

**Nebraska Department of Education
Nutrition Services**

**Administrative Review
Procedures for the
Child and Adult Care Food
Program**

NS-409-G

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Table of Contents by Section Number:

01	GENERAL INFORMATION
02	DEFINITIONS
03	JURISDICTION
04	REQUEST FOR ADMINISTRATIVE REVIEW
05	POWERS AND DUTIES OF THE ADMINISTRATIVE REVIEW OFFICIAL
06	RIGHTS AND DUTIES OF AN INSTITUTION, RESPONSIBLE PRINCIPAL OR RESPONSIBLE INDIVIDUAL
07	RIGHTS AND DUTIES OF THE DEPARTMENT
08	FILINGS
09	REVIEW OF THE RECORD
10	HEARINGS
11	EVIDENCE
12	DISPOSITION OF CASES
13	SATISFACTION OF ORDERS
14	APPEALS
15	ABBREVIATED ADMINISTRATIVE REVIEWS

Appendix A: Request for Administrative Review Form

01 GENERAL INFORMATION

01.01 Statutory Authority. The Nebraska Department of Education is authorized to establish procedures for Administrative Reviews for institutions, responsible principals and/or responsible individuals which participate in the Child and Adult Care Food Program, pursuant to federal law in the United States Code (USC) at 42 USC 1766; federal regulations in the Code of Federal Regulations (CFR) at 7 CFR 226.6(k); and state law in the Revised Statutes of Nebraska at Sections 79-318 and 79-319.

01.02 Basis for Review. Any institution, responsible principal or responsible individual may request an Administrative Review to resolve a dispute with the Nebraska Department of Education, Nutrition Services, concerning an action or proposed action of the Department which affects the institution or person, as set forth in Section 03.01 of these procedures.

01.03 Form. A Request for Administrative Review must be submitted using the Request for Administrative Review form contained in Appendix A, or a facsimile thereof.

01.04 Method of Review. An institution, responsible principal and/or responsible individual may choose the method of Administrative Review when completing the Request for Administrative Review form (see form in Appendix A), by selecting either a review of the record (see Section 09) or a hearing (see Section 10). If neither method is indicated, it shall be assumed that the request is for a review of the record. In certain circumstances, as outlined in Section 15 the hearing option not available, and an Abbreviated Administrative Review is conducted.

01.05 Applicability of Procedures. Any institution, responsible principal and/or responsible individual which applies for, or participates in, the CACFP Program must follow these procedures when requesting an administrative review of any of the actions taken by the Department that are listed in Section 03.01. Use of these procedures for Administrative Reviews is a part of the CACFP Program Application and Agreement (NDE Form NS-407-G).

01.06 Combined administrative reviews for responsible principals and responsible individuals. The Department must 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, and/or proposed disqualification of the institution with which the responsible principals or responsible individuals are associated. However, at the Administrative Review Official's discretion, 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.

01.07 Excluded Review Procedures. These Administrative Review Procedures do not address the following types of reviews:

01.07A Suspension Reviews, as described in 7 CFR 226.6(c)(5)(ii)(C), in which institutions request a review of a proposed suspension of participation. Suspension Reviews Procedures are contained in NDE Nutrition Services Policy NS-410-G.

01.07 B Administrative Reviews for Day Care Homes, as described in 7 CFR 226.6(l), in which a day care home has been given a notice of proposed termination for cause by a sponsoring organization. Administrative Review Procedures for Day Care Homes are contained in NDE Nutrition Services Policy NS-411-H.

01.08 Distribution of Administrative Review Procedures. Pursuant to 7 CFR 226.6(k)(4), a copy of the Administrative Review Procedures (NS-409-G) is provided: annually to all institutions; to an institution and to each responsible principal and responsible individual when the State agency takes any action subject to an administrative review as described in 7 CFR 226.6(k)(2); and at any other time upon request.

01.09 Record of Result of Administrative Reviews. Pursuant to 7 CFR 226.6(k)(7), the Department will maintain searchable records of all administrative reviews and their disposition.

01.10 Effect of Department Action. Pursuant to 7 CFR 226.6(k)(10), the Department's action must remain in effect during the administrative review. The effect of this requirement on particular Department actions is as follows:

01.10A 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.

01.10B Recovery of advances. During the administrative review, the Department must continue its efforts to recover advances in excess of the claim for reimbursement for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments.

01.10C 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 are addressed in paragraphs (c)(1)(iii)(D), (c)(2)(iii)(D), (c)(3)(iii)(D), (c)(5)(i)(D), and (c)(5)(ii)(E), respectively, of 7 CFR 226.6.

02 DEFINITIONS

02.01 Administrative Review, for the purposes of these procedures, shall mean either a review of the record (see Section 09) or a hearing (see Section 10) provided upon request to:

02.01A An institution that has been given notice by the State agency of any action or proposed action that will affect their participation or reimbursement under the Program, in accordance with 7 CFR 226.6(k); and

02.01B A principal or individual responsible for an institution's serious deficiency after the responsible principal or responsible individual has been given a notice of intent to disqualify them from the Program.

Note: Administrative Review procedures for Day Care Homes that have been given a notice by a sponsoring organization of proposed termination for cause are not dealt with in this set of procedures, but are contained in NDE Nutrition Services Family Day Care Homes Administrative Review Procedures (NS-411-H).

02.02 Administrative Review Official shall mean a person appointed by the Department who is an independent and impartial official. Although the review official may be an employee of the

Department, he or she must not have been involved in the action or proposed action that is the subject of the review, or have a direct personal or financial interest in the outcome of the review.

02.03 Department shall mean the Nebraska State Department of Education, including Nutrition Services.

02.04 FNS shall mean the federal Food and Nutrition Service of the United States Department of Agriculture.

02.05 Hearing shall mean a method of Administrative Review that includes the opportunity to appear before an Administrative Review Official in person or by a telephone hearing (see Section 10). It also includes the same opportunity to submit written information to an Administrative Review Official as in a Review of the Record, which is the other method of Administrative Review (see Section 09).

02.05A An informal hearing is a hearing before an Administrative Review Official without the formal rules of evidence of the District Court of Lancaster County invoked pursuant to Section 11.01 of these procedures.

02.05B A formal hearing is a hearing before an Administrative Review Official with the rules of evidence of the District court of Lancaster County invoked pursuant to Section 11.01 of these procedures.

02.06 Institution shall mean 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 Department to assume final administrative and financial responsibility for the program operations.

02.07 Responsible principal or responsible individual shall mean:

02.07A A principal, whether compensated or uncompensated, who the FNS determines to be responsible for an institution's serious deficiency;

02.07B Any other individual employed by, or under contract with, an institution or sponsored center, who the Department or FNS determines to be responsible for an institution's serious deficiency; or

02.07C An uncompensated individual who the Department or FNS determines to be responsible for an institution's serious deficiency.

02.08 Party or parties shall mean the Department and an institution, a responsible principal, and/or a responsible individual requesting a review of the Department action or proposed action.

02.09 Program shall mean the Nebraska Child and Adult Care Food Program (CACFP).

02.10 Reimbursement shall mean Federal financial assistance paid or payable to institutions for Program costs within the rates assigned by the Department.

02.11 Review of the record shall mean a method of Administrative Review that includes the opportunity to submit written information to an Administrative Review Official (see Section 09).

It does not include an in person hearing, which is the other method of Administrative Review (see Section 10).

03 JURISDICTION

03.01 Actions subject to Administrative Review. Pursuant to 7 CFR 226.6(k)(2), the following actions may be the subject of an Administrative Review under these procedures:

03.01A Application denial. Denial of a new or renewing institution's application for participation [see 7 CFR 226.6(b)], on Department review of an institution's application; and 7 CFR 226.6(c)(1) and (c)(2), on Department denial of a new or renewing institution's application);

03.01B Denial of sponsored facility application. Denial of an application submitted by a sponsoring organization on behalf of a facility;

03.01C Notice of proposed termination. Proposed termination of an institution's agreement [see 7 CFR 226.6(c)(2)(iii)(C), (c)(3)(iii)(C), and (c)(5)(i)(B), dealing with proposed termination of agreements with renewing institutions, participating institutions, and participating institutions suspended for health or safety violations];

03.01D Notice of proposed disqualification of a responsible principal or responsible individual. Proposed disqualification of a responsible principal or responsible individual [see 7 CFR 226.6(c)(1)(iii)(C), (c)(2)(iii)(C), (c)(3)(iii)(C), and (c)(5)(i)(B), dealing with proposed disqualification of responsible principals or responsible individuals in new, renewing, and participating institutions, and participating institutions suspended for health or safety violations];

03.01E Suspension of participation. Suspension of an institution's participation [see 7 CFR 226.6(c)(5)(i)(B) and (c)(5)(ii)(D), dealing with suspension for health or safety reasons or submission of a false or fraudulent claim];

03.01F Start-up or expansion funds denial. Denial of an institution's application for start-up or expansion payments [see 7 CFR 226.7(h)];

03.01G Advance denial. Denial of a request for an advance payment [see 7 CFR 226.10(b)];

03.01H Recovery of advances. Recovery of all or part of an advance in excess of the claim for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments [see 7 CFR 226.10(b)(3)];

03.01I Claim denial. 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)] [see 7 CFR 226.10(f) and 226.14(a)];

03.01J Claim deadline exceptions and requests for upward adjustments to a claim. Decision by the Department not to forward to the FNS an exception request by an institution for payment of a late claim, or a request for an upward adjustment to a claim [see 8 CFR 226.10(e)];

03.01K Overpayment demand. Demand for the remittance of an overpayment [see 7 CFR 226.14(a)]; and

03.01L Other actions. Any other action of the Department affecting an institution's participation or its claim for reimbursement.

03.02 Actions not subject to Administrative Review. Pursuant to 7 CFR 226.6(k)(3) the Department is prohibited from offering Administrative Reviews of the following actions:

03.02A FNS decisions on claim deadline exceptions and requests for upward adjustments to a claim. A decision by FNS to deny an exception request by an institution for payment of a late claim, or for an upward adjustment to a claim [see 7 CFR 226.10(e)];

03.02B Determination of serious deficiency. A determination that an institution is seriously deficient [see 7 CFR 226.6(c)(1)(iii)(A), (c)(2)(iii)(A), (c)(3)(iii)(A), and (c)(5)(i)(B), dealing with proposed disqualification of responsible principals or responsible individuals in new, renewing, and participating institutions, and participating institutions suspended for health or safety violations];

03.02C Disqualification and placement on State Agency list and National disqualified list. 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 [see 7 CFR 226.6(c)(1)(iii)(E), (c)(2)(iii)(E), (c)(3)(iii)(E), and (c)(5)(i)(C), dealing with proposals to disqualify related to new, renewing, and participating institutions, and in institutions suspended for health or safety violations];

03.02D Termination. Termination of a participating institution's agreement, including termination of a participating institution's agreement based on the disqualification of the institution by another State agency or FNS [see 7 CFR 226.6 (c)(3)(i) and (c)(7)(ii)].

03.02E State agency determination that corrective action is inadequate. A determination by the State agency that the corrective action taken by an institution or by a responsible principal or individual does not completely and permanently correct a serious deficiency;

03.02F State agency or FNS decision regarding removal from the National disqualified list. A determination, by either the State agency or by FNS, that the corrective action taken by an institution, or a responsible principal or individual is not adequate to warrant the removal of the institution or the responsible principal or individual from the National disqualified list; or

03.02G State agency's refusal to consider an application submitted by an institution or facility on the National disqualified list. The State agency's refusal to consider an institution's application when either the institution or one of its principals is on the National disqualified list, or the State agency's refusal to consider an institution's submission of an application on behalf of a facility when either the facility or one of its principals is on the National disqualified list.

04 REQUEST FOR ADMINISTRATIVE REVIEW

04.01 Notice. When the Department takes an action or proposes an action as described in Section 03.01 of these procedures, it will send a notice to the institution's executive director and chairman of the board of directors, and the responsible principals and/or responsible individuals. The notice will state the action being taken or proposed, the basis for the action, and will reference these procedures, under which the institution and the responsible principals or responsible individuals may request an Administrative Review. A copy of these procedures will also be included with the notice. The notice will include a statement informing the institution, responsible principal and/or responsible individual that they have fifteen (15) calendar days from the receipt of the notice to request an Administrative Review. The notice will be sent by certified mail, return receipt requested. If the notice is undeliverable, it is considered to be received by the institution, responsible principal or responsible individual, five days after being sent to the addressee's last known mailing address.

04.02 Time for Response. An institution, responsible principal and/or responsible individual must request a review in writing within fifteen (15) calendar days from the date it received the Department's notice of action.

04.03 Request for Review Form. The Request for Administrative Review must be submitted using the Request for Administrative Review form contained in Appendix A, or a facsimile thereof, which contains the following information:

04.03A The name(s) and address(es) of the institution, responsible principal, and/or responsible individual requesting the Administrative Review;

04.03B The phone number(s) of the representative of the institution, responsible principal and/or responsible individual where they are available for telephone calls during regular business hours;

04.03C The Program Agreement number.

04.03D A concise statement of the facts and issues in dispute.

04.03E The reason or reasons the institution, responsible principal and/or responsible individual disputes the Department's action;

04.03F A concise and specific explanation of all the facts and circumstances which support the listed reasons for disputing the Department's action, or any other information which explains why the institution, responsible principal and/or responsible individual should not be subject to the Department's action;

04.03G A list or copies of all documents or records the institution, responsible principal and/or responsible individual requesting the review believes the Administrative Review official will need to examine, regardless of whether the Request is for a Review of the Record or a Hearing. If copies of listed documents or records are not attached to the Request for Review, they must be submitted to the Administrative Review Official not later than 30 days after receipt of the notice of action in order to be considered;

04.03H A concise statement indicating how the problem should be resolved or what kind of remedy is sought;

04.03I An indication of the method of Administrative Review that is sought: either a Review of the Record or a Hearing. If no such selection is made, it shall be considered a request for a Review of the Record; and

04.03J Shall be signed and dated, and shall contain a Verification and Certificate of Service using the form in Appendix A, or a facsimile thereof.

04.04 Department Response. When the Department receives a Request for Administrative Review, it shall mail an acknowledgement by certified mail, return receipt requested, within ten (10) calendar days of receipt of the written request that responds in one of the following ways:

04.04A The Department will designate an Administrative Review Official who meets the definition in Section 02.02 of these procedures and will provide the institution, responsible principal and/or responsible individual with the address and phone number of the designated Administrative Review Official, and also the name, address, and phone number of the person designated to represent the Department in the Administrative Review; or,

04.04B The Department may dismiss the Request if it finds that the Request does not meet any of the requirements set forth in Sections 03 and 04 of these procedures, including a failure to use or complete the form in Appendix A, or a facsimile thereof.

05 **POWERS AND DUTIES OF THE ADMINISTRATIVE REVIEW OFFICIAL**

05.01 The Administrative Review Official:

05.01A May request information and subpoena witnesses as needed.

05.01B Shall set the matter for hearing or prehearing conference, if necessary. The parties shall be notified of the date, place and time of any hearing by certified mail, return receipt requested, not less than ten (10) calendar days prior to the time set for hearing.

05.01C Shall set deadlines for compliance with requests for information.

05.01D May grant continuances if the requesting party has shown good cause for such continuance, as allowed by federal regulations. 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 Administrative Review Official, unless the Administrative Review Official agrees to reschedule the hearing.

05.01E Shall conduct hearings, and reviews of record, and all related matters, take evidence, apply appropriate law and regulations, and shall have the power to make findings of facts, conclusions of law, and issue orders based on those findings and conclusions. Procedures for conduct of hearings will be at the discretion of the Administrative Review Official.

05.01F May limit or exclude testimony or evidence that is irrelevant, immaterial, or unduly repetitious.

06 **RIGHTS AND DUTIES OF AN INSTITUTION, RESPONSIBLE PRINCIPAL, AND/OR RESPONSIBLE INDIVIDUAL**

06.01 The institution, responsible principal, and/or responsible individual:

06.01A Shall submit a written Request for Review containing the information required in Section 04.03, using the form in Appendix A or a facsimile thereof, to initiate a Hearing or Review of the Record.

06.01B Shall have the option of selecting the method of Administrative Review: either a Review of the Record (see Section 09) or a Hearing (see Section 10).

06.01C Shall comply with these procedures.

06.01D Shall comply with all the directives and requests of the Administrative Review Official.

06.01E May retain legal counsel, or may be represented by another person.

06.01F May refute the findings contained in the notice of action in person or by submitting written documentation to the Administrative Review Official. In order to be considered, written documentation must be submitted to the Administrative Review Official not later than 30 days after receipt of the notice of action. The burden of proving that the action of the Department was inappropriate rests with the institution, responsible principal, and/or responsible individual requesting the Administrative Review.

06.01G Shall provide good cause to the Administrative Review Official in the event it becomes necessary to request a continuance on any matter relating to the Administrative Review.

06.01H Shall have the right to inspect any documents on which the Department's action was based. Documents will be available for inspection at the Nebraska Department of Education, 2nd floor, 500 S 84th Street, Lincoln, Nebraska during regular business hours.

06.01I Shall be responsible for the cost of copying and delivery of their photocopies for the Administrative Review; for any personal expenses or witness expenses associated with attending a hearing; for the cost of attorney representation if one is hired; for any costs incurred to complete their discovery; for the cost of the transcription, if requested, of a recorded hearing; and, for costs of an appeal of the Administrative Review Official's decision.

06.01J The institution and the responsible principals and responsible individuals are permitted to contact the Administrative Review Official directly if they so desire.

07 **RIGHTS AND DUTIES OF THE DEPARTMENT**

07.01 The Department:

07.01A Shall notify an institution, responsible principal, and/or responsible individual of any action or proposed action as set forth in Section 03.01 of these procedures.

07.01B May file an Answer as provided in Section 08.04.

07.01C Shall comply with these procedures.

07.01D Shall comply with all the directives and requests of the Administrative Review Official.

07.01E Shall designate an individual to represent the Department in the Administrative Review.

07.01F Shall provide good cause to the Administrative Review Official in the event it becomes necessary to request a continuance on any matter relating to the Administrative Review.

07-01G Shall be responsible for the cost of Administrative Review Official's expenses; cost of tape recording hearings; for copying and delivery of their photocopies for the Administrative Review; for any Department expenses associated with staff and witnesses attending a hearing; for any costs incurred by discovery; for the cost of the transcription of the recorded hearing if requested; and for costs of an appeal of the Administrative Review Official's decision.

07.02 The Department's action shall remain in effect during the review process. However, participating institutions may continue to operate under the Program during a review of the termination action, unless the action is based on imminent dangers to the health or welfare of participants. If the institution has been terminated for this reason, the Department shall so specify in its notice of action. Institutions electing to continue operating while requesting a review of the termination action shall be reimbursed for valid claims during the period of the review. See also Section 01.10

08 **FILINGS**

08.01 Filing and Service of Request for Review. The Request for an Administrative Review shall be served upon the Department by certified mail, return receipt requested at: Nutrition Services, Nebraska Department of Education, P.O. Box 94987, Lincoln Nebraska 68509-4987. The Request for an Administrative Review shall contain a certificate of service attesting to its service by certified mail, return receipt request, (see form in Appendix A).

08.02 Filing Subsequent Documents. The Administrative Review Official shall identify the address where all subsequent documents should be filed during the Administrative Review process.

08.03 Department's Response to the Administrative Review Request. Upon receiving the initial Request for Administrative Review submitted by an institution, responsible principal, and/or responsible individual, the Department shall mail a response within ten (10) calendar days, as set forth in Section 04.04 of these procedures.

08.04 Answer. The Department may file an Answer to the Request for Administrative Review within twenty (20) calendar days after receiving the Request for Administrative Review. The Answer shall contain specific statements regarding any and all allegations in the Request for Administrative Review and any additional facts that may be of assistance to the ultimate determination of the Administrative Review. Failure to file an Answer shall not be deemed an admission of any allegations in the Request for Administrative Review.

08.05 Format. All documents filed in relation to an Administrative Review shall contain the title of the proceeding, the case number, the name, address, and telephone number of the institution, responsible principal or responsible individual and the signature of the institution's representative, responsible principal or responsible individual.

08.06 Filing Copies. Subsequent to the initial Request for Review, whenever any party files a document with the Administrative Review Official, the party shall attach a certificate of service, as in the form in Appendix A, and simultaneously serve copies on all other parties by certified mail, return receipt requested.

08.07 Deadlines. When a filing deadline of any document or other matter related to the review must be completed by a specific date and the date falls on Saturday, Sunday, or a legal holiday when the Department is closed, the pleading or other filing need not be filed until the next succeeding working day that the Department is open for business. All time limits referred to in these procedures mean calendar days.

09 REVIEW OF THE RECORD

A Review of the Record is one of two available methods of Administrative Review that may be selected when the Request for Administrative Review is filed. It includes the opportunity to submit written information to an Administrative Review Official, but does not include a hearing, which is included in the other method of Administrative Review (see Section 10).

09.01 An institution, responsible principal, and/or responsible individual may refute the charges contained in the Department's notice of action or proposed action by submitting written documentation to the Administrative Review Official. In order to be considered, all written documentation not contained in, or attached to, the Request for Administrative Review must be submitted to the Administrative Review Official not later than 30 days after receipt of the notice of action.

09.02 As set forth in Section 08.04 of these procedures, the Department may submit an Answer and other written rebuttal documentation to the Administrative Review Official for consideration in the review of the record.

09.03 Additional documents and other written information may be required by the Administrative Review Official in order to render a decision. The Administrative Review Official shall set time deadlines directing the parties to file additional written information, as allowed by federal regulations.

10 HEARINGS

A Hearing is one of two available methods of Administrative Review that may be selected when the Request for Administrative Review is filed. It includes the opportunity to appear before an Administrative Review Official in person or by a telephone hearing (see Section 10). It also includes the same opportunity to submit written information to an Administrative Review Official as in a Review of the Record, which is the other method of Administrative Review (see Section 09)

10.01 Setting of Hearing. The Administrative Review Official shall set the date, time and location for any hearing and give the parties at least ten (10) days' advance notice.

10.02 Prehearing Conference. At the discretion of the Administrative Review Official, he or she may call the parties together, in person or by telephone, for a prehearing conference, or he or she may hold such a prehearing conference if requested by either of the parties. Such conference shall

be for the purpose of, but not limited to, the following: simplifying the issues, amending the request

or response, stipulating to facts, a proposed settlement, submission of witness or exhibit lists, identification of exhibits, application for subpoenas, and requests for discovery orders.

10.03 Location. Hearings shall be held in Lincoln, Lancaster County, Nebraska, unless there is an independent determination by the Administrative Review Official that another location would be more convenient to the parties and witnesses to the hearing, or the hearing may be held by telephone. If a hearing is held by telephone, the venue will be considered to be Lincoln, Nebraska.

10.04 Conduct of Hearings. At the time of hearing:

10.04A The Administrative Review Official shall open and close the proceedings, and take appearances. The Administrative Review Official shall rule on motions, objections, and matters of evidence.

10.04B Reasonable opportunity shall be afforded all parties to present evidence and argument. The Administrative Review Official may set reasonable time limits on presentations and arguments.

10.04C If the institution's representative, or the responsible principals and/or responsible individuals or their representative, fail to appear at a scheduled hearing, they waive the right to a personal appearance before the Administrative Review Official, unless the Administrative Review Official agrees to reschedule the hearing. Failure of the institution or institution's representative, responsible principal and/or responsible individual to appear at the time and place set for hearing, unless otherwise allowed by the Administrative Review Official for good cause shown, shall be deemed sufficient grounds for the Administrative Review Official to dismiss the Request for Review with prejudice.

10.04D Informal procedures governing the conduct of hearings shall be subject to the discretion and the direction of the Administrative Review Official at the time of such hearings.

10.05 Record of Proceedings. The Administrative Review Official shall ensure that an electronic recording of a hearing shall be made or may have the hearing transcribed by a court reporting service. The cost of obtaining such verbatim transcripts from a court reporting service shall be paid directly to the reporting service by the party requesting the verbatim transcript.

11 EVIDENCE

11.01 General Provisions. The Administrative Review Official may admit and consider evidence as provided in Neb. Rev. Stat. Section 84-914. An institution, responsible principal and/or responsible individual may request a formal hearing conducted pursuant to the rules of evidence applicable in the district court by delivering to the Administrative Review Official and Department, at least three (3) calendar days prior to the time set for hearing, a written request to conduct the hearing according to the rules of evidence. Such written request shall include the requesting party's agreement to be liable for the payment of costs of a formal hearing and any appeal or review of the formal hearing, including the cost of a verbatim transcription of the hearing.

11.02 Subpoenas, Discovery, and Witnesses. As provided in Neb. Rev. Stat. Section 84-914, the Administrative Review Official may administer oaths, issue subpoenas, compel attendance of witnesses, and the production of any papers, books, accounts, documents, and testimony, and

cause the depositions of any witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court.

11.02A Subpoenas. The use of subpoenas in proceedings before the Administrative Review Official is governed by statutory procedures for issuance of subpoenas by district courts in Nebraska except as hereinafter provided:

11.02A1 A subpoena requiring the attendance of a witness may be issued by the review official, upon written application of any party.

11.02A2 Subpoenas for the production of accounts, books, documents, or papers, will be issued by the review official only upon written application by a party stating specifically which accounts, books, documents, or papers are required and the facts expected to be proved thereby. All parties directed to produce accounts, books, documents, or papers shall furnish and deliver the same at the time and place specified in the subpoena.

11.02A3 A subpoena issued pursuant to these procedures may be served in any manner permitted by law, which shall include service by registered or certified mail, return receipt requested, sent not less than six (6) calendar days prior to the hearing.

11.02A4 In the case of disobedience to a subpoena, the Administrative Review Official may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of accounts, books, documents, or papers.

11.02A5 Charges for serving a subpoena by mail are to be paid prior to the issuance of the subpoena by the party at whose instance the subpoena is issued. Arrangements for personal service, if desired by such party, are to be made by the party requesting such service and that party shall be responsible for paying any costs for such service prior to the hearing date.

12 DISPOSITION OF CASES

12.01 Informal Disposition. Informal disposition of any case may be made by stipulation, agreed settlement, consent order, or default as approved by the Administrative Review Official.

12.02 Formal Disposition. The Administrative Review Official shall review applicable laws and regulations and consider all evidence and arguments presented and then shall prepare written findings of facts and conclusions of law. These shall be included in a written order prepared by the Administrative Review Official granting or denying the request or specific allegations of said request.

12.03 Basis for decision. The Administrative Review Official must make a determination based solely on the information provided by the Department, the institution, and the responsible principals and responsible individuals, and based on Federal and State laws, regulations, policies, and procedures governing the Program.

12.04 Orders. The prepared order shall be delivered to parties by certified mail, return receipt

requested, or by personal service, not more than sixty (60) calendar days from the date the Department received the request for review on the Department action.

12.05 Final Administrative Action. The Administrative Review Official's order is the final administrative action for the Administrative Review, but may be appealed as provided in Section 14.

12.06 Withdrawal of Requests for Administrative Reviews: A party filing a Request for an Administrative Review may withdraw the request at any time prior to the issuance of an order by submitting a dated and signed statement that they are withdrawing the request. The statement shall be filed with the Administrative Review Official (if one has already been assigned), or with the Department if an Administrative Review Official has not yet been assigned. Upon receipt of such a withdrawal, the Administrative Review shall be ended.

13 SATISFACTION OF ORDERS

13.01 If an Administrative Review Official orders an institution to repay the Department for overclaims under the program, the institution shall arrange a payment plan with the Department.

13.02 The Department reserved the right to use any lawful means to collect judgments for misuse of program funds ordered by an Administrative Review Official under these procedures.

14 APPEALS

14.01 Any party to a proceeding under these procedures has the right to appeal the matter to the District Court of Lancaster County, Nebraska, or the district court of the county where the hearing was held.

14.02 Appeals must be filed in accordance with the Nebraska Administrative Procedures Act, Neb. Rev. Stat. Section 84-917, within thirty (30) calendar days after the service of the review official's order.

15 ABBREVIATED ADMINISTRATIVE REVIEWS

15.01 Abbreviated Administrative Reviews are conducted pursuant to 7 CFR 226.6(k)(9) in certain circumstances when an Administrative Review is requested. The Department must limit the Administrative Review to a review of written submissions concerning the accuracy of the State agency's determination if the application was denied or the Department proposes to terminate the institution's agreement because:

15.01A The information submitted on the application was false [see paragraphs (c)(1)(ii)(A), (c)(2)(ii)(A), and (c)(3)(ii)(A) of 7 CFR 226.6];

15.01B The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the National Disqualified List [see paragraph (b)(12) of 7 CFR 226.6];

15.01C The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program [see paragraph (b)(13) and (c)(3)(ii)(S) of 7 CFR 226.6]; or

15.01 D The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities has been convicted for any activity that indicates a lack of business integrity [see paragraphs (b)(14) and (c)(3)(ii)(T) of 7 CFR 226.6].

15.02 All provisions of these Administrative Review procedures apply to Abbreviated Administrative Reviews, except for those portions dealing with hearings.

USDA Non Discrimination Statement and Complaint Filling Procedure

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotope, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

1. **Mail:**
U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410; or
2. **Fax:**
(833) 256-1665 or (202) 690-7442; or
3. **Email:**
program.intake@usda.gov

This institution is an equal opportunity provider.

As stated above, all protected bases do not apply to all programs, *"the first six protected bases of race, color, national origin, age, disability, and sex are the six protected bases for applicants and recipients of the Child Nutrition Programs."*

APPENDIX A

BEFORE THE NEBRASKA DEPARTMENT OF EDUCATION

_____)	
(Name of Institution, Responsible Principal, and/or)	
Responsible Individual requesting an Administrative)	
Review))	
_____)	
(Street Address))	
_____)	CASE NO. _____
(City, State, Zip))	(leave blank)
_____)	
(Phone Number))	
_____)	
(Agreement No.))	
Appellant,)	
)	
Vs.)	
)	
NEBRASKA DEPARTMENT OF EDUCATION,)	
)	
Respondent.)	

**REQUEST FOR
ADMINISTRATIVE REVIEW**

Appellant, in accordance with the Child and Adult Care Food Program review procedures of the Department of Education, Nutrition Services, states and alleges as follows (attach additional sheets as necessary):

1. What are you appealing? Give a concise statement of the facts and issues in dispute.

Administrative Review Procedures for the Child and Adult Care Food Program

NS-409 G

Revised: April 2024

2. Why are you appealing? List the reason or reasons the institution, responsible principal and/or responsible individual disputes the Department's action.

3. Provide a concise and specific explanation of all facts and circumstances which support the reasons listed above for disputing the Department's action, or any other information which explains why the institution should not be subject to the Department's action.

4. What evidence do you have to support your appeal? List all documents or records the institution, responsible principal and/or responsible individual requesting the review believes the Administrative Review Official will need to examine, regardless of whether the Request is for a Review of the Record or a Hearing. **Note: If copies of the listed documents or records are not attached to the Request for Review, they must be submitted to the Administrative Review Official not later than 30 days after receipt of the notice of action in order to be considered.**

5. What are you seeking? Concisely state how you believe this problem should be resolved or what kind of remedy you are seeking.

_____ Review of the Record, or
_____ Hearing.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above Request for Review was mailed by certified mail, return receipt requested, to the address below, on this _____ day of _____, (month)

_____.
(year)

(signature of person filing request)

Nutrition Services
Nebraska Department of Education
P.O. Box 94987
Lincoln, NE 68509-4987