**West Virginia Department of Education**

**Office of Child Nutrition**

**Summer Food Service Program**

**Appeal Procedures**

The West Virginia Department of Education, Office of Child Nutrition (WVDE OCN) has established appeal procedures according to SFSP regulations 7CFR 225.13(a) to be followed by a sponsor or Food Service Management Company appealing Summer Food Service Program (SFSP) adverse actions. The sponsor making the appeal is referred to as the appellant. An appeal is a formal administrative request whereby the appellant seeks to overturn a decision made by the WVDE OCN. It is not an informal request of reconsideration of the adverse action.

The following actions are subject to appeal:

* a denial of an application for participation;
* a denial of a sponsor's request for an advance payment;
* a denial of a sponsor's claim for reimbursement (except for late submission under

§ 225.9(d)(6));

* a WVDE, OCN refusal to forward to FNS an exception request by the sponsor for payment of a late claim or a request for an upward adjustment to a claim;
* a claim against a sponsor for remittance of a payment;
* the termination of the sponsor or a site;
* a denial of a sponsor's application for a site;
* denial of a food service management company's application for registration;
* the revocation of a food service management company's registration.

Appeal procedures are as follows:

1. The sponsor or food service management company be advised in writing of the grounds upon which the WVDE, OCN agency based the action. The notice of action, which shall be sent by certified mail, return receipt requested, shall also state that the sponsor or food service management company has the right to appeal the WVDE action.
2. The sponsor or food service management company be advised in writing that the appeal must be made within **10 (ten) calendar days** of receiving the notice of action.
3. The appellant is permitted the opportunity to review any information upon which the action was based.
4. The appellant be allowed to 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 **7 (seven) calendar days** of submitting the appeal, must clearly identify the WVDE, OCN action being appealed, and must include a photocopy of the notice of action issued by the WVDE, OCN.
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. A representative of the WVDE 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 the WVDE shall be provided with at least **5 (five) calendar 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 (fourteen) calendar days** of the date of the receipt of the request for review, but, where applicable, not before the appellant's written documentation is received in accordance with paragraphs (4) and (5) above.
8. The review official is independent of the original decision-making process.
9. The review official makes a determination based on information provided by the WVDE and the appellant, and on Program regulations.
10. Within **5 (five) working days** after the appellant's hearing, or within **5 (five) working days** after receipt of written documentation if no hearing is held, the reviewing official 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. The WVDE’s action remains 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 the WVDE's decision, reimbursement shall be paid for meals served during the appeal process. However, such continued Program operation shall not be allowed if the WVDE action is based on imminent dangers to the health or welfare of children. If the sponsor or site has been terminated for this reason, the WVDE shall so specify in its notice of action.
12. The determination by the WVDE review official is the final administrative determination to be afforded to the appellant.

**The request for appeal and additional written documentation must be sent via certified mail, return receipt requested, and addressed to:**

Director, Office of Child Nutrition

West Virginia Department of Education

Building 6, Room 750

1900 Kanawha Boulevard, East

Charleston, WV 25305

**IMPORTANT TIMELINESS NOTES:**

The request to appeal must be submitted within **10 (ten) calendar days** of the date that you receive the certified letter notifying you of the adverse action you wish to appeal.

The request for appeal **must** include:

* Name
* Address
* Title and signature of the person requesting the appeal
* Telephone and fax numbers, if available
* Specific request for a face-to-face hearing if one is desired (otherwise an administrative review of the records will be conducted);

The request should also include:

* Telephone and fax numbers if available;
* A copy of the certified letter from the WVDE OCN, in which the action being appealed is described
* The date the letter was received
* A statement of the relief being requested

Any additional written documentation you wish to be considered in your review:

* Must be submitted within **7 (seven) calendar days** of the date the request to appeal was submitted, must clearly identify the WVDE OCN action being appealed, and must include a photocopy of the notice of action issued by the WVDE OCN.

If your request is determined to be timely (submitted within ten days) from the receipt of the certified letter and 7 additional days for submitting written documentation and evidence), you will receive acknowledgment of that fact from the Administrative Review Officer. If your request is determined to be not timely filed, you will be notified that no review will be conducted, and that the original determination has become final. Timeliness deadlines will be strictly observed.

March 2021