

**IOWA DEPARTMENT
OF EDUCATION**
(Cite as 24 D.o.E. App. Dec. 249)

<i>In re Termination from CACFP</i>	:	
Nina Dammad,	:	
Appellant,	:	DECISION
vs.	:	
Community Action of Eastern Iowa,	:	[Admin. Doc. 4649]
Appellee.	:	

This matter was heard telephonically on April 2, 2007, before Carol J. Greta, J.D., designated administrative law judge, presiding on behalf of Judy A. Jeffrey, Director of the Iowa Department of Education. The Appellant, Nina Dammad, personally participated. The Appellee, Community Action of Eastern Iowa, was represented by employee Andy Brown. Monitoring the hearing, but not otherwise participating, were Suzanne Secor Parker and Robin Searles of the Iowa Department of Education, which is the designated State Agency (SA) to administer the program at issue herein.

Hearing was held pursuant to this agency's administrative rules in 281 Iowa Administrative Code 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).

**I.
FINDINGS OF FACT**

Nina Dammad runs a child daycare home in Davenport. She has participated 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, since August 29, 2005. 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. Dammad's must be supervised by a sponsoring organization, in this case Community Action of Eastern Iowa ["Community Action"], which was known as Iowa East Central T.R.A.I.N. at the time it became the sponsor of Ms. Dammad's daycare home. 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. Some of the applicable provisions in the agreement between Ms. Dammad and Community Action are as follows:

- The sponsor must conduct at least two unannounced visits to the home per federal fiscal year (October 1 – September 30), and that

at least one of the unannounced visits must include a review of an observed meal service. [§A, ¶3d]

- The sponsor shall follow the required procedures for corrective action, serious deficiency, and suspension if the provider fails to comply with CACFP requirements. [§A, ¶17] The listed requirements include failure to keep required records. [¶17(v)]
- The home provider shall collect enrollment forms, completed by the parent/guardian and including each child's normal days and hours of care and meals normally received while in care, for all infants and children in the provider's care. [§B, ¶4]
- The home provider shall maintain daily attendance by child's name, date and arrival-departure time. [§B, ¶5b]
- The home provider shall maintain daily meal participation by date, by meal type, and by child's name. [§B, ¶5c]

Community Action suspected in late 2006 that Ms. Dammad was not complying with program requirements to maintain daily attendance records with arrival-departure times by child because its review of Ms. Dammad's November records disclosed no departure times. At an unannounced on-site meal review conducted by Community Action employee Tammy Loos over the lunch period on January 10, 2007, children listed on Ms. Dammad's records as attending for lunch were not present for lunch on that date. A reasonable person could find from this occurrence that Ms. Dammad was not keeping her records on a daily basis, as required by federal regulations at 7 C.F.R. § 226.18(e).

At a subsequent unannounced visit on February 9, 2007, Ms. Dammad would not allow Mr. Brown into her home, stating that she was providing no care that day due to illness. Mr. Brown observed one child inside the Dammad house at this time (Ms. Dammad has no children of her own for whom she provides daycare), and witnessed a parent drop off her child while he stood outside the house talking to Ms. Dammad.

Ms. Dammad does not deny any of the foregoing facts, which form a reasonable basis for the Notice of Seriously Deficient Practice.

On or about February 13, 2007, Community Action provided a written Notice of Seriously Deficient Practice to Ms. Dammad. The alleged seriously deficient practices in the Notice to her were failure to maintain adequate records and failure to daily record required records. The Notice also informed Ms. Dammad of the Corrective Action Plan (CAP) required to demonstrate full and permanent compliance with CACFP rules. A Notice of Intent to Terminate is not issued until the sponsor is satisfied that a home provider continues to violate CACFP rules after being advised (via the Notice of Seriously Deficient Practice) that the provider needs to change how she conducts her daycare. This procedure ensures that no provider is terminated without being given a second chance.¹

¹ There is an exception not at issue here. 7 C.F.R. section 226.16(1)(4) states that a provider must be suspended from the program immediately (with appeal rights) for an imminent threat to the health or safety of children in the provider's setting

The Corrective Action Plan presented to Ms. Dammad stated that the CAP for the seriously deficient practice of failure to comply with recordkeeping requirements is as follows (verbatim):

Provider will: Have new enrollments completed by the parent and submitted to the office by 2/28/07. Submit menus weekly by Tuesday of the following week. Keep sign in sheet for parents to show arrival and departure times of children, which will be submitted weekly with the menus.

CACFP will: Complete an unannounced visit to ensure compliance to record keeping actions described above and reconcile enrollments and attendance for submitted menus. Review situation within 60 days and take appropriate action.

Ms. Dammad signed the acknowledgement of the CAP on February 27, although she does not dispute that she was provided with the Notice of Seriously Deficient Practice on February 13. For purposes of this Decision, we assume that Ms. Dammad had notice on the earlier date, February 13, 2007.

Mr. Brown testified herein that Ms. Dammad did have new enrollments submitted to his office in a timely manner. However, he expressed doubts that the forms were filled in by the parents or – in two cases – were signed by a parent. Ms. Dammad stated that the forms were properly signed either by a parent or by a person authorized to sign for the parent, but she admits that she filled in most of the information. Her rationale for doing so was that she feared not getting the enrollment forms back from the parents in time if she relied on the parents to complete them.

(There was also a great deal of testimony about Ms. Dammad's care for children who are either breastfed or whose parent supplies all of her infant's foods. Because these concerns were not addressed in the Notice of Seriously Deficient Practice, the CAP, or the Notice of Termination from the Program, SA staff shall assist Community Action in addressing these concerns with Ms. Dammad.)

The Notice of Proposed Termination dated March 1, 2007 from Community Action to Ms. Dammad states in part as follows:

We received the documentation you sent us detailing the actions that you have taken to correct these deficiencies on March 1, 2007, before the correction action deadline.

Based on our review of the menus and documentation you have submitted since that date, we have determined that you have not fully and permanently corrected the serious deficiencies that were cited in the Serious Deficiency Notice

As explained below, there was insufficient evidence presented at hearing for this agency to conclude that Ms. Dammad failed to fully and permanently correct the serious deficiency regarding her recordkeeping.

II. 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 failure to comply with recordkeeping requirements. 7 C.F.R. § 226.16(l)(2)(v). The regulations also mandate the procedure to be used if the sponsor determines that a home provider has committed one or more serious deficiencies. Offering an opportunity to take corrective action (via a CAP) is mandated in rule 226.16(l)(3).

The procedures were followed correctly by the sponsor up to the point where the sponsor, Community Action, provided Ms. Dammad with her CAP. The proposed termination fails for the following reasons:

First, the CAP states what steps Community Action will take to ensure that Ms. Dammad has permanently and completely corrected her seriously deficient practices. Community Action unambiguously stated in writing to Ms. Dammad that it would undertake another unannounced visit to ensure that she was keeping records on a daily basis, and that it would also undertake a review within 60 days of 2/13/07. Rather than do what it said it would do, Community Action jumped ahead and proposed to terminate Ms. Dammad's CACFP participation before it did anything. Because the CAP is a contractual agreement, the fact that Community Action committed to performing certain affirmative actions gives Ms. Dammad the right to rely on that commitment. Community Action cannot move to terminate Ms. Dammad until it has performed another unannounced visit and a review.²

The failure by Community Action to do what it said it would do in the CAP is enough by itself to reverse the proposed termination action. However, because we seek to educate all sponsors and providers who participate in the CACFP, we explain in detail the other reason why the proposed termination fails.

The evidence presented here simply does not support a finding that Ms. Dammad has failed to permanently and completely correct the seriously deficient practices of failure to maintain adequate records and failure to daily record required records.³ It is important for both parties to note that we do not affirmatively find that Ms. Dammad corrected her recordkeeping deficiencies. This Decision states only that the evidence is lacking that she did not permanently and completely correct such deficiencies.

² The pertinent regulation states that the time allotted in the CAP to correct the serious deficiency is not to exceed 30 days. Whether a sponsor could go beyond 30 days for any actions to which the sponsor commits is unknown, but that issue is not before us.

³ However, we wonder why the Notice of Seriously Deficient Practice did not cite submission of false claims as the serious deficiency, especially inasmuch as the bulk of Community Action's evidence was directed at trying to show that Ms. Dammad was submitting false claims. For instance, because the unannounced visit of January 10 really raised questions about the validity of claims for reimbursement filed by Ms. Dammad, the Notice of Seriously Deficient Practice could have listed submitting false claims and the CAP could focus narrowly on that deficiency. Also, the questions Community Action raised at hearing about whether one child even existed are not relevant to the recordkeeping claim as much as they would be regarding an allegation of false claims.

It may be that Ms. Dammad is not in compliance with all of the requirements rightfully imposed upon her. Inasmuch as failure to maintain adequate records and failure to daily record required records are the claims relied upon by Community Action, the CAP steps may have appropriately addressed these types of deficiencies. However, the *evidence at hearing* did not focus on Ms. Dammad's alleged failure to record attendance on a daily basis.


Regarding the serious deficiency of failure to daily record required records, no evidence about those daily records was presented at hearing. We are left to speculate why Community Action wrote in the Notice of Proposed Termination that its review of the "menus and documentation you have submitted since that date [of the CAP]," caused Community Action to determine "that you have not fully and permanently corrected the serious deficiencies that were cited in the Serious Deficiency Notice." Statements from parents regarding how daily sign in/sign out sheets were maintained may be helpful, but there was no evidence directed at her continuing failure to daily record required records.

We cannot conclude that Ms. Dammad failed to permanently and completely correct the alleged recordkeeping deficiency without making several assumptions. Fundamental fairness demands that we not base this Decision on assumptions. We must resolve our doubt in Ms. Dammad's favor.

III. DECISION

For the foregoing reasons, the proposed termination of Nina Dammad from the Child and Adult Care Food Program is hereby **reversed**.


4-24-07
Date



Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

4-25-07
Date



Judy A. Jeffrey, Director
Iowa Department of Education