

**IOWA DEPARTMENT OF EDUCATION**  
**26 D.o.E. App. Dec. 498**

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*In re Termination from CACFP*

Grand View Child Development Center, Inc., Appellant,	:	14DOE002
v.	:	ORDER of TERMINATION
Bureau of Nutrition, Health and Transportation Services, Appellee.	:	[Admin. Doc. 4783]
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***STATEMENT OF THE CASE***

This matter was heard telephonically on April 17, 2014, having been continued from March 19, 2014, on an appeal filed by Grand View Child Development Center, Inc. (“the Center”) from a determination that the Center is seriously deficient for the reasons specified herein. The Appellant, the Center, was represented by Sara Patterson, who testified on behalf of the Center. The Appellee, Bureau of Nutrition, Health and Transportation Services of the Iowa Department of Education [“Bureau”], was represented by Robin Holz.

The following exhibits from the Bureau were admitted into the record:

- A Summary of Serious Deficiencies (“SD”)
- B 2003 SD Documents
- C 2011 Review Report
- D 2011 SD Letter
- E 2012 Review Report
- F 2012 SD Letter
- G Statement of Oversight by Board President
- H 2012 Proposed Termination
- I 2012 Deferment Letter
- J 2014 Proposed Termination
- K 2013 Nonprofit Corporation Biennial Report
- L 2014 CACFP Institution Application & Certification Statement
- M 2014 CACFP Management Plan, Part III
- N 2014 Review Report
- O December 2013 Menu
- P 2014 Documentation of signing checks as board president
- Q USDA Guidance
- R Summary of Remaining Concerns
- S 2013 CACFP Management Plan, Part III

The following exhibits from the Center were admitted into the record:

- 1 CACFP Monthly Audit
- 4 Letter from Nick Swift, banker
- 5 Email from DMPS 1/22/14
- 6 Invoice from DMPS
- 7 Check front #5726
- 8 Check back #5726, cleared
- 9 Check front #5728
- 10 Check back #5728, cleared
- 11 Check front #5734
- 12 Check back #5734, cleared
- 13 Email from DMPS 4/2/14
- 14 Email from DMPS 4/3/14
- 15 Invoice from DMPS
- 16 Check front #5736
- 17 January bank statement
- 18 Monthly time log/lunch prep
- 19 Monthly time log/administrative
- 20 Food receipts from Aldi
- 21 Food receipts from food bank
- 22 Food receipts from food bank
- 23 Food receipts from food bank
- 24 Food receipts from food bank
- 25 Food receipts from food bank
- 26 Food receipts from Aldi, Dahls
- 27 Food receipts from Aldi, Dahls, Hy-Vee

### ***FINDINGS OF FACT***

Grand View Child Development Center is a daycare center in Des Moines. The Center participates 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 Nutrition Programs. CACFP provides reimbursement for meals and snacks served to children in daycare homes and centers. Centers are permitted to participate in CACFP either as independent centers or under the auspices of a non-profit sponsoring organization.

Grand View Child Development Center is an independent center. It is an operation of Grand View Child Development Center, Inc., a nonprofit corporation incorporated in the State of Iowa, whose operations are overseen by a volunteer board of directors of three persons. (Patterson Testimony) According to Ms. Patterson, the board members are Linda Dodson (president of the board), Linda Stockbauer (treasurer of the board) and Sara Kokke, whose involvement Ms. Patterson characterized as "inactive." (*Id.*)

The Center has been in existence since roughly 1995. It has participated in CACFP from the beginning of the Center's inception, and Ms. Patterson has always been the director of the Center. (Patterson Testimony)

To participate in CACFP, a center must possess a certification of registration from the Iowa Department of Human Services, and must sign an agreement that provides for the terms and conditions of program participation. The terms and conditions are based on federal requirements found in 7 CFR Part 226, and more specifically detailed herein.

On October 22, 2012, the Bureau sent a Serious Deficiency Determination to the Center, citing several deficiencies, as follows:

- Failure to operate the program with financial viability as evidenced by the Center's failure to timely pay and report payment to vendor Hy-Vee.
- Failure to operate the program with appropriate financial accountability to the board of directors.
- Failure of the board of directors to provide adequate oversight.
- Failure to maintain adequate records to ensure that CACFP funds are used solely for the food service operation.
- Failure to maintain records to adequately document food service operation costs.
- Failure to serve (or document) required amount of whole grains.

(Exhibit F)

The Center was given opportunity to correct the deficiency by taking the following specific actions:

- Pay Hy-Vee in full and document the same.
- Submit a signed, notarized statement by the board president describing how the board will provide regular financial oversight of the Center to ensure that all CACFP reimbursement is spent only on CACFP food service operations.
- Document and submit the time classroom teachers spend on food service duties each month, using a specified form from the CACFP Administrative Manual.
- Submit documentation by Ms. Patterson as to her administrative time spent on CACFP operations, using a specified form from the CACFP Administrative Manual.
- Include in all financial reports staff food service labor time and administrative labor time on the respective correct lines on the form.
- Improve the nutritional quality of specified menu items by increasing the amount spent on breakfast and snacks, and document on menus that this was done. "Label menu items clearly so the form of fruits/vegetables (fresh, frozen and canned) and whole grain foods are clearly labeled."

(*Id.*)

On January 31, 2013, the Center's corrective action plan was accepted by the Bureau, and its termination of participation in CACFP was deferred. (Exhibit I) The Summary section of the letter of January 31 states as follows:

We have temporarily deferred our serious deficiency determination. ...If we find in any subsequent review that any of these serious deficiencies have not been fully and permanently corrected, we may immediately propose to terminate Grand View Child Development Center's agreement and propose to disqualify Grand View Child Development Center, Sara Patterson, and Linda Dodson without any further opportunity for corrective action.

*(Id.)*

Following a review of the Center on February 11, 2014 by Bureau staff, Ms. Holz sent a Proposed Termination and Proposed Disqualifications letter dated February 14, 2014 to Ms. Patterson, Ms. Dodson, and Wayne Patterson (husband of Sara). This appeal stems from the February 11 Proposed Termination and Proposed Disqualifications. Six specific serious deficiencies are listed. (Exhibit J) They are sorted by this administrative tribunal into one of two categories, (1) serious deficiencies that were not mentioned in the October 22, 2012 Serious Deficiency Determination or (2) serious deficiencies that were mentioned in the October 22<sup>nd</sup> letter.

A serious deficiency not mentioned in the letter of October 22, 2012 is the deficiency of providing false information to the Bureau regarding the officers of the Center's board of directors. For reason explained under Conclusions of Law, the serious deficiency regarding providing false information cannot form the basis of termination and disqualification in this action.<sup>1</sup> Any testimony or other evidence related to the allegation of providing false information is not developed in the Findings of Fact.

The other serious deficiencies mentioned in the letter of October 22, 2012, which form the proper basis for termination and disqualification, are as follows:

- Failure to operate the program with financial viability as evidenced by the Center's failure to timely pay and report payment to vendor Des Moines Public Schools ("DMPS").
- Failure to operate the program with appropriate financial accountability to the board of directors.
- Failure of the board of directors to provide adequate oversight, including Ms. Patterson's dual roles as Center director and member of the board.
- Failure to maintain adequate records to ensure that CACFP funds are used solely for the food service operation as evidenced by lack of receipts for food served at the "Grandview I site" and insufficient milk receipts to show that the required amount of milk was served in December 2013.

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<sup>1</sup> Allegations regarding failure to train staff and the Center's failure to obtain Bureau approval of a not-at-arms-length loan transaction are also not discussed herein because neither was listed as a serious deficiency in either the October 22, 2012 or February 14, 2014 letters.

- Failure to serve (or document) required amount of whole grains. (Exhibit J)

### *Financial Viability of the Center*

The Bureau believes that the Center lacks financial viability because it habitually received CACFP funds from the Bureau but did not pay the same to its food vendors in a timely manner. Ms. Patterson acknowledged that in 2013, the Center was “struggling” and used CACFP funds for “anything that was needed.” (Patterson Testimony)

As the basis for this serious deficiency in the February 4, 2014 letter, Ms. Holz observed that the Center paid only \$1500 to DMPS (but had sufficient funds available to it to issue a check from much more than \$1500) for November meals and that the Center issued that check quite late (January 22, 2014). (Exhibit 7; Holz Testimony) Ms. Patterson provided an email from a DMPS staff member dated January 22, explaining that the school district had not been able to produce invoices due to a software issue. (Exhibit 5; Patterson Testimony) Invoices from DMPS for November, December, and March show that the average amount owed to DMPS by the Center for student lunches for those three months was \$1,533. (Exhibits 6, 15)

### *Financial Accountability of the Center to its Board/ General Lack of Board Oversight of the Center’s CACFP Operations*

As recent as 2013, the Iowa Secretary of State’s website regarding public information of corporations listed Ms. Patterson as a member of the board of directors. (Exhibit S) Ms. Patterson testified that she is not a member of the board. The copies of checks that Ms. Patterson submitted as exhibits to demonstrate the Center’s financial viability list the Center, not the corporation, as the payor. All three checks bear Ms. Patterson’s signature, under which she wrote “Pres.” (Exhibits 7, 9, 11)

The only minutes from board of director meetings made available to the undersigned are from 2013. They are undated but for “1 Quarter, 2 Quarter, 3 Quarter, 4 Quarter.” Other than noting that the meeting for “2 Quarter” was “done through email,” the minutes for the second quarter are completely copied and pasted verbatim from the first quarter minutes. The meeting for the third quarter was also “done through email and phone conversations.” All four sets of minutes vaguely state that “CACFP recap was reviewed,” and the fourth quarter minutes state, “We have a CACFP review scheduled in January. Sara Patterson has been reviewing the monthly files, to insure that we are in compliance.”

In January of 2013, the Center cut its ties with Hy-Vee as its prepared foods vendor and hired a cook. Then in November of 2013, the Center parted ways with its cook and entered into an agreement with DMPS for the provision of

prepared foods. (Patterson Testimony) None of these transactions are reflected in the minutes for 2013.

*Failure to Maintain Adequate Records Showing Appropriate Use of CACFP Funds*

Ms. Patterson acknowledged in her testimony that in 2013 when the Center was struggling financially, she used CACFP funds for purposes other than purposes related to the food program. She also pointed out that improvements have been made to how the Center implements CACFP. (Patterson Testimony)

*Failure to Serve Required Amount of Whole Grains*

Ms. Holz noted that one of the CACFP requirements is that one-half of the foods served to children in the program must include whole grains. (Holz Testimony) Ms. Patterson acknowledged that in December of 2013, the Center did not meet this requirement, but that one-third of the foods served to children included whole grains. (Patterson Testimony) She also stated that when the Center contracted with DMPS for meals, she assumed that the meals would be compliant with CACFP rules. (*Id.*) The issue arose with the meals served while DMPS was on winter break when DMPS did not provide the food. (Exhibits N, O)

One consistent theme that marked the testimony of Ms. Patterson was the fact that she had quite a few personal health issues involving the need for surgery in the last couple of years. She explained that the surgeries distracted her from many of the fine details regarding the Center's implementation of CACFP. (Patterson Testimony)

## **CONCLUSIONS OF LAW**

*General Provisions*

CACFP is a program created by the Agricultural Risk Protection Act, 42 U.S.C. § 1766. The regulations are located at 7 CFR Part 226. The regulations at 7 CFR § 226.6 enumerate reasons why a center may be terminated from CACFP. Being cited as "seriously deficient" and not correcting the deficiency is one cause for termination. Serious deficiencies include failure to perform any financial and administrative responsibilities.

The Center successfully corrected the serious deficiencies cited by the Bureau in its letter of October 22, 2012, permitting the Bureau to temporarily defer a determination of serious deficiency under 7 CFR § 226.6(c)(6)(ii)(d). The federal regulation provides, "If [the Bureau] later determines that the serious deficiency(ies) has recurred, [the Bureau] will move immediately to issue a notice of intent to terminate and disqualify the institution" **without giving the center another opportunity to implement corrective action.** This is what occurred here.

However, because the Bureau may terminate the Center's participation in CACFP and disqualify certain persons from the same without giving the Center a chance to correct the deficiencies, it is important to limit the reasons for the adverse actions to those deficiencies listed in the October 22, 2012 serious deficiency determination. It is those deficiencies (enumerated on pages 4-5 herein) that the Center had opportunity to correct. The Center's alleged failure to fully and permanently correct them is the issue.

#### *Financial Viability of the Center*

It is undisputed that the Center paid DMPS in late January for November meals. Ms. Patterson showed that she had no invoice from DMPS until January 26, 2014. Ms. Patterson acted reasonably and in good faith to estimate on January 22<sup>nd</sup> that the November bill would be approximately \$1500, so that is the amount for which she wrote the check. Indeed, her estimate was nearly \$400 more than the actual amount billed to the Center by DMPS. (Exhibit 6) The Bureau has not shown that this serious deficiency was not fully and permanently corrected by the Center.

#### *Financial Accountability of the Center to its Board/ General Lack of Board Oversight of the Center's CACFP Operations*

A center is required to be governed by an "independent governing board of directors." 7 CFR § 226.2 defines independent governing board of directors to mean "a governing board which meets regularly and has the authority to hire and fire the institution's executive director."

Although Ms. Patterson may truly believe that she is not a member of the board of directors of the Center, the evidence available to the public begs to differ. Prior to this hearing being set, the Iowa Secretary of State's website regarding public information of corporations listed Ms. Patterson as a member of the board of directors. (Exhibit S) In addition, a recipient of one of the checks from the Center would assume that Ms. Patterson is president of the Center's board of directors. The checks are not drawn on the corporation, but on the Center. (Exhibits 7, 9, 11)

In December 2012, Ms. Patterson and Linda Dodson signed an affidavit, asserting their understanding of the gravity of the accountability and oversight responsibilities. (Exhibit G) Their actions in 2013 demonstrate that both women viewed the sworn affidavit to be nothing more than a piece of paper they had to sign to get the Center back in the good graces of the Bureau. The cut-and-paste nature of the second quarter minutes is particularly aggravating.

None of the minutes clearly reflect that the board was informed of any adverse action being taken against the Center by the Bureau. All four sets of minutes vaguely state that "CACFP recap was reviewed," and the fourth quarter minutes state, "We have a CACFP review scheduled in January. Sara Patterson has been

reviewing the monthly files, to insure that we are in compliance.” The Bureau complied with the requirement in 7 CFR § 226.6(c)(3)(iii) that it notify the board chairperson of serious deficiency determinations and proposed terminations. (Exhibits F, H, I, J) All of those letters from the Bureau were addressed to Ms. Dodson as well as to Ms. Patterson. In light of the notification from the Bureau, it is particularly egregious that the board apparently did not discuss the proposed termination.

The substance of the minutes demonstrates that the board directed nothing and oversaw nothing. Ms. Patterson stated time and again that her health issues caused several of the lapses, but that only serves to show how completely the Center’s operations are a “one woman show.” Given Ms. Patterson’s health challenges and the Center’s problems with the Bureau, the board of directors should have been having multiple robust conversations about its CACFP operations. Instead, there is nothing in the minutes but *pro forma* statements clearly meant to swat away the allegations of the serious deficiencies of lack of accountability and lack of oversight.

The Bureau has shown that these serious deficiencies were not fully and permanently corrected by the Center. The Bureau has also shown that Ms. Patterson and Ms. Dodson must be disqualified personally from further participation in the CACFP.

#### *Failure to Maintain Adequate Records Showing Appropriate Use of CACFP Funds*

With Ms. Patterson’s acknowledgment that in 2013 when the Center was struggling financially, she used CACFP funds for purposes other than purposes related to the food program, this deficiency has not been fully and permanently corrected. It is not enough to state, as Ms. Patterson did, that improvements have been made in this area. This deficiency was noted in 2012 and was disregarded in 2013. While the Center may be in better shape financially in 2014, the misuse of CACFP funds in 2013 demonstrates that in no way can this serious deficiency be said to be fully and permanently corrected.

#### *Failure to Serve Required Amount of Whole Grains*

Ms. Patterson acknowledged that in December of 2013, the Center did not meet the requirement that one-half of the foods served to children in the program included whole grains. This serious deficiency was not fully and permanently corrected.

#### *Disqualifications*

The Bureau’s notice to the Center also proposes to disqualify Sara Patterson, Linda Dodson and Wayne Patterson from future CACFP participation. (Exhibit J) Because the Bureau initially determined that the Center’s corrective action



was complete but later determined that the serious deficiencies recurred, the Bureau is compelled by federal law to not only terminate the Center's involvement but also to disqualify any "responsible principals and responsible individuals" from participation in CACFP. 7 CFR § 226.6(c)(3).

A "principal" means "any individual who holds a management position within, or is an officer of, an institution or a sponsored center, including all members of the institution's board of directors or the sponsored center's board of directors." 7 CFR § 226.2. "Responsible principal or responsible individual" are defined as follows:

- (a) A principal, whether compensated or uncompensated, who the State Agency or FNS determines to be responsible for an institution's serious deficiency;
- (b) Any other individual employed by, or under contract with, an Institution or sponsored center, who the State agency or FNS determines to be responsible for an institution's serious deficiency; or
- (c) An uncompensated individual who the State agency or FNS determines to be responsible for an institution's serious deficiency.

*(Id.)*

By the definitions above, Ms. Patterson and Ms. Dodson are responsible principals. Ms. Patterson holds herself out as solely responsible for every phase of the Center's operations, and Ms. Dodson – regardless of whether she was truly active as a director – signed an affidavit stating that she was providing oversight. Their names both must be added to the National disqualified list maintained by the Food and Nutrition Service (FNS) of the United States Department of Agriculture.

Wayne Patterson, who is the husband of Sara Patterson, is more problematic. The notice of October 22, 2012 does not propose to disqualify him from CACFP. (Exhibit F) The latter deferring adverse action does not mention him. To the contrary, the deferment letter states, "However, if we find on any subsequent review that the corrective action is not permanent or complete, we may immediately propose to terminate [the] Center's agreement and propose to disqualify ... Sara Patterson or Linda Dodson without any further opportunity for corrective action." (Exhibit I)

The February 14, 2014 notice of proposed termination and proposed disqualifications is addressed to Wayne Patterson as board president. However, even assuming he was at some point the board president and even assuming he is a principal in the corporation that includes the Center as one of its concerns, Mr. Patterson had inadequate notice that disqualification of his involvement in CACFP would be sought by the Bureau. If the Bureau desires to disqualify Wayne Patterson, it must give him an opportunity to submit corrective action.

### *Summary*

The regulations governing CACFP are quite strict, purposefully so. 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 center is required to be accountable to the public for how it operates. When such accountability is lacking, the public trust is gone, and the Bureau is required to take appropriate action. Put another way, the US Department of Agriculture imposes a duty, no matter how unpleasant at times that duty may be, on states to hold centers accountable on behalf of the public. This Center has had nearly two decades of involvement with CACFP; there are no excuses for the continuing deficiencies. As noted by Ms. Holz, it truly would be a breach of the public's trust to allow the Center to continue to participate in CACFP.

The Bureau has shown by a preponderance of the evidence that the Center has failed to permanently and fully correct the serious deficiencies of failure of financial accountability, failure of board oversight, failure to appropriately use CACFP funds, and failure to maintain menu improvements, as shown by the non-compliance regarding foods with whole grains.

7 CFR § 226.6(c)(7)(v) states, "Once included on the National disqualified list, an institution and responsible principals and responsible individuals remain on the list until such time as FNS, in consultation with [the Bureau] determines that the serious deficiency(ies) that led to their placement on the list has(ve) been corrected, or until seven years have elapsed since they were disqualified from participation."

### ***DECISION***

For the foregoing reasons, the termination of Grand View Child Development Center from the Child and Adult Care Food Program is hereby **ordered**. The disqualifications of Sara Patterson and Linda Dodson from the Child and Adult Care Food Program are also hereby **ordered**.

Entered this 21<sup>st</sup> day of April, 2014.



Carol J. Greta  
Administrative Law Judge

It is so ordered.

4/21/2014  
Date

/s/  
Brad A. Buck, Director  
Iowa Department of Education

cc: Appellant  
Appellee