

**IOWA DEPARTMENT OF EDUCATION**  
**27 D.o.E. App. Dec. 673**

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*In re Termination from CACFP*

Bear Basics Children’s Centers,	:	15DOE007
Appellant,	:	
v.	:	<b>ORDER of</b>
	:	<b>TERMINATION</b>
Iowa Department of Education	:	
Bureau of Nutrition and Health Services,	:	
Respondent.	:	[Admin. Doc. 5028]

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**STATEMENT OF THE CASE**

This matter was heard telephonically on November 24, 2015, by Carol J. Greta, designated administrative law judge with the Iowa Department of Inspections and Appeals Division of Administrative Hearings, presiding on behalf of Ryan M. Wise, Director of the Iowa Department of Education (“Department”), pursuant to regulations governing 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 Services (“Bureau”), the Respondent.

The Appellant, Bear Basics Children’s Centers (“Bear Basics”) appealed on October 19, 2015 from (1) the proposed termination of Bear Basics’ agreement to participate in CACFP, (2) the proposed disqualification of Bear Basics from future CACFP participation, and (3) the proposed disqualification of Elizabeth (Betty) Bolin, Noelle Bolin, and Megan Mohler from future CACFP participation.

The Appellant, Bear Basics, was represented by Noelle Bolin, who testified on behalf of the Center. Also appearing but not testifying for Bear Basics were Betty Bolin and Megan Mohler. The Respondent, the Bureau, was represented by Jane Heikenen, who testified on behalf of the Bureau. Robin Holz of the Bureau also briefly testified. Also appearing but not testifying for the Bureau were Ann Feilmann, Suzanne Secor Parker, and Christine Crow.

Exhibits labeled A – N from the Bureau were admitted into the record. Although all of the Bureau’s exhibits were admitted into the record, those referred to herein are the following:

- A Summary of Prior Review Findings and Serious Deficiencies (“SD”)
- C 2005 SD Letter
- D 2005 Review Letter

- J 2015 Review Letter
- K 2015 Proposal to Terminate Letter

Exhibits labeled 1 - 12 from Bear Basics were admitted into the record. Although all of Bear Basics' exhibits were admitted into the record, those referred to herein are the following:

- 4 2015 Response to Review Findings
- 5 June 2015 Menu Planning Worksheet
- 12 Summary Statement

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

Bear Basics Children's Centers runs three daycare sites in the Des Moines area, and 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.

The centers run by Bear Basics are independent centers. The Appellant has participated in CACFP since at least 1998. (Exhibit A) The responsible principals and individuals at present of Bear Basics are Betty Bolin, Noelle Bolin, and Megan Mohler. (Exhibit K)

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. There are three overarching performance standards under which all terms and conditions fall.

When a center violates a term or condition of CACFP participation, the violation is known as a serious deficiency. With an exception pertinent to this appeal, unless a serious deficiency poses a threat to the health or safety of participating children or the public, a center must be given the opportunity to correct serious deficiencies. 7 CFR § 226.6(c)(3)(i) & (iii). Centers document their remedial actions in a corrective action plan. Failure to take corrective action to fully and permanently correct the serious deficiency/deficiencies within the allowed time period will result in proposed termination. 7 CFR § 226.6(c).

Another exception to offering an opportunity to correct serious deficiencies is if the Bureau initially determines that a center's corrective action is complete, but later determines that the serious deficiencies have recurred. 7 CFR § 226.6(3)(iii)(B)(3).

Multiple violations of repeat serious deficiencies are alleged here. Not all alleged serious deficiencies are addressed in this Decision because the number of serious

deficiencies is irrelevant. A center may be terminated from CACFP for just one serious deficiency that the center has failed to fully and permanently correct. 7 CFR § 226.6(3). **Accordingly, those serious deficiencies not closed out by the Bureau are the only ones that it is necessary to address.** (See Exhibit N)<sup>1</sup>

On June 2, 2005, the Bureau sent a Serious Deficiency Determination to the Center, citing several deficiencies. Those pertinent to this appeal, and the corrective actions required to be done by Bear Basics are as follows:

- **Monitoring Reviews**

Centers that operate more than one site, such as Bear Basics, must review each of their sites to ensure that they are prepared for the mandatory visits by the Bureau. The results of the monitoring reviews are demonstrated by filling out provided forms. Several parts of the forms were incomplete or missing in 2005. All reviews must include meal observations of all meals provided. Not all meals served were accounted for on the review form by Bear Basics. (Heikenen Testimony)

The corrective action required was for Bear Basics to conduct follow up visits at each site, fill in all required information, and describe its plans to ensure future full compliance.

- **Meal Counts**

There was a lack of daily, dated menus for each meal claimed for each infant. Regarding the other children, meal counts were not accurate. The Center would hand count meal totals and then transfer the counts to a computer system, but over one-third of the hand-counted meal totals were not accurate. (Exhibit D)

The corrective action required was the rather obvious step of describing in detail how it will ensure the accuracy of all aspects of claiming meals for reimbursement. Regarding the infants, Bear Basics was to separate out the children according to the site at which they were actually fed, even if they later were moved for non-meal purposes to maintain correct ratios, and to make sure that this procedure is always followed.

- **Training**

There was no documentation that the two primary principals, Betty Bolin and Curt Bolin, had received any recent training. Also, the Bureau's observations led its personnel to conclude that "it appeared that teachers were inadequately trained to properly carry out mealtime responsibilities." (Exhibits C & D)

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<sup>1</sup> Much of the information provided by the Bureau was superfluous. It was confusing and unnecessary to present exhibits and testimony about issues whose findings were "closed." It was necessary only to discuss the three issues listed above as not closed and which were also deficiencies from 2005.

The corrective action required was for Bear Basics to train all personnel with mealtime supervision responsibilities about mealtime expectations, including serving size and meal service requirements; have someone attend an Infant Workshop; train staff with responsibilities related to completing food production records regarding how to plan, prepare and serve enough food and how to complete records correctly; and describe plans to ensure that all key staff receive at least 1.5 hours of CACFP training annually.

(Exhibits A, C & D)

The 2005 Serious Deficiency Determination closes with this notice:

...If we find in any subsequent review that any of these serious deficiencies have not been fully and permanently corrected, we will immediately propose to terminate Bear Basic's agreement and propose to disqualify Curt Bolin, Betty Bolin, Tracy Bolin and/or Sue Doherty without any further opportunity for corrective action.

(Exhibit C)

On October 8, 2015, the Bureau sent a Serious Deficiency Determination to Bear Basics, citing several deficiencies. (Exhibit K) That letter included the following information to the Center:

This letter concerns the CACFP review that was conducted on August 25-27, 2015 **and the prior determination of serious deficiency dated June 2, 2005.** [Emphasis added.]

Based on findings identified during the current review, several serious deficiencies have been repeated. Prior communication from the State agency indicated, "If we find on any subsequent review that the corrective action is not permanent or complete, we may immediately propose to terminate Bear Basic's Childcare agreement and propose to disqualify the [parties] without any further opportunity for corrective action." Therefore, we have determined that Bear Basics Childcare has not fully and permanently corrected the serious deficiencies identified in 2005.

The serious deficiencies cited by the Bureau in 2015 *that were also cited in 2005* and which were not subsequently "closed out" by the Bureau are as follows, along with the Center's response:

- **Monitoring Reviews**

The forms for monitoring reviews continued to be incomplete, and there was no proof that all meals were observed because quantities of food, number and ages of participants was not completed on the review forms. (Exhibit K)

*Appellant's Response:* Bear Basics acknowledged that the forms were not filled out correctly, in large part because Megan Mohler was new to the process. The Center also pointed out that its sites are open from 5:30 a.m. to 10:00 p.m. to accommodate unorthodox schedules of working parents, and thus it provides six meals. Bear Basics alleged that not all meals provided could be listed on the forms. (N. Bolin Testimony) In fact, the forms list all six meals of breakfast, morning snack, lunch, afternoon snack, dinner, and evening snack. (Exhibit 5) Two of the Center's sites are actually in the same building, so Bear Basics uses just one form for its review of two sites. (Exhibit 4)

- **Meal Counts**

During the unannounced visit on July 9 2015, Ms. Heikenen observed the noon meal, and made notes as to the meal counts. When she came back in August, changes had been made by the Appellant to the July 9 meal counts. (Heikenen Testimony)

*Appellant's Response:* Bear Basics acknowledged that the meal count for July 9, 2015 had been changed, but explained that to maintain required adult:child ratios, it moves children between the two sites that share the same building and then adjusts the meal counts later. (N. Bolin Testimony)

- **Training**

There was no proof that new staff had orientation training prior to beginning CACFP duties and no showing that every staff member had received the mandatory 1.5 hours of annual training. (Heikenen Testimony; Exhibit N)

*Appellant's Response:* Bear Basics acknowledged that it did not monitor whether the orientation training took place, but disputed the finding that not all staff had the 1.5 hours of annual training. (N. Bolin Testimony)

## ***CONCLUSIONS OF LAW, ANALYSIS***

### *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 or administrative responsibilities.

Although it was not made clear in the Bureau's presentation of its case, it is assumed that Bear Basics successfully corrected the serious deficiencies cited by the Bureau in its letter of June 2, 2005, 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 2005 serious deficiency determination. It is Bear Basic’s alleged failure to fully and permanently correct those deficiencies (enumerated above) that is the issue.

Bear Basics is reminded that the number of serious deficiencies is not relevant. It just takes one serious deficiency that has not been fully and permanently corrected to result in a termination from the CACFP.

### *Monitoring Reviews*

Bear Basics argument that the form to be used by it to prepare its sites for a CACFP visit does not include all meals is false. The form includes breakfast, morning snack, lunch, afternoon snack, dinner, and evening snack. There is no room for the Center to argue that it bore a burden to reformat the form, and even if it had reformatted the form to show all six meals, the information was still incomplete. Bear Basics acknowledged the incompleteness of the forms, but also attributed this to a new staff member, Ms. Mohler. This excuse highlights the importance of training personnel before they begin their CACFP duties. The Bureau has shown that this serious deficiency was not fully and permanently corrected by the Center.

### *Meal Counts*

This deficiency has not been fully and permanently corrected. It is not enough to state, as Bear Basics did, that it continues to make improvements in this area. This deficiency has recurred several times since 2005. Meal counts done at point of service daily are a key element of ensuring the public that CACFP funds are expended to centers for meals actually served. There is no such assurance in this case; thus, in no way can this serious deficiency be said to be fully and permanently corrected.

### *Training*

Bear Basics cited its high turnover of staff, and the subsequent need to train and retrain staff. (Exhibit 12) The Center also stated that it did not always have the option of hiring “well-suited staff.” (*Id.*) These rationale are rejected. The public has every right to expect that a recipient of public moneys will be accountable to follow the rules of participation. The Bureau makes numerous resources available to participants of CACFP. However, having noted this, the Bureau only showed that there was no proof of orientation training. The Bureau did not show that present staff lacked the required 1.5 hours of annual training. Nevertheless, because part of this serious deficiency was not fully and permanently corrected (the orientation training), the partial failure is enough to terminate Bear Basics from the Program.

## *Disqualifications*

The Bureau's notice to the Center also proposes to disqualify Elizabeth (Betty) Bolin, Noelle Bolin, and Megan Mohler from future CACFP participation. (Exhibit K) 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.*)

There is no question that Betty Bolin, Noelle Bolin, and Megan Mohler are responsible principals. Betty Bolin was a responsible principal in 2005 when the initial serious deficiency determination was issued to Bear Basics by the Bureau. Her name must be added to the National disqualified list maintained by the Food and Nutrition Service (FNS) of the United States Department of Agriculture.

However, the 2005 serious deficiency determination from the Bureau did not propose to disqualify either Noelle Bolin or Megan Mohler from CACFP. (Exhibit C) That letter specifically states, "If we find in any subsequent review that any of these serious deficiencies have not been fully and permanently corrected, we will immediately propose to terminate Bear Basic's agreement and propose to disqualify Curt Bolin, Betty Bolin, Tracy Bolin and/or Sue Doherty without any further opportunity for corrective action." (Exhibit C)

Fundamental fairness dictates that Noelle Bolin and Megan Mohler did not have adequate notice that disqualification of their involvement in CACFP would be sought by the Bureau. If the Bureau desired to disqualify Noelle Bolin and Megan Mohler, it needed to have given them an opportunity to submit corrective action. This was not demonstrated by the Bureau. Accordingly, neither woman is disqualified from involvement in CACFP *for a center other than Bear Basics*.

## *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. Bear Basics has over a decade of involvement with CACFP; there are no excuses for the continuing deficiencies. Between 2006 and 2013, documents show that the Bureau attempted to work with Bear Basics as the Center kept repeating serious deficiencies. It truly would be a breach of the public's trust to allow Bear Basics to continue to participate in CACFP.

The Bureau has shown by a preponderance of the evidence that Bear Basics has failed to permanently and fully correct the serious deficiencies of failure to conduct proper monitoring reviews, failure to perform accurate meal counts, and failure to provide orientation to new staff prior to assuming CACFP duties.

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." Betty Bolin shall remain on the National disqualified list until such time as the Food and Nutritino Service of the U.S. Department of Agriculture, in consultation with the Bureau determines that the serious deficiency(ies) that led to her placement on the list have been corrected, or until seven years have elapsed since she was disqualified from participation.

## ***DECISION***

For the foregoing reasons, the termination of Bear Basics Children's Centers from the Child and Adult Care Food Program is hereby **ordered**.

The disqualification of Elizabeth (Betty) Bolin from the Child and Adult Care Food Program is also hereby **ordered**.

Entered this 7<sup>th</sup> day of December, 2015.



Carol J. Greta  
Administrative Law Judge



It is so ordered.

12/9/2015  
Date

/s/  
Ryan M. Wise, Director  
Iowa Department of Education

cc: Appellant  
Appellee