

**IOWA DEPARTMENT OF EDUCATION**

**(Cite as 26 D.o.E. App. Dec. 364 )**

<i>In re Termination from CACFP</i>	:	
Vickie White,	:	DIA Docket # 13DOE002
Appellant,	:	[DE Admin. Doc. 4769]
v.	:	
West Central Community Action,	:	DECISION
Appellee.	:	

This matter was heard telephonically on June 25, 2013, before Administrative Law Judge Carol J. Greta, on behalf of D.T. Magee, Interim Director of the Iowa Department of Education. The Appellant, Vickie White (“Ms. White”), failed to appear after having received due notice of the hearing. The Appellee, West Central Community Action (“WCCA”), was represented by its Executive Director Joel Dirks, and by employees Nancy Pash and Deb Martens.

The Iowa Department of Education has jurisdiction over the parties and the subject matter pursuant to the federal regulation found at 7 CFR § 226.6(k). While Ms. White is deemed to have waived her right to personally appear at the hearing, testimony was taken and a record made pursuant to 7 CFR § 226.6(k)(5)(vi). Prior to the hearing, WCCA submitted an appeal summary and Exhibits A – D, which have been admitted into evidence. When it transmitted this appeal to this administrative tribunal, the Iowa Department of Education included several documents (some marked as Exhibits 1 – 3b), which have also been admitted into evidence.

**FINDINGS OF FACT**

Ms. White operates a child development home (daycare) in Council Bluffs, Pottawattamie County. She has participated in the Child and Adult Care Food Program (CACFP), which is administered by the United States Department of Agriculture through the Iowa Department of Education’s Bureau of Food and Nutrition, for the past few years. The CACFP is a federal program that provides reimbursement for meals and snacks provided to children (and adults, though such is not the case here) in daycare homes and centers.

Child development homes must be supervised by a sponsoring organization, in this case WCCA. To participate in CACFP in Iowa, the home provider must be licensed by the Iowa Department of Human Services (“DHS”). Ms. White’s daycare is appropriately licensed. In addition, a CACFP daycare home provider must sign an annual agreement that provides for the terms and conditions of program participation. The present

agreement between Ms. White and WCCA was signed on August 20, 2010 by Ms. White. (Exhibit D) Some of the applicable provisions in the agreement are as follows:

- That the home provider shall be in compliance with all DHS rules.
- That the home provider shall give the sponsor prior notification of plans to be out of the home during the time of meal service.

Officials from DHS conducted a spot check on April 16, and found that Ms. White's nephew and his girlfriend were doing the child care. They told DHS they had been there for almost two weeks at that time, and that Ms. White was expected back on April 24. The nephew's understanding was that Ms. White was on vacation and had a pre-approved substitute lined up, but that person had a conflict at the last minute. Accordingly, Ms. White called her nephew, who agreed that he and his girlfriend would take care of the children at Ms. White's daycare in her absence. (Exhibits 1 and B)

In a letter dated April 18, 2013, Ellen Picray of DHS informed Ms. White as follows:

I am writing in regards to your childcare registration. This is a list of the deficiencies found during the spot check conducted in your home on 04/16/13. The Iowa Code Chapter 237A and 441 Iowa Administrative Code, Chapter 110, describe specific requirements that must be met by a registered child development home.

Our biggest concern when we went to your home is that you had two people who were not approved substitutes caring for children. In addition to that, you planned to be gone more than 2 weeks, which is the limit for substitutes, even if they were approved. They did not know where the first aid kit was, and could not answer many of the questions we had about items on our checklist. This leaves children at risk. This is enough to revoke your registration, in and of itself, but we are going to give you a chance to correct there deficiencies. You need to do this in the next 30 days and we will be back out unannounced to re-check your home.

...

(Exhibit A)

WCCA determined that the concern noted by DHS rose to the level of "imminent threat to the health or safety of CACFP participants." Accordingly, WCCA sent a letter to Ms. White dated May 28, 2013, suspending Ms. White's participation in the CACFP. (Exhibit C)

In her timely appeal letter, Ms. White stated that she had her pre-approved substitute ready to take care of the children in her daycare, but that about a week before her planned vacation, this substitute had a family emergency. Exhibit 2 shows that this substitute was approved February 13, 2013 by DHS, a couple of months before Ms. White's planned vacation. Ms. White also stated in her appeal that she had not had a vacation for two years, that the children were in no danger, and that she had two substitutes present when her initial substitute had her conflict. Using two persons, argued Ms. White, provided for better accountability and less stress on the caregivers themselves. (Exhibit 1)

The two substitutes used by Ms. White were approved by DHS, subject to certain trainings, by letters dated May 14, 2013. (Exhibits 3a and 3b). They may be used by

Ms. White in the future. The approvals by DHS were not retroactive to cover the time the substitutes were used by Ms. White in April.

### CONCLUSIONS OF LAW

CACFP is a program created by the Agricultural Risk Protection Act, 42 U.S.C. § 1766. That Act and its regulations dictate the minimum terms of the participation agreement between the sponsor and the home provider.

The regulations at 7 CFR § 226.16 enumerate reasons why a daycare home may be terminated from CACFP. A condition that poses an imminent threat to health or safety of participating children is cause for immediate termination of the provider, subject to appeal. 7 CFR 226.16(l)(4) ("If State or local health or licensing officials have cited a day care home for serious health or safety violations, the sponsoring organization must immediately suspend the home's CACFP participation... .")

In her appeal letter, Ms. White stated that the children were in no danger. That is not true. The fact that the substitutes she used did not know the location of the mandatory first-aid kit is a *per se* violation of DHS standards. See 441—IAC 110.5(1)"c". The fact that her substitutes were not pre-approved violated the safety regulation in 441—IAC 110.5(2). And the extended use of the substitutes violated the safety regulation in 441—IAC 110.5(10).

These safety regulations are not capricious or arbitrary. They were duly adopted by DHS to protect the most vulnerable of our population, children. As for Ms. White's argument in her appeal letter that DHS should not limit her vacation time, she misses the point. The limit is not on the time she takes as vacation; she is free to take as much or as little vacation as she desires, if she closes her daycare during those periods. The limit, designed to protect children and families, is on the amount of time a provider utilizes substitutes.

### DECISION

For the foregoing reasons, the proposed termination of Ms. White from the Child and Adult Care Food Program is hereby **AFFIRMED**.

Entered this 25<sup>th</sup> day of June 2013.



Carol J. Greta  
Administrative Law Judge

It is so ordered.

June 25, 2013

Date

/s/

D.T. Magee, Interim Director  
Iowa Department of Education

cc: Appellant  
Appellee  
Ann Feilmann, Suzanne Secor Parker, Robin Holz – Department of Education