

IOWA DEPARTMENT OF EDUCATION
(Cite as 26 D.o.E. App. Dec. 95)

<i>In re Termination from CACFP</i>	:	
Valley Junction Learning Center,	:	
Appellant,	:	DECISION
vs.	:	
Bureau of Nutrition, Health and Transportation Services,	:	[Admin. Doc. 4729]
Appellee.	:	

This matter was heard on June 6, 2011, before Carol J. Greta, J.D., designated administrative law judge, presiding on behalf of Jason E. Glass, Director of the Iowa Department of Education. Appearing on behalf of the Valley Junction Learning Center [“Center”], which is operated by the Valley Junction Church of God, were Pastor David Redden and board members Doyle Scott and Lou Roth. Appearing on behalf of the Bureau of Nutrition, Health and Transportation Services [“Bureau”] were Director Ann Feilmann, Suzanne Secor Parker and Robin Holz.

Hearing was held pursuant to this agency’s administrative rules in 281—Iowa Administrative Code chapter 6. The Iowa Department of Education has jurisdiction over the hearing pursuant to the federal regulation found at 7 C.F.R. 226.6(k).

FINDINGS OF FACT

The Valley Junction Church of God of West Des Moines, Iowa, runs a nonresidential child daycare program in West Des Moines called the Valley Junction Learning Center. It has participated since June, 2010, in the Child and Adult Care Food Program [“CACFP”], a program created by the Agricultural Risk Protection Act, 42 U.S.C. § 1766, regulated in 7 C.F.R. section 226, and administered in Iowa by the Bureau. The CACFP provides reimbursement for meals and snacks provided to children in daycare homes and centers.

Daycare institutions such as the Center must be approved and supervised by the Bureau, and licensed by the Iowa Department of Human Services [“DHS”]. All participating CACFP institutions must comply with terms and conditions set by the Agricultural Risk Protection Act and its regulations.

The Center’s childcare program was cited by the Bureau for serious deficiencies in a letter dated February 23, 2011. The serious deficiencies cited were as follows:

1. Not updating the Center’s on-line application from October 10, 2010,
and

2. Not having records available for inspection at an unannounced visit¹ conducted by Ms. Secor Parker on January 27, 2011, to support the public funds received by the Center for claimed meals served during November and December. The records, required by CACFP, to support the claims submitted for those two months include the following:
 - a. Daily meal participation records
 - b. Daily menus
 - c. Daily attendance records
 - d. Food production records
 - e. Food receipts and, if needed, documentation of non-food meal service related items, food service labor, and CACFP administrative costs

The Center received reimbursement for claimed meals served during November and December, but the absence of the above records to support its claim of meals served requires that the Center be ordered to return to the Bureau the reimbursement it received, \$2,178.63.

The letter from the Bureau dated February 23, 2011, informed Pastor Redden and the president of the Center's board of directors² that the Center would be terminated from CACFP participation unless the above deficiencies were corrected by March 21, 2011. Correspondence of February 23 detailed all the specific steps ("corrective action") to be taken by the Center to avoid termination. No one on behalf of the Center responded by the March 21 deadline.

Due to this lack of any response, the Bureau sent a notice dated April 5, 2011, to Pastor Redden and the Center's listed board president that the Center would be terminated from participation in the CACFP effective May 1, 2011. To this letter, Pastor Redden did send an immediate response, stating to the Bureau, "We will have the paper work to you by the end of this week." The Bureau responded by letter of April 7, advising Pastor Redden as follows:

"Because the letter dated April 5, 2011 stating the next step was proposed termination and disqualification had been sent/emailed, the next step for Valley Junction church of God is appeal of the proposed termination and disqualification. Do not send the paper work to me; instead it should be submitted as part of an appeal."

Pastor Redden filed a timely appeal. At the hearing, Pastor Redden admitted the serious deficiencies. No documentary evidence was offered by the Center. By way of explaining the Center's failure to respond with corrective action by March 21, Pastor Redden offered the following:

¹ At least one unannounced visit to recipients of CACFP funds is required annually.

² CACFP regulations require that communications be sent to the president of the board of a recipient of public funds. The person listed by the Center as president of its board received all communications. It is not known whether the listed president was in fact president of the Center's board during the time the communications were sent by the Bureau. It is the responsibility of Pastor Redden to have corrected this information.

- The Center was plagued by a series of poor (therefore, short-term) directors, one of whom is alleged to have stolen a few thousand dollars from the Center.
- The Center was the target of one former employee's efforts to discredit or even destroy it. This former employee notified DHS of alleged violations, setting in motion an intensive DHS investigation of the Center.³
- Pastor Redden was further distracted by the need to be absent from Iowa during the final illness of his mother. It is not clear whether this absence was prior to the March 21 corrective action deadline.

Pastor Reddens argued that the above are extenuating circumstances that must be taken into consideration to excuse the Center's failure to correct its serious deficiencies in a timely manner. He also testified that the Center is by no means a money-making venture; rather, the church he pastors subsidizes the Center, which fills a need in the community by serving primarily children of low income families.

CONCLUSIONS OF LAW

The CACFP regulations at 7 C.F.R. § 226.16 enumerate reasons why an institution shall be terminated from program participation. Being cited as seriously deficient and not correcting all deficiencies is cause for termination. The Center was cited as seriously deficient, was given appropriate opportunity to take corrective action, and has not fully and permanently corrected the serious deficiencies.

The regulations governing the CACFP are quite strict. While a termination from CACFP may seem harsh, the rationale for the strictness of the regulations is simple. CACFP is funded by public monies; therefore, a recipient of those funds is required to be accountable to the public for how it operates. When such accountability is lacking, the public trust is gone. The Bureau has a duty to hold recipients accountable on behalf of the public. 7 C.F.R. § 226.16(c).

The evidence presented here amply supports a finding that the Center failed to permanently and completely correct the seriously deficient practices with which it was cited. The only response ever received by the Bureau was an email from Pastor Reddens on or about April 5, stating for the first time that the "paper work" would be provided soon.

The undersigned do not doubt that the Center fills a need. However, participation in the CACFP requires accountability in the form of written proof that the meals claimed for reimbursement by the Center in November and December were indeed served. The Bureau received no request for assistance or additional time based on extenuating circumstances prior to March 21. The federal regulations in 7 C.F.R. 226.16 permit the Bureau to give more time to a recipient to correct a serious deficiency, but provide no authority for the Bureau or the undersigned to overlook the deficiencies and the lack of correction of the same. Accordingly, the proposed termination of the Valley Junction Learning Center from the CACFP must be upheld.

³ The Center maintains a provisional license from DHS to operate as a daycare center, which does not negatively affect the Center's CACFP participation.

When an institution's participation in CACFP is terminated, both the institution and all responsible individuals must be placed on a national disqualified list. A responsible individual is any person who, whether compensated or not, is determined by the Bureau to be responsible for an institution's serious deficiency. 7 C.F.R. 226.2. The national disqualified list is maintained by the federal Department of Agriculture to ensure that those entities and persons on the list do not participate in CACFP during their periods of disqualification. The maximum period any entity or person is to be on the list is seven years, unless monies are owed to the CACFP, in which case the period of ineligibility is extended until the federal Department of Agriculture is fully reimbursed.

The undersigned do not have the authority to determine the time periods that any entity or individual is on the national disqualified list. The Bureau makes that determination. Removal from the list is dependent on full and permanent correction of the serious deficiencies that led to placement on the list, as well as repayment in full of any debts owed under CACFP.

Bureau personnel took the time at the hearing to explain in detail to those representing the Center what steps could be taken to avoid having to repay some or all of the \$2,178.63 to the Bureau. To recap, if someone on behalf of the Center did indeed keep contemporaneous records⁴ during November and December, 2010, of attendance, menus, meal participation, food production, and documented food program-related expenses (food and other related costs, if needed), and those records have now been located, the Center should produce those records as soon as possible. The records cannot keep the Center from having its CACFP participation terminated, but proof of their existence will make repayment unnecessary. On the other hand, if such contemporaneous records do not exist, the Center has 60 days to file lawful claims for meals served to children for April and May. If these records are contemporaneous and are not deficient under CACFP regulations, rather than receive repayment for proof of served meals, that amount can be credited against the \$2,178.63. The Center shall direct any questions to Bureau CACFP personnel.

DECISION

For the foregoing reasons, the proposed termination of the Valley Junction Learning Center from the Child and Adult Care Food Program is hereby upheld.

6/7/11
Date

/s/
Carol J. Greta, Administrative Law Judge

It is so ordered.

6/7/11
Date

/s/
Jason E. Glass, Director

⁴ Contemporaneous means that the records were completed daily at the time of service. Records compiled "after the fact" are not contemporaneous records, and cannot be considered by the Bureau.