

IOWA DEPARTMENT OF EDUCATION
27 D.o.E. App. Dec. 703

In re Termination from CACFP

Tracey's Tots Daycare & Preschool, Tracey Wilson and Cori Jewett,	:	15DOE009
	:	
Appellants,	:	DECISION
v.	:	
	:	
Iowa Department of Education Bureau of Nutrition and Health Services,	:	
	:	[Admin. Doc. 5032]
Respondent.	:	

STATEMENT OF THE CASE

This matter was heard telephonically on January 7, 2016, 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, Tracey's Tots Daycare & Preschool ("TTDC" or "the Center") appealed on December 1, 2015 from (1) the proposed termination of TTDC's agreement to participate in CACFP, (2) the proposed disqualification of TTDC from future CACFP participation, and (3) the proposed disqualification of individuals Cori Jewett and Tracey Wilson from future CACFP participation.

The Appellant was represented by attorney Becky Knutson, who called TTDC owner Tracey Wilson and employee Cori Jewett to testify on behalf of the Center and themselves. The Respondent was represented by consultant Robin Holz, who testified on behalf of the Bureau. Bureau consultants Jane Heikenen and Jaclyn Yetmar also testified on behalf of the Respondent. Appearing but not testifying for the Bureau were Ann Feilmann, Suzanne Secor Parker, and Dean Flaws.

Exhibits labeled A – T from the Bureau were admitted into the record. Exhibits labeled 1 - 19 from TTDC were admitted into the record. Although all of the parties' exhibits were admitted into the record, the key exhibits referred to herein are the following:

- C Letter regarding targeted desk review from May, June 2015
- D SD Letter of 12/13/2010

E SD Deferral letter of 01/27/2012
I Miscellaneous Documentation from Fort Dodge visit of 11/17/2015
T 11/24/2015 Proposed Termination Letter
3 Excerpt from CACFP manual regarding menu substitutions

FINDINGS OF FACT, CONCLUSIONS OF LAW

General Description of Child and Adult Care Food Program

CACFP provides reimbursement for meals and snacks served to children in daycare homes and centers. 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.

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.

With an additional 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 accepts a center’s corrective action(s) and defers its serious deficiency determination, but later determines that the serious deficiencies have recurred. 7 CFR § 226.6(3)(iii)(B)(3). That is procedurally what occurred here.

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).

Tracey’s Tots Day Care

At the time of this hearing, TTDC ran two daycare sites in West Central Iowa, specifically in Fort Dodge and Carroll, and had participated in the CACFP since July 2006. In 2010, TTDC ran two daycare sites, one in Churdan and one in Fort Dodge. The Churdan site closed several months ago (predating the Proposed Termination Letter, Exhibit T) for reasons unrelated to this appeal. In March 2011, TTDC opened its site in Carroll. (Wilson Testimony) The centers run by TTDC are independent centers. It was not disputed that at all times pertinent to this appeal, the responsible principals and individuals of TTDC have been Tracey Wilson and Cori Jewett.

The Bureau conducted an unannounced review of TTDC’s Fort Dodge and Churdan sites on August 31, 2010, as well as a follow-up review on September 20 – 21, 2010. It issued

a letter of Serious Deficiency Determination to the Center on December 13, 2010. The serious deficiencies listed in the letter and the corrective actions required to be completed by TTDC, were as follows¹:

§ 226.6(c)(3)(ii)(F), Failure to maintain adequate records²:

1. Breakfast was not served on the day of the unannounced review. A few parents had bought some food items for their children. Parents must not be required to provide food at centers participating on CACFP.
2. Breakfasts were claimed for the month of August except for August 31.
3. Meal participation records must be completed at point of service. Refer to the Steps to Success Manual.
4. Daily meal participation records were not available in the class rooms when asked on August 31. A call was received after lunch indicating that the records had been found and copies were available as requested.

Corrective Action for 1, 2[,3] and 4: A corrected August 2010 meal participation claim for the Fort Dodge center must be submitted to remove all meals claimed except for AM snack, lunch and PM snack on August 31. Describe how you will ensure meal participation is recorded at the point of service. Confirm that parents will not be required to bring food. Include a copy of the written center policy regarding food and meal times.

Overall supervision and operation of CACFP (... “any other action affecting the institution’s ability to administer the CACFP”)³:

1. The free and reduced-price eligibility summary list was not used as intended for Churdan center.
2. The FY2010 summary list for the Fort Dodge center was not available. An attendance list of children with their eligibility marked was provided however the list did not include all the children who were enrolled during Fiscal Year (FY) 2010.

Corrective Action for 1 and 2: A summary eligibility list must be maintained for both centers for each fiscal year (October – September). The lists must be

¹ The letter of December 13, 2010 is repeated verbatim for the most part herein. Any formatting errors are the sole responsibility of the undersigned.

² The federal regulation for this serious deficiency is 7 CFR § 226.6(c)(3)(ii)(F).

³ The letter cited 7 CFR § 226.6(c)(3)(ii)(Q), which states, “Failure to perform any of the other financial and administrative responsibilities required by this part.”

updated monthly to demonstrate that the center had at least 25% free and reduced-price and how the percentage of eligible children was determined to document eligibility for CACFP participation.

3. Income applications for the first party of FY 2010 (October 2009 – July 2010) were not in the folder for the Churdan center.
Corrective Action: copies of income applications for the Churdan Center for FY2010 (October 2009 – July 2010) must be submitted. Complete a summary list of eligibility for FY2010 and submit this also.
4. At the Fort Dodge center, social security numbers were missing on ten income applications, thirty three applications were not copied front to back as required and several outdated income application forms were used for FY2010.
Corrective Action: Social security numbers must be obtained for the family member who completed the applications. The information must be sent to the State Agency no later than January 31, 2011. The social security number is required unless the family member completes the application indicating that he/she does not have one. Confirm that applications will be copied front to back and that a current form will be used each new fiscal year.
5. Attendance records were incomplete for August, time in and time out was not consistently completed, or was missing. A second set of attendance records was maintained for DHS (the Department of Human Services).
Corrective Action: Describe the communication with parents/guardians to complete the attendance record when their children arrive and leave to ensure that the attendance record accurately reflects children's attendance.
6. Final menus and food production records must match and reflect actual meal service. The actual number of children (by age) and number of adults served must be recorded for each meal service in the upper right corner of the food production record.
Corrective Action: Submit a copy of the December menus and food production records for both centers to demonstrate that corrective action has been taken. The information must be sent to the State Agency no later than January 31, 2011.
7. All menus (including infant menus) and food production records for both centers must be reviewed to determine if the required components and sufficient amounts of foods were served. If the required components and creditable/reimbursable foods are not served, the meal must not be claimed for CACFP reimbursement. The person responsible for reviewing menus and food production records should initial the records when the task had been completed. Notes must be made on the records when a meal is determined not to be compliant and not claimed for CACFP reimbursement.
Corrective Action: Describe the plan to centralize the collection, review and maintenance of each center's monthly menus (including infant menus) and food production records. The review of the menus and food production records is to ensure that CACFP food components, creditable foods and required amounts of

foods are served. Indicate who will be assigned the responsibility to review required records for compliance with CACFP requirements.

8. Several snacks served in August at the Churdan center were noncompliant: August 6 AM snack, August 11 PM snack, August 20 AM snack, August 31 PM snack.

Corrective Action: A revised August 2010 meal participation claim must be submitted to remove the identified non-compliant snacks.

9. Monitoring reviews for FY2009 and FY2010 were not on file as required for center sponsor organizations.

Corrective Action: Complete one monitoring review for each center and send copies of monitoring reviews to the State Agency no later than January 31, 2011. Use the monitoring review form in Appendix B of the Steps to Success Manual that includes the 5-day reconciliation. Describe how you will ensure three monitoring reviews are completed for each center for each fiscal year (October – September).

10. Documentation of CACFP-related training for staff members who have CACFP responsibilities was not on file for FY2009 and FY2010. All staff members who have CACFP responsibilities must receive 1.5 hours of training each fiscal year (October – September). Refer to the CACFP Steps to Success Manual Chapter 7 for the annual training requirement and the required documentation that must be maintained.

Corrective Action: Send documentation of the CACFP training completed by staff to fulfill the FY2009 and FY2010 training requirements (3 hours total per staff person). Documentation includes: sign in attendance, date, beginning and ending times, topic and outline of the CACFP related training. The training must include civil rights training. Please note that this CACFP training will not count toward meeting the FY2011 CACFP training requirement. Include a list of staff members and their job titles for each center.

Corrective Action: Describe the plan to meet the CACFP staff training requirement during the new fiscal year (October 1, 2010 – September 30, 2011) for all staff responsible for CACFP tasks.

Corrective Action: Describe the plan to track all CACFP staff training and documentation to ensure that the CACFP training requirement is met for the Tracey's Tots each fiscal year. There is a form in Chapter 7 to assist with tracking training.

11. A written procedure for reviewing monthly center meal participation records for the potential of block claims was not on file or followed.

Corrective action: Send the written procedure that will be used every month to review center meal participation records for block claims based on the requirements described in Appendix B of the CACFP Steps to Success Manual.

(Exhibit D)

On January 27, 2012, the Bureau sent a written notice to TTDC to state that the Serious Deficiency Determination was being temporarily deferred because TTDC “has corrected the serious deficiencies that were cited in the Serious Deficiency Notice [of December 13, 2010].” (Exhibit E) The January 27 letter acknowledged timely receipt of required corrective action, and stated that follow-up visits on August 30, 2011 (unannounced) and November 9, 2011 (apparently scheduled) confirmed that the serious deficiencies had been corrected. The January 27 letter included the following information to the Center:

...[I]f we find in any subsequent review that any of these corrective actions are not permanent or complete, we may immediately propose to terminate Tracey’s Tots Daycare’s agreement and propose to disqualify Tracey’s Tots Daycare, Tracey Wilson, Owner, and Cori Jewett, former Director without any further opportunity for corrective action.

(Exhibit E)

After the Bureau sent its temporary deferral notice of January 27, 2012 to TTDC, it issued a review letter dated August 18, 2015 to TTDC regarding a review in the previous May and June. The letter identified “concerns” and required two discrete items of corrective action, (1) specified online training and (2) submission of September menus to reflect that staff understood the online training regarding menu planning and recordkeeping. (Exhibit C) The corrective action was taken by the Center and accepted by the Bureau. (Holz Testimony) This midyear review was not the impetus for the November 24, 2015 Proposed Termination and Disqualification.

The Bureau conceded that it was an anonymous parent complaint received by someone within the Bureau in June 2015 that triggered the scrutiny of TTDC that led to the November 24, 2015 Proposed Termination and Disqualification letter. (Holz Testimony) Even so, in an email dated October 16, 2015 sent to a person or persons unknown and provided by the Bureau to TTDC’s attorney, Ms. Holz opined that “it seems like they [TTDC] need some intensive TA [technical assistance], but not sufficient for SD [serious deficiency].” (*Id.*) In order to “know exactly what they needed,” the Bureau conducted two unannounced visits on November 17, 2015; Ms. Holz and Jaclyn Yetmar visited the Fort Dodge site and Jane Heikenen and Dean Flaws visited the Carroll site of TTDC. (*Id.*)

At the Carroll site, Ms. Heikenen described insufficient amounts of milk being “poured”⁴, as well as one child asking for more milk and being refused. One-half of a hot dog was being served to one-year-olds, which was an insufficient amount according to CACFP guidelines.⁵ (Heikenen Testimony) Ms. Jewett was at the Carroll site that

⁴ Children age two years and younger are to get at least ½ cup of milk; children ages three-four years are to get at least ¾ cup of milk.

⁵ One ounce of hot dog is required to be served to one-year-olds; the amount served was ¾ ounce.

day, and explained that she had grabbed the wrong measuring cup for the milk and that the brand of hot dogs being served was not the same as the center usually uses, so she did not notice the discrepancy in the serving size, but rectified the situation as soon as it was pointed out to her. (Jewett Testimony) The meal production records were not immediately available to Bureau staff at the Carroll site because the center was training a new person who had not placed the records in their customary spot. (*Id.*)

Ms. Yetmar observed at the Fort Dodge site that the menu she looked at did not reflect the foods being served, that the quantities of milk being served were insufficient, and that cereal being mixed into the infants' meals was not recorded. (Exhibit I; Yetmar Testimony) TTDC uses an eight week cycle of menus from the CACFP manual. (Wilson Testimony) Substitutions are allowed as long as the final menu submitted to the Bureau reflects what was actually served. (Exhibit 3)

As a result of the unannounced November 17 visits, the Bureau did not offer technical assistance, intensive or otherwise. Rather, on November 24, 2015, the Bureau sent a notice of proposed termination of the Center's CACFP agreement and proposed disqualification of TTDC, Tracey Wilson, and Cori Jewett from future CACFP participation, effective December 16, 2015, without opportunity for corrective action. The notice of November 24, 2015, was based on the following alleged repeated serious deficiencies.

Categorized as failure to maintain adequate records pursuant to 7 CFR § 226.6(c)(3)(ii)(F) were the following:

1. Failure to include fresh food items purchased for the Churdan site, as shown by receipts, on the May menu for that site.
2. Failure to submit receipts that matched the menus at the Carroll and Fort Dodge sites, stated in the November 24, 2015 notice as "Receipts submitted did not always match the Carroll and Fort Dodge menus."
3. Purchasing perishable items for the Churdan site in Emmetsburg.
4. Not segregating non-CACFP items from CACFP items on receipts in violation of Bureau Memo 2012-1.
5. Failure to maintain menus that matched "what was served the day of the Fort Dodge review [November 17, 2015]."
6. Error of the Carroll menu of November 17, 2015 to report that oyster crackers were served when the same were not on hand. Error of the Fort Dodge menu for November 17 and the rest of the week to report that yogurt, grapes, string cheese, celery, English muffins, tuna and baked beans were or were to be served when the same were not on hand.

7. Failure of Carroll site to have infant menus for November 17. (The letter states that staff explained that parents were providing all of the food for their infants, but that infant meals were claimed in October.)
8. Failure of Carroll site to have infant menus and meal count sheets available the day of the November 17 review, and failure of meals claimed to match the menus recorded.
9. Failure of Fort Dodge site to provide required infant cereal and at least one type of formula.
10. Failure to accurately claim infant meals at Fort Dodge site for October by claiming infants over 3 months of age whose parents provided all meal components.
11. Failure of both sites to have infant enrollment forms available during visits of November 17.
12. Failure to have complete infant enrollment forms as evidenced by failure of all but one form to indicate the infant formula used by the Center, precluding parents from making an informed decision about whether to use the Center's formula or provide their own.
13. Failure to have food production records available for inspection on November 17 for the current or prior week at the Carroll site.
14. Failure to record meals at the point of service at the Carroll site on November 16 and 17.
15. Failure to report expenses as required for October and November 2014 and for July – October 2015.
16. Making a net profit in federal fiscal year 2015 (October 1, 2014 – September 30, 2015), although TTDC is a non-profit food service.

Categorized under failure to perform any of the other financial and administrative responsibilities required by this part pursuant to section 226.6(c)(3)(ii)(Q) were the following:

1. (a – c) Failure to follow infant feeding requirements, demonstrated by the older infant menus missing required components during the site review and desk audits and by failure to ensure that infant meals had met requirements before being claimed.
2. Failure to comply with meal pattern requirements, as follows:

- a. Breakfast served at the Fort Dodge site on November 17 was missing the fruit/vegetable component.
 - b. The morning snack served at the Fort Dodge site on November 17 had only one of the two required components.
 - c. An insufficient amount of milk was served at the Fort Dodge site in the one year old and 3-4 year old classrooms and at the Carroll site in the 3-4 year old classroom. Also, records showed that not enough milk had been purchased to comply with meal pattern requirements.
 - d. The amount of hot dog served to one year olds at the Carroll site on November 17 was insufficient.
 - e. "Insufficient food was on hand in Carroll, but they stated they were going to the store immediately."
 - f. "...[At the Fort Dodge site] There was no milk available after lunch in the refrigerators for the next day. When the consultant visited again on 11/18, six gallons of milk had been purchased."
 - g. Because they lacked enriched flour, several boxes of muffin mix at one of the sites would not be creditable if used.
3. (a & b) Failure to ensure that staff met training requirements because staff "did not appear to understand CACFP requirements."

(Exhibit T)

Because ultimately the Bureau chose to take advantage of the CACFP regulation that allows a State Agency to temporarily defer its serious deficiency determination, only those serious deficiencies cited by the Bureau in December 2010 may form the basis of its November 24, 2015 Proposed Termination and Disqualification.

As noted earlier, all of the above serious deficiencies were characterized by the Bureau as *repeated* serious deficiencies from the December 13, 2010 Serious Deficiency Determination made by the Bureau. In actuality, the undersigned find and conclude that the alleged serious deficiencies listed above in the termination notice of November 24, 2015 that were *not* noted in December 2010 are the following:

3. Purchasing perishable items for the Churdan site in Emmetsburg.
4. Not segregating non-CACFP items from CACFP items on receipts in violation of Bureau Memo 2012-1.
10. Failure to accurately claim infant meals at Fort Dodge site for October by claiming infants over 3 months of age whose parents provided all meal components.
12. Failure to have complete infant enrollment forms as evidenced by failure of all but one form to indicate the infant formula used by the Center, precluding parents from making an informed decision about whether to use the Center's formula or provide their own.

15. Failure to report expenses as required for October and November 2014 and for July – October 2015.
16. Making a net profit in federal fiscal year 2015 (October 1, 2014 – September 30, 2015), although TTDC is a non-profit food service.

Thus, the above six items are not discussed further in this Decision.

ANALYSIS

The only standard of proof enunciated in the regulations is that a suspension review decision requires the State agency to show by a preponderance of the evidence that its action was appropriate. 7 CFR s 226.6(c)(3)(E)(5)(ii)(D). This action was not a suspension review decision. However, in the absence of the articulation of any other standard of proof, it is assumed that the Bureau must show by a preponderance of the evidence that its Proposed Termination and Disqualification are correct.

The undersigned could find no caselaw to illuminate when a State Agency may use the procedure under 7 CFR § 226.6(c)(6)(ii)(d) that permits the Bureau to temporarily defer a determination of serious deficiency and later move immediately to terminate and disqualify a center without further opportunity to implement corrective action. However, basic tenants of due process dictate that this procedure must be limited to circumstances where a center was given clear notice of what serious deficiencies occurred originally, clear notice of how to correct the deficiencies, and clear notice of what deficiencies have been determined by the State Agency to not have been fully and permanently corrected after all.

The review by the undersigned of the actions taken by the Bureau was greatly hampered by the fact that the Bureau made little discernable attempt in its Termination letter of November 24, 2015 to relate the repeated serious deficiencies cited with the earlier corrective action that the Bureau claims was not fully and permanently corrected. At hearing, the Bureau relied on the broad categories of insufficient recordkeeping and – even broader – “other financial and administrative responsibilities required.”

The “kitchen sink” approach taken by the Bureau in its Termination letter of November 24, 2015 also hurt the credibility of the Bureau’s argument in this appeal. A very generous reading of the Termination letter shows that it included items (3, 4, 10, 12, 15, and 16) that bore no relation at all to the initial Serious Deficiency Determination in December 2010. The Termination letter also included items only very tenuously related to true serious deficiencies. These include the following:

- Noting that “insufficient food was on hand in Carroll, but they stated they were going to the store immediately.”
- Noting that the “amount of food on hand appeared to be adequate in Fort Dodge except Milk. There was no milk available after lunch in the refrigerators for the

next day. When the consultant visited again on 11/18, six gallons of milk had been purchased.”

- Noting that “several boxes of muffin mix in the cupboard were not creditable (made with unenriched flour).”
- Requiring training because staff did not appear to understand CACFP requirements.

The first three items bulleted above are observations, but are not completed thoughts linked to any serious deficiencies. Due process requires that a CACFP provider not have to guess at what is being required of it. Regarding the fourth bullet point, the only CACFP requirement regarding training is that key staff must attend training and a center must demonstrate that such staff members have attended training. 7 CFR § 226.17(b)(10). If staff members do not understand the material, it is not a serious deficiency under the category of training. Lack of understanding may result in other serious deficiencies, but lack of understanding is not a training serious deficiency.

An immediate termination is a drastic action. It calls for the State Agency to use care in making the connection between the previous serious deficiencies and the allegation that one or more of the previously accepted corrective actions have been deemed not to be full or permanent because of one or more repeated serious deficiencies. The repeated serious deficiency must truly reflect a systemic issue.

What remains here is to determine whether any of the remaining alleged repeated serious deficiencies may form the basis for immediate termination and disqualification. That is, has the Bureau shown that any of the corrective actions it accepted in its deferral letter of January 27, 2012 were not permanent or complete? (Exhibit E)

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). There are three serious deficiencies regarding which the Bureau has made an argument that bears exploring as to whether any of those three serious deficiencies have not been permanently and completely corrected. Those three serious deficiencies are as follows:

- Final menus and food production records must match and reflect actual meal service (item #6 from letter of December 13, 2010).
- All menus (including infant menus) and food production records for both centers must be reviewed to determine if the required components and sufficient amounts of foods were served (item #7 from letter of December 13, 2010).
- Not recording meal participation at the point of service (item #3 from the Serious Deficiency Determination letter of December 13, 2010).

Final Menus and Food Production Records must Match and Reflect Actual Meal Service

In the Serious Deficiency Determination of December 13, 2010, it was noted that final menus and food production records must match and reflect actual meal service. The required corrective action was to “[s]ubmit a copy of the December menus and food production records for both centers to demonstrate that corrective action has been taken.”

When a corrective action plan is limited to remediation and does not include any requirement to demonstrate going forward how a center will ensure that the issue does not recur, it cannot form the basis for a finding that the serious deficiency has not been permanently and fully corrected. TTDC timely submitted its December menus; they were accepted by the Bureau. No other corrective action was required regarding this serious deficiency.

Furthermore, there was contradictory testimony about whether the menu looked at by Bureau staff on November 17, 2015 was in fact the final menu submitted for claim by TTDC. The proof offered by the Bureau fell short of proving by a preponderance of the evidence that the Center committed this serious deficiency; thus, there was no proof that this was a repeated serious deficiency.

Required Meal Components and Quantities must Comply with CACFP Regulations; Recording Meal Participation at Point of Service

In the Serious Deficiency Determination of December 13, 2010, the required corrective action plan for these serious deficiencies included submission of plans for going forward. The Bureau’s evidence at hearing showed that on November 17, 2015, breakfast and morning snack at the Fort Dodge site were missing components to be creditable, and that quantities of milk and hot dog served in certain classrooms at Carroll were insufficient. On November 17 when there continued to be no recorded meals for one of the Carroll classrooms for November 16, the Bureau showed that on November 16 there had been no recording of meal participation for that classroom (3 – 5 year olds) at the Carroll site at the point of service. Meal production records at the Carroll site were not immediately available to Bureau staff on November 17, and a Fort Dodge employee was not recording cereal on CACFP records on that date.

The question remains whether these observations were proof of isolated serious deficiencies or systemic problems that continued to be uncorrected.

The Bureau did not prove that what it observed on November 17 was indicative of systemic issues that had recurred several times. To the contrary, the midyear review in 2015 did not raise any of the issues listed in the November 24, 2015 Termination and Disqualification Notice. From December 13, 2010 to November 24, 2015, there was no indication that the corrective actions taken following the December 2010 Serious Deficiency Determination were not full and permanent.

It appeared from the testimony that the Bureau's original plan was to visit the two TTDC sites for the purpose of identifying specific areas in which to offer technical assistance. Whatever persuaded the Bureau to instead go forward with termination, that decision was not bolstered by a preponderance of the evidence presented at hearing.

This is not to say that there were no serious deficiencies on November 17, 2015. TTDC did not comply, on November 17, 2015, with CACFP regulations regarding meal components and quantities. The Center had not recorded meal participation on November 16, 2015 at the Carroll site for the 3 – 5 year olds. These are serious deficiencies, but TTDC must be given an opportunity to correct them because there was no proof that these deficiencies were systemic and had not been fully and permanently corrected.

The Bureau's notice to the Center also proposed to disqualify Tracey Wilson and Cori Jewett from future CACFP participation as "principals." (Exhibit T) 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 Tracey Wilson and Cori Jewett are responsible principals, and they did not argue to the contrary. They were responsible principals in 2010 when the initial serious deficiency determination was issued to TTDC by the Bureau. However, for the same reasons that TTDC cannot be terminated from the CACFP and cannot be disqualified from future CACFP participation at this time, neither Ms. Wilson nor Ms. Jewett may be added to the National disqualified list maintained by the Food and Nutrition Service (FNS) of the United States Department of Agriculture.

DECISION

For the foregoing reasons, the proposed termination of Tracey's Tots Day Care from the Child and Adult Care Food Program is hereby **reversed**. The proposed disqualifications of Tracey's Tots Day Care, Tracey Wilson and Cori Jewett from the Child and Adult Care Food Program are also hereby **reversed**.

Entered this 28th day of January, 2016.



Carol J. Greta
Administrative Law Judge

It is so ordered.

1/28/2016
Date

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

cc: Becky Knudson, Attorney for Appellant

Iowa Department of Education Bureau of Health and Nutrition Services