

**IOWA DEPARTMENT OF EDUCATION
(Cite as 26 D.o.E. App. Dec. 350)**

<i>In Re Termination from CACFP</i>	:	
Four Oaks Family and Children's Services, Jaymi Johnson, and Tim Cart	:	
Appellants,	:	DECISION
	:	
v.	:	
	:	
Department of Education, Bureau of Nutrition and Health Services	:	[Admin. Doc. No. 4763]
	:	
Appellee.	:	

STATEMENT OF THE CASE

Four Oaks Family and Children's Services (Four Oaks), Jaymi Johnson, and Tim Cart requests review of a determination by the Iowa Department of Education, Bureau of Nutrition and Health Services (Bureau), which administers the Child and Adult Care Food Program (CACFP), proposing termination of the agreement to participate in the CACFP program and disqualification of the appellants from future CACFP participation, effective December 31, 2012. The Iowa Department of Education has jurisdiction over the appeal, pursuant to the Federal Code of Regulations found at 7 C.F.R. 226.6(k). Hearing was held pursuant to this agency's administrative rules in 281—Iowa Administrative Code chapter 6.

This matter was heard in person at the Grimes State Office Building, located at 400 E. 14th Street, Des Moines, Iowa, on January 29, 2012, before Nicole M. Proesch, J.D., designated administrative law judge, presiding on behalf of Jason E. Glass, Director of the Iowa Department of Education. The appellants were represented by legal counsel Steven Pace. Further appearing and testifying on behalf of Four Oaks were Ms. Johnson, Mr. Cart, and Tammi Gilmore, the CFO of Four Oaks. Appearing and testifying on behalf of the Bureau were Consultant Lisa Robinson, Consultant Robin Holz, and Bureau Chief Ann Feilmann.

The record includes a proposed termination letter dated December 7, 2012 and three Affidavits of Appeal from Four Oaks, Ms. Johnson, and Mr. Cart. Exhibits 1 through 9 were offered into evidence by the Appellants and were admitted into the record without objection. Exhibits A-K were offered into evidence by the Appellees. Exhibits A-E and G were admitted into the record without objection. Exhibits F, H-K were offered, objected to, and not admitted into evidence because the exhibits were not timely received by the Appellants prior to the hearing.

FINDINGS OF FACT

Four Oaks is a nonresidential child welfare juvenile justice facility that offers afterschool childcare and other community based prevention programs in eastern Iowa. Four Oaks has participated in the CACFP program as a sponsor since 2008. Four Oaks has one CACFP agreement that sponsors two CACFP sites under its agreement, one in Iowa City¹ and one in Cedar Rapids.² This program was created by the Agricultural Risk Protection Act, 42 U.S.C. § 1766, regulated in 7 C.F.R. § 226, and administered in Iowa by the Bureau. The CACFP provides reimbursement for meals and snacks provided to children in daycare homes and centers.

Institutions such as Four Oaks must be approved and supervised by the Bureau, and licensed by the Iowa Department of Human Services (DHS). All participating institutions must comply with the terms and conditions set by the Agricultural Risk Protection Act and its regulations. These regulations require an unannounced site visit and a meal observation at either of Four Oaks sites for FY2012 followed by an announced administrative review of the required CACFP records and documentation.

On August 30, 2012, the Bureau conducted an unannounced site visit at the Cedar Rapids site to include a meal observation period, followed by a subsequent administrative review of CACFP records on September 27, 2012.

Following the completion of the site visit and administrative review, on October 11, 2012 Ms. Johnson emailed Ms. Holtz to notify the Bureau that Four Oaks would not be continuing the CACFP at the Cedar Rapids site past August 31, 2012. Ms. Johnson indicated that was the last day of CACFP operations at that site and that billing was not submitted for September.

In a letter dated October 25, 2012, Four Oaks was cited by the Bureau for serious deficiencies. The serious deficiencies cited were as follows:

- 1) Failure to operate the program in conformance with the performance standards set forth in paragraph (b)(18)(iii) of this section: Program Accountability;
- 2) Failure to maintain program operations that met CACFP requirements following staff turnover;
- 3) Failure to maintain fiscal integrity and accountability under § 226.15(e) and failure to process claims accurately;
- 4) Failure to maintain adequate records;
- 5) Failure to provide adequate and regular training or monitor sponsored facilities in accordance with § 226.16(d);

This letter informed Four Oaks, Ms. Johnson, Mr. Cart, and Lydia Brown, the Board President, that the Bureau would propose to terminate Four Oaks from CACFP participation and disqualify Four Oaks, Ms. Johnson, and Mr. Cart from further CACFP participation unless Four Oaks provided documentation to the Bureau that it has taken corrective action for each of the above deficiencies by November 25, 2012. This letter detailed the corrective action to be taken

¹ The Iowa City site is listed as site 1001 in the Four Oaks CACFP agreement.

² The Cedar Rapids site is listed as site 1002 in the Four Oaks CACFP agreement. This is also referred to as the "Day Treatment" site and the D Street location.

by Four Oaks to avoid termination and disqualification. This letter also advised that if Four Oaks voluntarily terminates its agreement after receiving this letter, the Bureau would propose to disqualify Four Oaks, Ms. Johnson, and Mr. Cart from future CACFP participation.

On November 12, 2012, Ms. Johnson emailed Ms. Holtz to notify the Bureau that Four Oaks would not be continuing the CACFP at the Iowa City site past September 30, 2012. Ms. Holtz responded that Four Oaks would still need to complete the corrective actions for the serious deficiency or the institution and people name would be placed on the National Disqualified list. Ms. Johnson responded that "we are planning on doing so."

On November 19, 2012, James A. Ernst, President and CEO of Four Oaks, sent a letter to Ms. Robinson in response to her letter of October 25, 2012. This letter indicated that Tami Gilmore and Mike Mitchell internally decided to voluntarily terminate Four Oaks agreement with CACFP in September of 2012. The letter indicates this was a decision made before the Notice of Serious Deficiency was received and therefore, "the development and implementation of a corrective action plan would seem moot." Four Oaks did nothing to permanently correct the deficiencies cited during the August 30, 2012 review. The Bureau received this letter on November 21, 2012.

On December 7, 2012, in response the Bureau sent a letter to Four Oaks indicating that Four Oaks has not adequately corrected the serious deficiencies that were cited in the serious deficiency notice on October 25, 2012. The letter informed Four Oaks, Ms. Johnson, Mr. Cart, Lydia Brown, and James Ernst that the Bureau was proposing to terminate Four Oaks agreement to participate in CACFP and to disqualify Four Oaks, Jaymi Johnson, and Tim Cart from future CACFP participation effective December 31, 2012. Four Oaks, Ms. Johnson, and Mr. Cart filed a timely appeal.

At the hearing Ms. Robinson testified that on August 30, 2012, she attempted to make contact with Four Oaks for an administrative review of the CACPF program. The FY2012 review required an unannounced site visit and a meal observation at either of Four Oaks' two sites followed by an announced administrative review of the documentation submitted for the day of the site visit and other dates claimed. Ms. Robinson attempted to conduct an unannounced lunch review of the Iowa City location first and was informed by Nicole Hines that there were no children in care that day and no meals would be served. According to the online application for that site the center was open from 7:30 a.m. to 6:30 p.m. and served meals at 9:30 a.m., 12:00 p.m., and 4:00 p.m. Ms. Hines informed Ms. Robinson that the information on the application was incorrect. Ms. Robinson requested that the center update that information.

Ms. Robinson testified that she attempted to conduct an unannounced site visit the same day at the Cedar Rapids site. According to the online application for that site the center was open from 9:30 a.m. to 4:00 p.m. and served meals at 9:30 a.m., 11:45 a.m., and 3:00 p.m. Ms. Robinson arrived mid-afternoon and was told there would be no meal service until 4:00 p.m. Ms. Robinson met with Mr. Cart and was advised that he was the new program manager for the Cedar Rapids Day Treatment site. He was not the person that was listed on the application as the responsible party at the time of the visit; however, someone updated the application and put Mr. Cart's name on the application after the date of the visit.

Mr. Cart testified that he met with Ms. Robinson and explained to her that there was a lot of staff turnover in the program. Mr. Cart testified that he is responsible for hiring people for the Day Treatment site. He testified that Amy Allmandinger, a shift manager, managed the CACFP program at the Day Treatment site from July 2011 until her departure in May 2012. He testified

that Ms. Allmandinger was the last person who had been trained on the CACFP program. Three weeks prior to her departure Mr. Cart hired Thomas Hudson to replace her and take over the CACFP program and Mr. Hudson was signed up for the June CACFP training. Mr. Cart testified that Mr. Hudson quit after four days. During the short time Mr. Hudson was there he cleared out many documents from Ms. Allmandinger's office. Some of those documents were believed to be CACFP records. Mr. Cart testified that Jacob Young was hired on July 7, 2012 to replace Mr. Hudson and be responsible for the CACFP program administration; however, he was not signed up for training until October 2012. Mr. Cart advised that neither he nor Mr. Young had attended the required CACFP Steps to Success training program prior to taking on their duties. Four Oaks relied on one person to run the CACFP program and that he was responsible for hiring that person. Mr. Cart had no knowledge of how the CACFP program ran or what the CACFP paperwork looked like until he found a manual in the office in late July 2012 and began reading it on his own. Mr. Cart did not contact the Bureau for assistance during the time of the staff turnover.

Ms. Robinson testified during meal service she observed several violations of the rules regarding the CACFP administration to include the following: 1) the menu was inconsistent with the food actually served; 2) the meals were not offered in an allowable service manner - either by family style or by staff service of the accurate portions to each child; 3) participants were only given food if they indicated they wanted it and as a result eight children did not receive milk and two children did not receive milk or a snack at all; 4) Mr. Young recorded a meal for all of the 16 students in attendance even if they did not get a full meal or eat at all; 5) Mr. Young had not completed the meal participation for August 29, 2012, although meal participation is required to be filled out the day it is served; and 6) there was no in and out times listed for participating children on the daily attendance sheets. The above deficiencies were discussed that day with Mr. Cart.

Ms. Robinson testified that on September 10, 2012, she emailed Ms. Johnson, who was listed on the CACFP institution application as authorized representative, to set up a time for the administrative review. An administrative review was set up for September 27, 2012, and a list of the required documentation was sent to Ms. Johnson. On September 27, 2012, Ms. Robinson met with Ms. Johnson and Mike Mitchell to conduct an administrative review of the requested documents. Ms. Robinson testified that she noted several issues with non-compliance of the CACFP regulations during this review to include the following: 1) missing documentation; 2) current income applications were not in use, some forms were incomplete or missing altogether; 3) discrepancies in the August claims; 4) 190 lunch meals were claimed in August and there was no documentation to support those claims; 5) 430 snacks were claimed in August and documents showed only 300 served; 6) food production records showed two of the seventeen days claimed did not have records and nine of seventeen days did not adequately document food served; and 7) there was no documentation of training of staff, orientation of staff, or civil rights training of staff. Ms. Robinson emailed her review report findings to Ms. Johnson, Ms. Gilmore, and Mr. Mitchell on October 22, 2012.³

Ms. Johnson testified that she began working at Four Oaks in April 2010 as an accounting assistant. Ms. Johnson was located in the administration office of Four Oaks. Ms. Johnson was responsible for financial responsibilities of Four Oaks. She testified that she only helped with the billing and financial portion of the CACFP program. She had no training in administration of the program and had very little involvement. Ms. Johnson testified that she

³ Ms. Gilmore testified this was the first notice Four Oaks received documenting any serious deficiencies.

was not aware that she was listed as a responsible person on the CACFP application. No one had knowledge regarding who listed Ms. Johnson on the CACFP application as a contact.

Ms. Gilmore, the CEO of Four Oaks, testified that Mr. Mitchell spoke with Ms. Robinson during the administrative review on September 27, 2012, and advised Ms. Robinson that Four Oaks would not be continuing participation in the CACFP program as of August 31, 2012. She testified that she and Mr. Mitchell had several internal discussions about the viability of the program and determined it was not a viable fit. Ms. Gilmore testified that their decision to terminate had nothing to do with the review. She testified that some of the documents requested by Ms. Robinson for June, July, and August were missing due to turnover. Four Oaks did not complete an application for FY2013 because they were no longer participating in the program. Ms. Gilmore further testified that correcting a program that no longer existed did not make sense.

The Appellants first argue that Iowa Administrative Procedures Act, Iowa Code § 17A.10 requires the Bureau to promulgate settlement negotiations to settle this matter without a hearing. The Appellants next argue that Four Oaks internally decided to voluntarily terminate its CACFP program for the Cedar Rapids site in September 2012, followed by an oral notice given on September 27, 2012, to Ms. Robinson during the administrative review, and a written notice given on October 11, 2012, in email. The Appellants argue these notices of voluntary termination were before the Notice of Serious Deficiencies went out on October 25, 2012. The Appellants contend that the Department may only disqualify Four Oaks for voluntary termination after having been notified that it is seriously deficient. Finally, the appellants argue there was no Notice of Serious Deficiency for the Iowa City site and therefore, there was no due process given.

CONCLUSIONS OF LAW

The CACFP regulations at 7 C.F.R. § 226.6 do not provide an opportunity for a settlement conference once a party has received notice of proposed termination and disqualification, therefore Iowa Code 17A.10 is not applicable.

The CACFP regulations at 7 C.F.R. § 226.6(c)(3) enumerate reasons why an institution may be terminated from program participation. Being cited as seriously deficient and not correcting all deficiencies is cause for termination. When a State agency declares an institution seriously deficient and identifies current employees as responsible parties for the serious deficiencies, the State agency must hold the institution and the responsible parties accountable for the serious deficiencies and continue the serious deficiency process through to its completion.

The Bureau began the review process on August 30, 2012, by conducting a site visit of the Cedar Rapids Day Treatment site. During this review several serious deficiencies were noted and discussed with Mr. Cart. Four Oaks was on notice at that point, at least orally, that the program was not running according to regulations. The site visit was followed by an administrative review of records on September 27, 2012, which noted further violations. Four Oaks was cited as seriously deficient on October 25, 2012, and was given until November 25, 2012, to correct those deficiencies but made no attempt to correct those deficiencies. The review process was well underway by the time Four Oaks orally notified the Bureau of the decision to voluntarily terminate their agreement on September 27, 2012, with an effective date of August 31, 2012. Four Oaks is still accountable for the August claims that it submitted and how it ran the program through August 31, 2012.

The regulations governing CACFP are quite strict. While a termination and disqualification from future participation in 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 Four Oaks was seriously deficient in the management of the CACFP program and further that Four Oaks failed to attempt to correct the serious deficient practices with which it was cited during the site visit on August 31, 2012, and the administrative review on September 27, 2012. Although the deficiencies cited were only at the Cedar Rapids site and not the Iowa City site, the Bureau was only required to review one of the two sites to determine if Four Oaks was administering the CACFP program as required under their agreement. Four Oaks was afforded due process for the termination of its agreement that included both sites.

The undersigned understands that Four Oaks has taken the position that it voluntarily decided to terminate its participation in the CACFP program. However, this decision to terminate only came about after the August 30, 2012, site visit where several serious deficiencies in the program were already noted. Only compounding the issue is the fact that Four Oaks claimed meals through August 31, 2012. Four Oaks is accountable for the operation of this program through August 31, 2012.

While the federal regulations make mention of a participant's voluntary termination from the CACFP program after receiving a notice of serious deficiencies, those regulations simply provide that voluntary termination will still result in formal termination and placement of the participant and responsible individuals on a national disqualified list. 7 C.F.R. § 226.6. These regulations do not stand for the proposition that a participant could avoid the consequences of the serious deficiency process by voluntarily withdrawing from CACFP before receiving formal notice of serious deficiencies. There are incomplete corrective actions from the August 2012 test month that were not adequately addressed and not resolved by the decision made by Four Oaks to voluntarily withdraw from CACFP participation.

An Iowa Supreme Court case supports the proposition that this matter was not made moot by Four Oaks' decision. In *State v. Otterholt*, 234 Iowa 1286, 15 N.W.2d 529 (1944), the state sought to revoke a chiropractor's license to practice. The chiropractor argued that his voluntary cessation of his practice made the state's action moot. The supreme court disagreed. "The cause of action has not ceased to exist so long as there remain rights undetermined and all matters involved in the action have not been adjudicated." 234 Iowa at 1292, 15 N.W.2d at 532. The court reasoned,

To hold otherwise places in the hands of the accused practitioner himself the power to escape the penalty provided for a violation of the rules governing the conduct of his profession, no matter how gross his misconduct may have been.

Id. This reasoning applies directly to the present case. Even if its actions were broadly viewed in the most favorable light, Four Oaks' voluntary withdrawal from CACFP did not address all matters addressed in the notice of serious deficiency. Specifically, the claim for August 2012 that was not supported by required documentation, and the resulting overpayment, was not corrected by voluntary withdrawal (and was not corrected at all). All of serious deficiencies were

not corrected within the required timeline.

While, the federal regulations in 7 C.F.R. § 216.16 permit the Bureau to give more time to a recipient to correct a serious deficiency, they provide no authority for the Bureau or the undersigned to overlook the serious deficiencies and the lack of correction of the same. Accordingly the proposed termination of the Four Oaks from the CACFP must be upheld.

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 periods of disqualification. The maximum period that any entity or person may 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 Bureau has determined that the responsible individuals are Ms. Johnson and Mr. Cart. The undersigned is troubled by the finding that Ms. Johnson was listed as a responsible party. Her testimony indicates she was not aware that she was listed on the CACFP agreement as a responsible party. Furthermore, her involvement with the program administration was minimal in that she only took care of accounting duties. The undersigned does not believe Ms. Johnson is a responsible individual. Mr. Cart, on the other hand, was in charge of the Day Treatment site, supervised employees at that site, and was responsible for the hiring of staff at that site to include the Shift Leader who ultimately had the responsibilities for administration of the CACFP program. Mr. Cart as the supervisor thus holds responsibility for the administration of the CACFP program.

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.

DECISION

For the foregoing reasons, the proposed termination of Four Oaks from the Child and Adult Care Food Program is hereby upheld. Furthermore, the decision to disqualify Four Oaks and Tim Cart from further CACFP participation in the future is also upheld. The decision to disqualify Jaymi Johnson is reversed.

02/14/2013
Date

/s/
Nicole M. Proesch, J.D.
Administrative Law Judge

IT IS SO ORDERED.

02/14/2013
Date

/s/
Jason E. Glass, Director
Iowa Department of Education