

**WEST VIRGINIA DEPARTMENT OF EDUCATION  
CHILD NUTRITION PROGRAMS  
1900 Kanawha Boulevard, East  
Building 6, Room 248  
Charleston, WV 25305**

**Appeal Procedures**

In the event a sponsor or potential sponsor of Child Nutrition Programs (CNP), administered through the West Virginia Department of Education (WVDE), is (a) denied program participation, (b) denied facility or site participation, (c) terminated from participation, (d) denied part or all of a program claim for reimbursement, advance program payments or start-up funds, or (e) required to remit an overpayment of funds, the sponsor or potential sponsor may appeal the denial of services or actions of the Office of Child Nutrition (OCN) to the State Superintendent of Schools or his /her designee. The petition of appeal must be submitted to the Office of Child Nutrition within fifteen (15) calendar days following receipt of written notification of the denial of services or other adverse actions.

Petitions of appeal shall be presented in the following format:

\_\_\_\_\_, Petitioner

Versus

**West Virginia Department of Education, Office of Child Nutrition,** Respondent

Petitioner, residing at \_\_\_\_\_ hereby requests the State Superintendent of Schools to determine a controversy existing between petitioner and respondent by reason of the following facts:

*(Here set forth in appropriate paragraphs the facts constituting the basis of the controversy) Wherefore, petitioner requests that (here set forth the relief sought or desired)*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Petitioner

Upon receipt of the Petition of Appeal, the OCN shall notify the State Superintendent of Schools within ten (10) working days. Within fifteen (15) working days of notification from the OCN, the State Superintendent of Schools shall acknowledge receipt and request a report from the Director of the Office of Child Nutrition. Such report shall cite pertinent regulatory violations and substantiating evidence upon which the denial of services was determined. This report shall be sent to the State Superintendent of Schools within fifteen (15) working days of the request. A copy of the report shall be made available to the petitioner. The petitioner may refute the charges contained in the letter of denial by submitting written documentation to the State Superintendent of Schools within seven (7) days following receipt of the OCN report and may request a hearing, if so desired. If a hearing is not requested by the petitioner, the Superintendent of School shall, upon review of the facts submitted by both parties, render a written decision.

A hearing shall be provided upon written request of the petitioner. Written notification of the time and place of the hearing will be sent to the petitioner by certified mail, return receipt requested, ten (10) days before the hearing date. The petitioner may be represented by legal counsel or other person(s). Failure of the petitioner or his/her representative to appear at the hearing shall constitute a waiver of petitioner's right to a hearing. The hearing and/or administrative review resulting from the petition of appeal and the OCN report shall be conducted within four (4) weeks of receipt of the report from the OCN. The State Superintendent's determination shall be embodied in a written decision sent by certified mail, return receipt requested, to the petitioner and the respondent within fifteen (15) working days following the hearing and/or administrative review.

**Action of the Department of Education shall remain in effect during the appeal process.** The decision to appeal shall not relieve the sponsor of fulfilling responsibilities under corresponding CNP agreement, nor shall it interrupt the required time frames concerning the recovery of federal funds. However, participating sponsors and sites may continue to operate CNP during an appeal. If the appeal results in overturning the State Agency's decision, reimbursement shall be paid for meals served during the appeal process. However, reimbursement claims shall not be honored if the continued operation poses imminent dangers to the health or welfare of children as indicated in Department's notification of action to sponsor and/or when the sponsor is unable to demonstrate an ability to submit a valid claim. The determination by the State Superintendent is the final administrative determination to be afforded an applicant.