



STATE OF MICHIGAN  
DEPARTMENT OF EDUCATION  
LANSING



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PUBLIC INSTRUCTION

**FISCAL YEAR 2006  
CHILD AND ADULT CARE FOOD PROGRAM  
OPERATIONAL MEMO #20**

**TO:** Child and Adult Care Food Program Institutions

**FROM:** Mary Ann Chartrand, Director  
Grants Coordination and School Support

**DATE:** May 8, 2006

**SUBJECT: Appeal Procedures**

The Child and Adult Care Food Program (CACFP) regulations, 7CFR 226.6 (k), provide institutions, responsible principals and responsible individuals procedures for appealing actions taken by the State agency (Michigan Department of Education). The appeal procedures for all institutions participating in the CACFP program with the Michigan Department of Education (MDE) are outlined below.

If you have any questions regarding this memo, please contact our office at (517) 373-7391.

**Please keep this memo on file or in a notebook for quick and easy reference.**

Attachment:  
Appeal Procedures

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**MICHIGAN DEPARTMENT OF EDUCATION  
CHILD AND ADULT CARE FOOD PROGRAM**



**APPEAL PROCEDURES**

The United States Department of Agriculture's (USDA) Child and Adult Care Food Program (CACFP) regulations, 7CFR 226.6(k), provide institutions, responsible principals, and responsible individuals procedures for appealing actions subject to administrative review taken by the Michigan Department of Education (MDE).

**Actions that are subject to administrative review include:**

- Denial of an institution's application for participation;
- Denial of an application submitted by a sponsoring organization on behalf of a facility;
- Notice of proposed termination of an institution's agreement;
- Notice of proposed disqualification of a responsible principal or responsible individual;
- Suspension of an institution's participation;
- Denial of all or part of the claim for reimbursement, except for late submission under 7CFR 226.10(e);
- Failure of the MDE CACFP to forward to the USDA Food and Nutrition Service an exception requested by the institution for payment of a late claim or a request for an upward adjustment to the claim after the 60 day deadline;
- Demand for the remittance of any overpayment; and
- Any other action of the MDE CACFP affecting the participation of an institution or the institution's claim for reimbursement.

*Family Day Care Home Sponsors only:*

- Denial of an institution's application for start-up or expansion payments;
- Denial of an advance payment; and
- Recovery of all or part of an advance in excess of the claim for the applicable period.

**Procedure**

1. A request for administrative review must be submitted to the MDE CACFP no later than 15 calendar days after the notice of action was received by the institution. If the notice of action is undeliverable, it is considered to be received by the institution, responsible principal or responsible individual, or day care home five days after being sent to the addressee's last known mailing address. The request for administrative review will be denied if the request is not submitted within the 15-day deadline. The request for the administrative review must be sent to the following address:

**Child and Adult Care Food Program  
Grants Coordination and School Support  
Michigan Department of Education  
PO Box 30008  
Lansing, Michigan 48909**

2. The request for an administrative review must be in writing and must:
  - a. Contain the institution's name and MDE CACFP agreement number.
  - b. Explain your disagreement with each finding and/or action taken by the MDE CACFP.
  - c. **Specifically request either of the following:**

- i) **File Review** (For example: XYZ Child Care hereby requests a File Review)

With a "File Review," an administrative law judge (ALJ) employed by the State Office of Administrative Hearings and Rules (SOAHR) reviews the documentation (contained in the institution's CACFP file) and submitted to him or her by representatives of the MDE CACFP. The ALJ also reviews any written documentation submitted by the institution, responsible principals, and responsible individuals. The final administrative determination of the ALJ is based solely on written information.

or an

- ii) **In-Person Review** (For example: XYZ Child Care hereby requests an In-Person Review)

With an "In-Person Review," an ALJ employed by SOAHR schedules a hearing in Lansing, Michigan. At the hearing, the institution's representatives, responsible principals, and responsible individuals or other witnesses may testify under oath and present written documentation to the ALJ. Representatives of the MDE CACFP may attend the hearing to present information, respond to testimony, answer questions of the ALJ, and present written documentation. The final administrative determination of the ALJ is based upon the institution's MDE CACFP file as well as testimony and written documentation submitted to the ALJ.

3. If the institution's written request for review does not specifically request an In-Person Review, the ALJ will conduct a File Review. An In-Person Review is held only when the written request for administrative review includes a request for an In-Person Review.
4. The MDE CACFP will acknowledge receipt of the request for administrative review within 10 calendar days of receipt of the request. Thereafter, all correspondence regarding the appeal must be submitted to the SOAHR at the following address:

**State Office of Administrative Hearings and Rules  
608 W. Allegan Street  
P.O. Box 30008  
Lansing, Michigan 48909**

**Telephone Number: (517) 373-8772  
Facsimile Number: (517) 373-9238**

5. Regardless of whether the request for administrative review is a request for a File Review or an In-Person Review, the institution, responsible principals, and responsible individuals may submit to SOAHR written documentation refuting the findings in the notice of action not later than 30 calendar days after the notice of action was received, unless otherwise directed by the ALJ. A copy of any documentation or correspondence submitted to SOAHR must be simultaneously provided to the MDE CACFP. Documentation submitted after this deadline, or not submitted in accordance with the direction of the ALJ, will not be considered.
6. The MDE CACFP may submit to SOAHR its legal and/or factual justification for its actions or findings not later than 15 calendar days after the institution's deadline for submitting documentation expires.
7. If an in-person review is requested, SOAHR will schedule a hearing. SOAHR shall provide the institution, the responsible principals, responsible individuals, and the MDE CACFP with at least 10 days advance notice of the time and place of the hearing.
8. If the institution's representative, or 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 ALJ, unless the ALJ agrees to reschedule the In-Person Review.
9. Any information on which the MDE CACFP bases its action will be available to the institution, the responsible principals, and responsible individuals upon request for inspection from the date of receipt of the request for administrative review.
10. The institution may retain legal counsel or may be represented by another person. The attorney or representative must file an appearance with the SOAHR and with the MDE CACFP no later than 30 calendar days after the institution received notice of the action.
11. The ALJ will make the final administrative determination based solely on information provide by the MDE CACFP, the institution, the responsible principals, and responsible individuals, and based on Federal and State laws, regulations, policies, and procedures governing the MDE CACFP. The ALJ will inform the MDE CACFP, the institution's executive director, and chairman of the board of directors, the responsible principals, and responsible individuals of the administrative review's outcome within 60 days of the receipt of the request for administrative review. This timeframe is an administrative requirement of the federal regulations and may not be used as a basis for overturning the MDE CACFP's action if a decision is not made within the specified timeframe.
12. The determination of the ALJ is the final administrative determination to be afforded to the institution, the responsible principals, and responsible individuals.

### **Program Payments**

Participating institutions and facilities may continue to operate in the MDE CACFP during an appeal of Notice of Intent to Terminate unless participation has been suspended. Reimbursement for eligible meals and allowable administrative costs will continue to be paid to the institution provided that records to support the claim are available pending the outcome of the administrative review.