Tips for Navigating the CACFP & SFSP Appeal Process with TDA

The Texas Department of Agriculture (TDA) values its partnership with each and every contracting entity (CE) that operates a Child Nutrition Program. We are partners for progress connecting Texans in need with nutritious resources for success.

In the event that TDA takes an “adverse action” against you during your operation of the Child and Adult Care Food Program (CACFP) or the Summer Food Service Program (SFSP), you have the right to appeal that action. Below are tips and information that should make navigating the appeal process a little easier.

You are required to keep your address current with TDA.

You must keep your mailing address current with TDA. If it changes, you must let TDA know. Submit an amendment in TX-UNPS if needed.

You also must check your mail regularly, year-round.

By the Texas Administrative Code, “If the notice is sent by certified mail, return receipt (or the equivalent private delivery service), it is considered to be received … five (5) days after being sent to the addressee’s last known mailing address.” (Title 4, Part 1, Chapter 1, Subchapter P, Division 1, Rule 1.100(7), and Division 2, Rule 1.1010(7)) Even if you don’t check your mail or sign for a certified letter, you have legally “received it” not later than five calendar days after it was sent by TDA.

What can I appeal?

You can appeal any “adverse action,” meaning any TDA action that affects your ability to participate in the program or your reimbursement. Examples: meal disallowances, discontinuation of advances, denial of an application, program termination, disqualification, or exclusion. Should your organization experience an adverse action, you will receive written notice explaining the actions and appeal rights.

A determination of serious deficiency cannot be appealed, as by itself it does not affect program participation or reimbursements.

Appeals for demand letters only apply to the calculation of the amount of debt stated in the letter. An appeal of a demand letter is not an appeal of any actions that came before, like meal disallowances or termination.
Read the instructions in the appeal section of your notice.

If you do not specifically request an in-person hearing, the Administrative Review Official (ARO, the “judge”) will only look at the paperwork you submit. Upon written request to the ARO, the ARO may allow a telephone hearing in lieu of an in-person one.

You must provide a copy of the notice you are appealing in your request for an appeal.

If you still have questions on how to appeal, contact the Docket Clerk. You will find the contact information in the letter you received.

When do I have to submit my appeal?

Appeals must be received by TDA no later than 11:59 PM on the due date.

For SFSP, the due date is the 10th day after you receive the notice of adverse action.

For CACFP, the due date is the 15th day after you receive the notice of adverse action.

Please remember, if the notice is sent by certified mail, return receipt (or the equivalent private delivery service), it is considered to be received by the sponsor or FSMC five (5) days after being sent to the addressee’s last known mailing address.

It is a good idea to call the Docket Clerk in TDA’s Legal Division to confirm that TDA has received your appeal.

How do I communicate with TDA once an appeal is made?

Once an appeal is made, the TDA Legal Division is the only TDA office that can discuss the specific matters in it with you. You may discuss any issues unrelated to the one being appealed with Food and Nutrition staff.

If you need technical assistance on an appealable issue, you must request and receive it prior to submitting the appeal request.

You may represent yourself or retain an attorney.

You are not required to have a lawyer for an appeal. You may represent yourself.

If you choose to hire a lawyer, the lawyer must contact TDA to tell the agency that they are representing you in the appeal.
Very important next-step instructions are provided in your appeal acknowledgment letter – please read carefully.

Once you have filed your appeal, you will receive an acknowledgment letter from the Docket Clerk. This letter will tell you the deadline for submitting other documents to be considered by the ARO.

The letter will also tell you the date, time, and location of your hearing, if you requested one.

If you still do not understand something, contact the Docket Clerk. You will find the contact information in the letter you received.

There are consequences for missing a hearing.

If you miss your hearing, it will not be rescheduled.

If you are running late the morning of your hearing, call the Docket Clerk.

It is a good idea to allow extra time for rush hour traffic and to find a parking space. Interstate 35 has the worst rush hour traffic in the state and rush hour conditions can (and do) happen at any time during the day.

May the Administrative Review Official’s results be overturned?

The appeal process is the final step to address any concerns with the adverse action taken. The ARO will issue a Final Order document, which is the final remedy available from TDA.

May I appeal the same adverse action more than once?

Each letter that contains a notice of adverse action will include appeal rights. A CE may exercise their right to appeal the actions in that letter only once.

What are the differences between Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP) appeals?

CACFP appellants can request to have an in-person hearing at TDA or at the State Office of Administrative Hearings (SOAH). SFSP hearings are conducted at TDA.

CACFP appeals must be filed with TDA by the fifteenth calendar day (15th) after you receive the notice of action.

Due to the short duration of SFSP, appeals must be filed with TDA by the tenth (10th) calendar day after you receive the notice of action.