

IOWA DEPARTMENT OF EDUCATION

27 D.o.E. App. Dec. 688

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*In re Termination from CACFP* :  
Kim Sallee, : 15DOE008  
Appellant, : **DECISION**  
v. :  
Mid-Iowa Community Action, Inc., : [Admin. Doc. 5031]  
Respondent. :

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This matter was heard telephonically on December 14, 2015, before Carol J. Greta, J.D., designated administrative law judge, presiding on behalf of Ryan M. Wise, Director of the Iowa Department of Education. The Respondent, Mid-Iowa Community Action, Inc. (“MICA”), was represented by employee Kristine Polich, who testified. Also appearing from MICA, but not testifying, were Lacey Maxwell and Sunny Thompson. Monitoring the hearing, but not otherwise participating, were Suzanne Secor Parker and Ann Feilmann of the Iowa Department of Education, which is the designated State Agency (SA) to administer the program at issue herein.

The Appellant, Kim Sallee, was provided notice of hearing that informed her that the hearing was to start at 3:00 p.m., but that she would not be considered in default if she called in by 3:10 p.m. Ms. Sallee called in at 3:11 p.m. The representatives from MICA and the SA, along with the undersigned were still on the call.<sup>1</sup> Ms. Sallee was given a synopsis by the undersigned of the testimony of Ms. Polich and was then allowed to testify on her own behalf.

Hearing was held pursuant to this agency’s administrative rules in 281—Iowa Administrative Code (IAC) chapter 6. The Iowa Department of Education has jurisdiction over the hearing pursuant to the federal regulation found at 7 C.F.R. § 226.6(k).

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<sup>1</sup> Because it was not clear from the federal regulations that govern this program whether a default could be taken, the undersigned asked that Ms. Polich testify by summarizing MICA’s exhibits. Thus, all participants were still on the phone beyond the time the notice of hearing indicated that the undersigned would wait for the Appellant to call into the hearing.

## FINDINGS OF FACT

Kim Sallee runs a child daycare home in Nevada. She has participated for the past several years 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. 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. Sallee's must be supervised by a sponsoring organization, in this case MICA. 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. Two of the provisions in that agreement are as follows:

- The sponsor must offer at least seven (7) training sessions on CACFP-related topics each federal fiscal year, "FFY" (October 1 – September 30). [§A, ¶4]
- The home provider shall "[a]nnually attend the number of hours of CACFP related training as approved by the Sponsor. The minimum requirement is 2 hours during the FFY." [§B, ¶15]

(Exhibit A)

MICA fulfilled its obligation to offer seven training sessions during FFY 15. All such opportunities were free to home providers and were offered during the evening hours or as webinars. Two were offered in Ames, just a few miles from Ms. Sallee's residence. (Exhibit B) There was no evidence that Ms. Sallee did not possess a valid driver license and a reliable motor vehicle.

MICA took the following steps to make Ms. Sallee aware of the trainings (all dates occurred in 2015):

- Sent an email on March 27 to Ms. Sallee to remind her of the training obligation and offerings. (Exhibit D)
- Mailed a letter dated July 1 to all home providers, including Ms. Sallee, who had not yet fulfilled their CACFP training for FFY 2015; included in the letter was a list of three upcoming opportunities offered by MICA. This letter also mentioned that the training had be completed by September 30, the end of the FFY. (Exhibit E)
- Personally discussed with Ms. Sallee during the site visit to her home on August 5 that she had not fulfilled her training obligation. (Exhibit C)

- Sent an email on October 15 to Ms. Sallee to encourage her to complete the remaining one hour of training by October 30 so the serious deficiency determination could be rescinded. (Exhibit G)

On October 1, 2015, MICA provided a written Notice of Seriously Deficient Practice to Ms. Sallee. The seriously deficient practice in the Notice to her was Ms. Sallee's alleged failure to complete her mandatory 2 hours of training during the federal fiscal year ending September 30, 2015 [FFY 15]. The Notice also informed Ms. Sallee of the Corrective Action Plan required to demonstrate full and permanent compliance with CACFP rules. She was given 30 days to submit proof of completion of the mandatory training. That is, her original deadline of September 30 was extended to October 30, 2015. (Exhibit F)

Ms. Sallee completed her mandatory training on October 31. (Exhibit H) Thus, on November 2, MICA sent her a Proposed Termination of her daycare's agreement with MICA and Proposed Disqualification of herself from CACFP. (Exhibit J) Ms. Sallee filed a timely appeal.

At hearing, Ms. Sallee did not dispute that she failed to fulfill her obligation to attend 2 hours of CACFP approved training during FFY 15 (originally September 30, but extended to October 30, 2015 by the Corrective Action Plan). She stated, "I take the program very seriously," and offered that she had misread the deadline as October 31.

The only issue on appeal is whether Ms. Sallee failed to fully and permanently correct her serious deficiency within the allotted time of an additional 30 days. As explained below, this agency concludes that Ms. Sallee failed to fully and permanently correct the serious deficiency regarding her annual training obligation.

### **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 CFR § 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 failure to participate in training. 7 CFR § 226.16(l)(2)(viii). Offering an opportunity to take corrective action is mandated in rule 226.16(l)(3). This procedure ensures that no provider is terminated

without being given a second chance.<sup>2</sup> The procedures were followed correctly by the sponsor.

The regulations governing the CACFP are quite strict. While a termination from CACFP may seem harsh to Ms. Sallee, the rationale for the strictness of the regulations is simple. CACFP is funded by public monies; therefore, a home 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. Ultimately, “[e]ach sponsoring organization shall accept final administration and financial responsibility for food service operations in all child ... day care facilities under its jurisdiction.” 7 CFR § 226.16(c). Each sponsor has a duty to hold its home providers accountable on behalf of the public.

Ms. Sallee does not deny that she failed to attend the mandatory 2 hour training during FFY 15. She claims that she takes the program (CACFP) seriously, but that claim is totally lacking in credibility. Ms. Sallee was given multiple reminders of her obligation, along with information about how to fulfill the obligation. Her eleventh hour appearance – without explanation for her tardiness – at this hearing underscores that she does not take the program seriously.

MICA met its obligation under the federal law as a sponsor by offering several free trainings and in giving Ms. Sallee 30 calendar days to make up the training requirement. Ms. Sallee did not meet her obligation.

The evidence presented here amply supports a finding that Ms. Sallee failed to permanently and completely correct the seriously deficient practices of failure to participate in training.

## DECISION

For the foregoing reasons, the proposed termination of Kim Sallee’s CACFP agreement and the proposed disqualification of Kim Sallee from the Child and Adult Care Food Program are hereby **affirmed**. Ms. Sallee’s name shall be placed on the National Disqualified List (NDL). She may seek information from the Bureau of Nutrition and Health Services of the Iowa Department of Education regarding how long her name remains on the NDL.

Dated this 15<sup>th</sup> day of December, 2015.

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<sup>2</sup> There is an exception not at issue here. 7 CFR § 226.16(l)(4) states that a provider must be suspended from the program immediately for an imminent threat to the health or safety of children or others.



Carol J. Greta  
Administrative Law Judge

It is so ordered.

12/15/2015  
Date

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

cc: Appellant  
Respondent