

**IOWA DEPARTMENT OF EDUCATION**  
**(Cite as 26 D.o.E. App. Dec. 254)**

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<i>In Re Termination from CACFP</i>	:	
Mike O'Connor, Owner, Little Angels Preschool and Childcare	:	
Appellant,	:	DECISION
	:	
v.	:	
Iowa Department of Education, Bureau of Nutrition and Health Services	:	[Admin. Doc. No. 4759]
Appellee.	:	

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**STATEMENT OF THE CASE**

Mike O'Connor and Julie O'Connor, owners of the Little Angels Preschool and Childcare (Center) and Shannon Tackes requests review of a determination by the Iowa Department of Education, Bureau of Nutrition and Health Services (Bureau), who administers the Child and Adult Care Food Program (CACFP), proposing termination of the agreement to participate in the CACFP program and disqualification from future CACFP participation, effective September 24, 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. 14<sup>th</sup> Street, Des Moines, Iowa, on October 1, 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. Appearing and testifying on behalf of the Center were Mike O'Connor, Julie O'Connor, and Whitney Wagman, the Center Director. Appearing and testifying on behalf of the Bureau were Keerti Patel, Cheryl Benson, Suzanne Secor Parker, and Robin Holz. Director Ann Feilmann was also present at the hearing.

The record includes a proposed termination letter dated August 31, 2012 and Little Angels Affidavit of Appeal. Supporting documents, marked Articles 1 through 20 were offered into evidence by the Appellant and were admitted into the record without objection. The Center also offered a training certificate for Julia O'Connor and Shannon Tackes as evidence. The following supporting documents were offered by the Appellee and admitted into the record without objection: five emails with document attachments sent between September 19-26, 2012 from Robin Holz to the parties; March 21, 2011 letter from Keerti Patel; April 4, 2011 letter from Shannon Tackes; and Corrective Action Plan dated October 13, 2010.

## FINDINGS OF FACT

Mike O'Connor and Julie O'Connor, are the owners and operators of the Little Angels Preschool and Childcare, a nonresidential childcare program in Keokuk, Iowa. The Center has participated in the CACFP program since August of 2004. 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.

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 institutions must comply with the terms and conditions set by the Agricultural Risk Protection Act and its regulations.

The Center's child care program was cited by the Bureau for serious deficiencies in a letter dated August 27, 2010.<sup>1</sup> The serious deficiencies cited were as follows:

1. Failure to operate the Program in conformance with the performance standards:
  - a. Administrative capability - Inadequate number of qualified staff to accurately complete and maintain all required records and submit accurate claims.
  - b. Program accountability - Fiscal accountability - Lack of integrity and accountability of all expense incurred - Claims not processed accurately (children claimed at an incorrect benefit level).
  - c. Meal service and other operational requirements - Non-compliance with civil rights requirements.
2. Failure to maintain adequate records (CACFP enrollments, current and complete documentation and summary of income eligibility, attendance).
3. Claiming reimbursement for a significant number of meals that do not meet program requirements.
4. Failure to perform any other financial and administrative responsibilities - did not document non-profit food service.
5. Other action affecting the institution's ability to administer the program in accordance with program requirements - Failure to provide at least 1.5 hours of annual CACFP training to all key staff.

The letter from the Bureau dated August 27, 2010, informed Mike O'Connor, Julie O'Connor, and Shannon Tackes, the Director, that the Bureau would propose to terminate the Center from CACFP participation unless the Center provided documentation to the Bureau that the Center has taken corrective action for each of the above deficiencies by September 27, 2010. This letter detailed the corrective action to be taken by the Center to avoid termination.

On November 23, 2010, the Bureau received documentation from the Center detailing the actions the Center had taken to correct the deficiencies. The Bureau requested follow-up information on March 21, 2011, and received that information on April 2, 2011. On April 7, 2011, a letter was sent to the Center rescinding the serious deficiency determination noting that

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<sup>1</sup> These deficiencies were cited during a follow up administrative review of the CACFP Center conducted on July 27<sup>th</sup> and 28<sup>th</sup>, 2010. This review was prompted as a follow-up to an announced administrative review of the Center conducted on September 2, 2009 where the Bureau found a number of non-compliant practices and extremely poor record keeping.

the Center had made adequate progress. The letter found that the Center had fully and permanently corrected the serious deficiencies that were cited.<sup>2</sup>

The Bureau sent an email to Shannon Tackes on August 20, 2012, to notify the Center of a visit on August 22, 2012.<sup>3</sup> On August 22, 2012, an announced administrative review of the Center was conducted. A letter from the Bureau dated August 31, 2012, detailed the results of that administrative review and found the Center has not fully and permanently corrected the serious deficiencies that were cited in the serious deficiency notice on August 27, 2010. The August 31, 2012, letter cited the following serious deficiencies as follows:

1. Training requirements are not met.
2. Civil Rights requirements are not met.
3. One or more claim errors were identified for the test month.
4. Requirements to claim meals at the free or reduced price rate are not met.
5. Required records are not current or not on file.
6. Meal service requirements are not met.
7. Financial documentation, reporting and or management does not meet requirements.
8. Enrollment requirements are not met.
9. Submission of false information on application.

The August 31, 2012, letter informed Mike O'Connor, Julie O'Connor, and Shannon Tackes that the Bureau was:

- Proposing to terminate the Center from participation in CACFP effective September 24, 2012;
- Proposing to disqualify the Center from future CACFP participation effective September 24, 2012; and
- Proposing to disqualify Shannon Tackes, Michael O'Connor, and Julie O'Connor from future CACFP participation effective September 24, 2012.

The Center, Michael O'Connor, Julie O'Connor, and Shannon Tackes filed a timely appeal. At the hearing, Michael O'Connor offered evidence that the deficiencies discovered during the Audit on August 22, 2012, were the result of his director, Shannon Tackes leaving employment with the Center on August 15, 2012, seven days before the audit was conducted. The Center hired a new director, Whitney Waggeman, on August 16, 2012, and she was on the job four days before the review was conducted. Mrs. Waggeman was not able to locate the requested documentation during the visit because she was new and not familiar with the documents. This was a transitional time for the Center while Mrs. Waggeman was learning her position.

Mrs. Waggeman testified about each of the deficiencies cited in the proposed letter of termination and how the Center has addressed them. The Center submitted documentation

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<sup>2</sup> The letter put the center on notice that in a subsequent review if the Bureau finds that any of the serious deficiencies cited have not been fully and permanently corrected, the Bureau will immediately propose to terminate the Center's CACFP agreement and propose to disqualify the Center, Shannon Tackes, Michael and Julie O'Connor without any further opportunity to take corrective action.

<sup>3</sup> Mrs. Tackes was the authorized representative for the Center designated to receive correspondence from the Bureau. Julie O'Connor testified that the Center did not receive notice of the Bureau's visit because it went to Shannon Tackes' email account and she was no longer with the Center.

showing compliance with some of the cited deficiencies and provided corrective action for other cited deficiencies.

Julie O'Connor testified that Mrs. Waggeman was unable to locate the requested documentation on the day of the August 22, 2012, visit, but that it was in a box onsite at the time of the visit. It was Mr. O'Connor's belief that Shannon Tackes was handling the deficiencies and entrusted that responsibility to her. Mrs. O'Connor worked with the Bureau to fix the deficiencies after the August 27, 2010, letter was received. Since the August 22, 2012, visit, the Center was making changes to how it manages the program and has hired new staff to administer the program, including a new cook. During the hearing Mr. and Mrs. O'Connor admitted the serious deficiencies and acknowledged that the food service received on the day of the visit was not in compliance with CACFP requirements.<sup>4</sup>

The Bureau provided evidence and testimonies that many of the serious deficiencies cited in August 27, 2010, and again in August 22, 2012, dated back to 2006, and were consistent errors not attributable to new staffing. The Center did not permanently correct the deficiencies cited in August 27, 2010.

### **CONCLUSIONS OF LAW**

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. The Center was cited as seriously deficient in August 27, 2010, was given time to correct those deficiencies, and did successfully correct those deficiencies resulting in the notice of serious deficiency being rescinded on April 7, 2011. Subsequently, the Center was cited again for some of the same serious deficiencies in the August 22, 2012, visit resulting in the proposed termination.

The regulations governing 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 serious deficient practices with which it was cited during the first administrative review on August 27, 2010. While the Center responded to these deficiencies and worked hard to correct them in November of 2010 and thereafter, the Center failed to permanently correct these deficiencies as evidenced by the recurring deficiencies cited in the August 22, 2012, administrative review.

The undersigned do not doubt that the Center is providing an important service to the children that attend. However, participation in the CACFP requires accountability in the form of written proof that the requirements of the program are being met. While the Center was able to provide some written proof that the Center was in compliance with some of the program requirements at time of the visit, it was still not in compliance with staff training requirements, one or more claim errors were identified for July 2012, requirements to claim meals at free or reduced price rate were not met, meal service requirements were not met<sup>5</sup>, financial

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<sup>4</sup> The Center reprimanded the cook for non-compliance with meal service requirements on the day of the visit.

<sup>5</sup> This was a consistent finding during administrative reviews dating back to 2006.

documentation was not met, and enrollment requirements were not met on the day of the visit. 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 recurring deficiencies and the lack of correction of the same. Accordingly the proposed termination of the Little Angels Childcare and Preschool Center 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 Mike O'Connor, Julie O'Connor, and Shannon Tackes. 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 the Little Angels Preschool and Childcare Center from the Child and Adult Care Food Program is hereby upheld. This decision is final and should be considered final agency action by the Department of Education.

10/22/12  
Date

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

IT IS SO ORDERED.

10/22/12  
Date

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