



FEI Appeal Tips

This document provides guidance and language for Head Start programs that have received a letter from the Office of Head Start indicating intent to recapture funds. Nothing in this document constitutes legal advice, and Head Start programs should consult internal legal counsel on their rights and options in their appeal.

1. Introduction

- Address your letter to the person who sent it to you, likely Dr. Laurie Todd-Smith, the Acting Director of the Office of Head Start.
- Ideally the board chair should send the letter. If the board chair is unable to do so, indicate that the CEO or Executive Director is writing the letter on behalf of the board chair.
- Acknowledge that you are in receipt of the letter and note the date you received the letter and what the letter stated with regard to enrollment and plans to recapture.
- Clearly state that this letter serves as your appeal of OHS's plans to recapture funds and that you believe you qualify for a waiver under the Head Start Act.
- Request a virtual hearing as part of your appeal. If nothing else, this will provide more time to increase your enrollment and finesse your arguments.

2. Enrollment update

- If your enrollment numbers have improved over the data presented in the letter, state your current enrollment numbers. If you have children that are very close to being enrolled, then state that.
- For example, if you have families that have accepted a slot and you're working with them on paperwork so their child can start attending soon, including that information. If you have recently hired classroom staff and are working through the final phases of the onboarding process such that children can be enrolled in just a few weeks, state that clearly. If you are recruiting families or staff to reopen classrooms or serve more families through home visiting, that is not likely to persuade OHS of an immediate improvement in enrollment.
- Make sure you are reporting the same numbers you have or will report in HSES for monthly enrollment. Do not use creative math, as it will likely backfire by frustrating OHS staff.

3. Waiver criteria

- If you believe that you qualify for a waiver based on the criteria outlined below, state that and present evidence.
- Per the Head Start Act, OHS may grant a waiver if a program meets at least one of the following criteria.
 - The underenrollment is due to serving a significant portion of highly mobile children.

- Consider whether you have a large population of families that are experiencing homelessness, in foster care, or have been displaced from their homes or communities.
 - The underenrollment can reasonably be expected to be temporary.
 - OHS typically defines this criteria as including one or more of the following conditions:
 - The grantee has made significant improvements in enrollment since the start of the underenrollment plan (generally 10 percentage points or more).
 - There is a recent or pending Change in Scope application.
 - The program has a facilities project underway such that space is not available for some classrooms.
 - There is a recent natural disaster impacting operations or facilities.
 - The grantee is new or has new slots that were awarded in the last 18-24 months.
 - OHS likely will not consider staffing shortages or difficulty allotting slots to service providers to be temporary unless there is a very near term solution (i.e. staff that have been hired and are in the process of onboarding with a start date; contracts in process)
 - The number of slots allotted to the agency is small such that the underenrollment does not constitute a significant shortfall.
 - Generally this includes grant recipients with fewer than 200 slots.
- Use language that cites the Head Start Act and waiver provisions. For example:
 - Pursuant to Section 641A(h)(5)(B) of the Head Start Act, [GRANTEE] believes that ACF should provide a waiver from or lowering of the percentage of recapturing, withholding, or reduction required under Section 641A(h)(5)(A)(ii) of the Head Start Act. Per Section 641A(h)(5)(B) of the Head Start Act, I believe that [grantee] is eligible for a waiver from the recapture, withholding, or reduction of its base grant according to...
 - Pick which criteria applies:
 - (i) the causes of the enrollment shortfall, or a portion of the shortfall, are related to the agency's serving significant numbers of highly mobile children, or are other significant causes as determined by the Secretary
 - (ii) of the Head Start Act, that the enrollment shortfall can reasonably be expected to be temporary
 - (iii) the number of slots allotted to the agency is small enough
- OHS maintains that programs cannot appeal the designation as chronically underenrolled, but you may appeal the proposed recapture of funds.

4. **Immediate action plan**

- You will want to demonstrate that you have a near term (i.e. next 2-3 months) plan to get to full enrollment.

- OHS will want you to demonstrate that you have an immediate plan to get to full enrollment. Some examples of an immediate plan include:
 - Children who are in the process of being enrolled
 - New staff that are ready to onboard
 - New delegates or contractors who have agreed to offer Head Start services and the grantee is in the process of executing a contract.
- Some examples of actions that will likely be perceived as too far away or abstract to be considered an immediate action plan include:
 - A new recruitment or marketing strategy to reach more children and families that are eligible.
 - Posting positions or expanding teacher recruitment efforts.
 - Initiating conversations with potential service providers.
- The immediate plan to get to enrollment could include a Change in Scope, but OHS may question why you did not initiate a Change in Scope during the 12 month plan. If you did not receive TA on a CIS, this may be part of your rationale for a waiver to submit a CIS request.

5. **Conclusion**

- Thank OHS for considering the information you have shared.
- State that you look forward to hearing from them regarding scheduling a virtual meeting for your appeal.

General tips:

- Be aware that you have a firm 30 days to appeal and be sure to submit prior to that date.
- Take screenshots of HSES with time stamps for any materials you have submitted that are relevant to your appeal, including CIS. Be sure that you document when you submitted a Change in Scope with your own screen shots, as some grantees have reported dates changing in HSES.
- Demonstrate that you have an immediate and specific plan to get to full enrollment (i.e. personal attestations or contracts with service providers for slots).
- Cite the Head Start Act and specific provisions within the Act.
- Show with data and documentation that you qualify for a waiver.
- Arguments about the importance of Head Start services to the community, the quality of services, or the efforts to get to full enrollment that have not produced results are unlikely to sway OHS.

Suggestions for the virtual hearing:

- Include your board chair or another member of the board if at all possible.
- You will have exactly one hour. Assume that you will be given the floor after brief introductions and will have most of the hour to explain your case.
- Use the time to focus on presenting evidence that you qualify for a waiver AND demonstrating that you have an immediate and operationalized plan to get to full enrollment. Bring evidence and offer to email it following your hearing.

- If your enrollment numbers have improved, share that information. The enrollment numbers that you present should reflect the numbers you have reported or plan to report to OHS. Do not reinterpret or spin enrollment numbers, as that is likely to frustrate OHS staff.
- Arguments about the importance of your program or the quality of your program are unlikely to be persuasive because the question is about enrollment. It is not a good use of your limited time to have parents or community members join to serve as validators of the importance and value of your program.
- Tribes that have incorporated Head Start into 477 should request that BIA attend the hearing as well. If OHS does not confirm that BIA will be present at the hearing, consult your Tribal council or Tribal attorney to understand your rights under the consolidated 477 program.

If you need assistance in drafting your appeal letter and wish to speak with Katie Hamm, Yvette Sanchez Fuentes, or Khari Garvin about your case, please email advocacy@startearly.org for an appointment.