

**IOWA DEPARTMENT OF EDUCATION  
(Cite as 26 D.o.E. App. Dec. 346)**

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In Re: Termination from CACFP,	)	
	)	
Brandie Gist,	)	
	)	DECISION
Appellant,	)	
	)	
v.	)	
	)	
Polk County Community,	)	Admin. Doc. No. 4764
Family and Youth Services	)	
	)	
Appellee.	)	

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**STATEMENT OF THE CASE**

Brandie Gist, whom provides in-home childcare services, requests review of a proposed decision by the Appellee, Polk County Community, Family and Youth Services (Polk County), who sponsors and administers the Child and Adult Care Food Program (CACFP), proposing termination of Ms. Gist's agreement to participate in the CACFP program and disqualification from future CACFP participation, effective December 20, 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 held telephonically on January 28, 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 Appellant, Brandie Gist, personally participated. The Appellee, Polk County, was represented by CACFP Program Specialist Gracy Kirkman, Lorna Sapp, Joy Ihle, and Herkesha Burkett. Monitoring the hearing, but not otherwise participating, was Robin Holtz of the Iowa Department of Education, which is the designated State Agency (SA) to administer the program at issue herein.

The record includes a proposed termination and disqualification letter dated December 3, 2012, and Brandie Gist's Affidavit of Appeal. The Appellant did not offer any exhibits or supporting documents. Supporting documents, marked Exhibits A through F were offered into evidence by the Appellee and were admitted into the record without objection.

## FINDINGS OF FACT

Brandie Gist runs a child daycare home in Des Moines, Iowa. She has participated as a “provider” 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 and Health, since August 5, 2011. The CACFP is a federal program that provides reimbursement for meals and snacks provided to children in daycare homes and centers.

Daycare homes such as Ms. Gist’s must be supervised by a sponsoring organization, in this case Polk County, Family and Youth Services (Polk County). To participate in CACFP in Iowa, the home provider 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. This agreement provides for announced and unannounced visits to the provider’s daycare site by the sponsor to ensure the presence of the children who are claimed to be served. The sponsor is expected ensure that reimbursement is not sent to the provider for meals/snacks not actually served to a child. The sponsor may conduct a “parent audit” to verify with the parents that the children are actually in the providers care when claimed.

Such a “parent audit” was conducted in this case. By phone Polk County contacted Jason and Brandi P. whose children were listed in Ms. Gist’s records. The responses from these parents led Polk County to send to Ms. Gist a written Notice of Serious Deficient Determination for filing false claims in violation of 7 C.F.R. § 226.16(l)(2)(ii) on November 14, 2012. Specifically, Polk County found during this audit that H.C., J.P., and K.P. were not in care when claimed. Jason and Brandi P. both claim their children were not in the care of Ms. Gist beginning August 22, 2012 to November 13, 2012. Records submitted by Ms. Gist claim the children were in her care from August 22, 2012, until November 12, 2012, the day of the inquiry.

When a Notice of Seriously Deficient Determination is filed, it is accompanied by a Corrective Action Plan, informing a provider in detail of steps that must be taken to permanently and completely correct the allegation of submission of false claims. The serious deficiency notice in this case required that Ms. Gist turn in new enrollment forms for H.C., J.P., and K.P. as well as other children currently enrolled in her daycare before November 30, 2012. Additionally, Ms. Gist, Jason and Brandi P. were required to go to Polk County and sign a notarized statement stating that the children were in Ms. Gist’s care from August 22, 2012 to November 12, 2012, before November 30, 2012. Ms. Gist did not complete all of the requested corrective actions before November 30, 2012, and on December 3, 2012, Polk County sent to Ms. Gist a notice of intent to terminate her participation in CACFP effective December 20, 2012.

Ms. Gist testified that she received a phone call from Gracy Kirkman, of Polk County, regarding the parent audit conducted on November 14, 2012. She advised Ms. Kirkman that she would get a hold of the parents and figure out what was going on. Ms. Gist spoke with the parents and then never heard back from them. She testified that Brandi P. had suffered from a seizure and does not remember things but Brandi P. signed the new enrollment form in September. Ms. Gist denies that the claims were false and testified that H.C., J.P., and K.P. were in her care from August 22, 2012 until November 12, 2012. She admits she received the letter of serious deficiency noting the corrective actions needed. She got new enrollments filled out for the other children but did not understand that she needed them for H.C., J.P., and K.P. because they were no longer in her care. She could not reach Jason and Brandi P. to have them fill out an affidavit. Ms. Gist believes Jason and Brandi P. are lying about their children attending her daycare to get out of paying her money owed to her. J.M., age 12, testified on

behalf of Ms. Gist, who is his mother, that that H.C., J.P., and K.P. were in his mother's care from summer to sometime in November.

Lorna Sapp, of Polk County, testified that according to enrollment papers H.C., J.P., and K.P. began daycare with Ms. Gist on May 24, 2012. On November 13, 2012, Ms. Sapp spoke with Jason P. during the parent audit and Jason P. advised her that the children stopped going to Ms. Gist August 22, 2012. Jason P. advised that the kids stayed with him, their grandfather, or their mother beginning on August 22, 2012. Herkesha Burkett, of Polk County, testified that Jason P. came into the office on December 19, 2012, and signed a notarized statement that H.C., J.P., and K.P., had not been to Ms. Gist's since August 22, 2012. Jason P. questioned H.C., J.P., and K.P. in Ms. Burkett's presence and they stated they were no longer going to Ms. Gist's. Ms. Kirkman testified that Ms. Gists did not turn in enrollments for her own children either as requested in the corrective action plan.

Overall this agency does not find the testimony or statements of Ms. Gist credible. The parent audit supports the conclusion of the sponsor. This agency has considered the respective motives of the appellant as well as the parents who participate in the parent audits. The parents have nothing to gain from their responses however; Ms. Gist stands to keep her continued CACFP participation.

### **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 C.F.R. § 226.16 enumerate reasons why a daycare home may be terminated from CACFP. Being cited as "seriously deficient" and not correcting the deficiency is one cause for termination. A serious deficiency includes the provider's submission of false claims for reimbursement. 7 C.F.R. § 226.16(l)(2)(ii).

This Agency has noted in previous CACFP decisions that the regulations governing that program 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 provider is required to be accountable to the public for how s/he operates. When such accountability is lacking, the public trust is gone, and the sponsor is required to take appropriate action. Put another way, the sponsor has a duty, no matter how unpleasant at times that duty may be, to hold its child care homes accountable on behalf of the public.

The evidence presented here as to H.C., J.P., and K.P. supports a finding that Ms. Gist submitted false claims as to those children. The evidence as a whole supports a finding that the submission of false claims is systemic and was not a one-time human error. These submissions occurred daily over a three month period for three children in her care. Ms. Gist did not complete the requested corrective action by November 30, 2012. Polk County has shown that Ms. Gist has not permanently and completely corrected the seriously deficient practice of submission of false claims.

Ms. Gist will remain on the National disqualified list until such time as the Bureau of Food and Nutrition determines that the serious deficiencies that led to the placement on the list have been corrected, or until seven years have elapsed since the agreement was terminated for cause. 7 C.F.R. § 226.6(c)(7)(v-vi).

**DECISION**

For the foregoing reasons, the termination of Ms. Gist from the Child and Adult Care Food Program is hereby **ordered**. This decision is final and should be considered final agency action by the Department of Education.

02/11/2013  
Date

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

02/11/2013  
Date

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