200 Administration and Operations

260 General Administrative Review Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture CACFP/USDA

1.0 Institutions Participating in the Delaware CACFP May Request an Administrative Review of the Following Actions

1.1 Denial of a new or renewing institution's application for participation;

1.2 Denial of an application submitted by a sponsoring organization on behalf of a facility;

1.3 Proposed termination of an institution's agreement;

1.4 Proposed disqualification of a responsible principal or responsible individual;

1.5 Suspension of an institution's participation;

1.6 Denial of an institution's application for start up or expansion payments;

1.7 Denial of all or a part of an institution's claim for reimbursement except for a denial based on a late submission under 7 CFR §226.10(e);

1.8 Demand for the remittance of an overpayment; and

1.9 Any other action of the State agency affecting an institution's participation or its claim for reimbursement.

2.0 Notwithstanding the Provisions of Section 1.0 Above, Institutions Participating in the Delaware CACFP May Not Request an Administrative Review of the Following Actions

2.1 A determination that an institution is seriously deficient;

2.2 Disqualification of an institution or a responsible principal or responsible individual, and the subsequent placement on the State agency list and the National disqualified list; or

2.3 Termination of a participating institution's agreement, including termination of a participating institution's agreement based on the disqualification of the institution by any publicly funded program.

3.0 Except Where the Abbreviated Administrative Review Procedures Apply as Set Forth Below, Administrative Reviews will be Conducted as Follows

3.1 The Department of Education ("Department") must give notice of the action being taken or proposed, the basis for the action, and the procedures under which the institution and the responsible principals or responsible individuals may request an administrative review of the action. Notice shall be given to the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals by U. S. Mail postage prepaid. As used herein, "Petitioner" means a participating institution or agency, or its responsible principals or responsible individuals, as appropriate under the circumstances.

3.2 A request for administrative review must be submitted to the Department in writing not later than 15 days after the date the notice of action is received.

3.3 The petitioner may retain legal counsel or may be represented by another person if permitted by law.

3.4 Any information on which the Department's action was based will be available to the petitioner for inspection from the date of receipt by the Department of the request for an administrative review.

3.5 The petitioner may refute the findings contained in the notice of action in person or by submitting written documentation to the Department's review official. In order to be considered, written documentation must be submitted to and received by the review official not later than 30 days after the petitioner received the notice of action.

3.6 A hearing must be held by the administrative review official in addition to, or in lieu of, a review of written information only if the petitioner requests a hearing in the written request for an administrative review. If the petitioner fails to appear at a scheduled hearing, the petitioner waives the right to a personal appearance before the administrative review official, unless the administrative review official

agrees to reschedule the hearing. A representative of the Department may, but is not required, to attend the hearing to respond to the petitioner's testimony and to answer questions posed by the administrative review official. If a hearing is requested, the petitioner and the Department must be provided with at least 10 days notice of the time and place of the hearing.

3.7 The administrative review official shall be independent and impartial. The administrative review official may be an employee of the Department, but must not have been involved in the action that is the subject of the administrative review, or have a direct personal or financial interest in the outcome of the administrative review. The petitioner may contact the administrative review official directly, but all such contacts must include the participation of a representative of the Department if the Department chooses to participate.

3.8 The administrative review official shall make a determination based solely on the information provided by the Department, the petitioner, and based upon federal and Delaware laws, regulations, policies and procedures governing the CACFP/USDA.

3.9 The decision of the administrative review official shall be issued to the Department and petitioner within 60 days of the Department's receipt of the written request for an administrative review. If the last day on which the decision is to be issued shall fall on a Saturday, Sunday, legal state holiday, or day when the Department is closed due to adverse weather conditions, the decision shall be issued on the next regular work day of the Department. The failure to issue a timely decision shall not, solely in itself, constitute grounds for reversing the Department's action. The decision of the administrative review official is the final administrative determination to be afforded to the petitioner.

3.10 The Department shall maintain a searchable record of all administrative reviews and the dispositions of the same.

3.11 The Department shall conduct the administrative review of the proposed disqualification of the responsible principals and responsible individuals as part of the administrative review of the application denial, proposed termination or proposed disqualification of the institution with which the responsible principals or responsible individuals are associated. However, at the discretion of the administrative review official, separate administrative reviews may be held if the institution does not request an administrative review or if either the institution or the responsible principal or responsible individual demonstrates that their interests conflict.

4.0 Administrative Review

Notwithstanding any of the foregoing to the contrary, administrative review will be limited to a review of written submissions concerning the accuracy of the Department's determination if the application was denied or the Department proposes to terminate the institution's agreement because:

4.1 The information submitted on the application was false; or

4.2 The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is

4.2.1 On the National Disqualified List; or

4.2.2 Ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program; or

4.2.3 Has been convicted for any activity that indicates a lack of business integrity.

5.0 The Department's Administrative Responsibilities to a Participating Institution Shall Remain in Effect During the Administrative Review

5.1 Overpayment demand. During the period of the administrative review, the Department is prohibited from taking action to collect or offset the overpayment. However, the Department must assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review unless the administrative review official overturns the Department's action.

5.2 Program payments. The availability of Program payments during an administrative review of the denial of a new institution's application, denial of a renewing institution's application, proposed termination of a participating institution's agreement, and suspension of an institution shall be treated in accordance

with the provisions of 7 CFR §226.6 (c)(1)(iii)(D), (c)(2)(iii)(D), (c)(3)(iii)(D), (c)(5)(i)(D), and (c)(5)(ii)(E), respectively.

5 DE Reg. 461 (8/1/01)
8 DE Reg. 537 (10/1/04)
13 DE Reg. 636 (11/01/09)