an institution or sponsored center, who the State agency or FNS determines to be responsible for an institution's serious deficiency;
(c) An uncompensated individual who the State agency or FNS determines to be responsible for an institution's serious deficiency.

APPEAL PROCEDURAL REQUIREMENTS

(1) **Notice of Action** When an action is taken or proposed that is subject to appeal according to CACFP regulations, MDE provides notice of the action to the Institution's executive director, the Institution's chairman of the board of directors and, if applicable, responsible principals and responsible individuals. The notice describes the action being taken or proposed, the basis for the action, and includes this CACFP Appeal Procedure.

(2) **Appeal Request and Deadline** An appellant must submit an appeal request in writing to Director of Food and Nutrition Service, Minnesota Department of Education, 1500 Highway 36 West, Roseville, MN 55113, not later than 15 days after the date the notice of action is received. MDE will acknowledge the receipt of an appeal request by certified mail, return receipt requested, within 10 days of MDE's receipt of the request. An appeal request must include:
- Name, address, telephone number and, if applicable e-mail address, for each appellant.
- Identification of MDE action(s) being appealed.
- An indication whether the request is for the appeal to be based on a review of the written records by the Appeal Panel <u>or</u> a hearing before the Appeal Panel. See Section 7 of this procedure for a list of MDE actions for which a hearing is not available.
- The appeal request must be signed and dated.

(3) **Representation** Each appellant may retain legal counsel or may be represented by another person.

(4) **Review of Record** Information on which MDE's action was based must be available to each appellant from the date of receipt of the appeal request.

(5) **Opposition** Each appellant may refute the findings contained in the notice of action in person or by submitting written documentation to the Appeals Panel. In order to be considered, written documentation must be submitted not later than 30 days after receipt of the notice of action.

(6) **Hearing** The Appeal Panel will hold a hearing if an appellant requests a hearing in the written appeal request. If a hearing is requested, MDE will provide at least 10 days advance notice of the time and place of the hearing by certified mail, return receipt requested. At least one MDE representative will attend the hearing to respond to the testimony of the appellants and to answer questions posed by the Appeal Panel.

If the disqualification of responsible principals or individuals is proposed, MDE will conduct the appeal of the proposed disqualification as part of the appeal of the Institution with which the responsible principals or responsible individuals are associated. However, at the Appeal Panel's discretion, a separate appeal may be held if an appellant demonstrates that its interests conflict with another appellant.

Prior to the hearing, the Appeal Panel will review all written information submitted by the appellants.

If the Institution's representative, or if applicable the responsible principals or responsible individuals or their representative, fail to appear at a scheduled hearing, they waive the right to a personal appearance before the Appeal Panel, unless the Appeal Panel agrees to reschedule the hearing.

(7) **Decision without Hearing** In the following situations, no hearing will be held and the Appeal Panel will base its decision on a review of the written information submitted by the appellant(s) and MDE.

- The appellant did not request a hearing in accordance with the requirements in Section 2 of this procedure.
- The appellant waived the right to a hearing by failing to appear a scheduled hearing as described in Section 6 of this procedure and the Appeal Panel did not reschedule the hearing.
- In accordance with 7 CFR 226.6(k)(9), no hearing will be held and the appeal is limited to a review of written submissions concerning the accuracy of MDE's determination if the application was denied or MDE has proposed to terminate the Institution's agreement for any of the following reasons: false information submitted on application; the institution, one of its sponsored facilities, or one of the principals or its facilities is on the National Disqualified List; the institution, one of its sponsored facilities, or one of the principals or its facilities is ineligible to participate in another publicly funded program due to violation of that program's requirements; conviction for an activity that indicates lack of business integrity.

(8) **Appeal Panel** The Appeal Panel will be composed of three MDE staff from a pool of available members. Appeal panel members are employees of MDE who have not been involved in the action that is being appealed and do not have a direct personal or financial interest in the outcome of the appeal. The chairperson of the Appeal Panel may be contacted directly by appellants.

(9) **Basis for Decision** The Appeal Panel will make a determination based solely on the information provided by appellants, information provided by MDE, Federal and State laws, regulations, policies, and procedures governing the Program. The decision of a majority of the members of the Appeal Panel is the decision of the Appeal Panel.

(10) **Time for Issuing Decision** Within 60 days of the Appeal Panel's receipt of the appeal request, the Appeal Panel will inform the Institution's executive director and chairman of the board of directors, and if applicable the responsible principals and responsible individuals, of the appeal outcome(s) by certified mail, return receipt requested. This timeframe is an administrative requirement for MDE and may not be used as a basis for overturning MDE's action if a decision is not made within the specified timeframe.

(11) **Final Decision** The determination made by the Appeal Panel is the final administrative determination to be afforded the Institution and, if applicable, responsible principals and individuals.

(12) **Record** MDE maintains searchable records of appeals and results, subject to the Minnesota Government Data Practices Act.

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