

**IOWA DEPARTMENT  
OF EDUCATION**  
(Cite as 24 D.o.E. App. Dec. 115)

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<i>In re Termination from CACFP</i>	:	
Charlene DeZwarte,	:	
Appellant,	:	DECISION
vs	:	
Southern Iowa Economic Development Association,	:	[Admin. Doc. 4637]
Appellee	:	

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This matter was heard telephonically on September 8, 2006, 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, Charlene DeZwarte, personally was present. The Appellee, Southern Iowa Economic Development Association, was represented by employee Alice Beeson. 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**

Charlene DeZwarte runs a child daycare home in Knoxville. 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, for one year. 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. DeZwarte's must be supervised by a sponsoring organization, in this case the Southern Iowa Economic Development Association ["SIEDA"]. To participate in CACFP in Iowa, the home provider must sign an annual agreement that provides for the terms and conditions of program participation. The agreement between Ms. DeZwarte and SIEDA was signed by Ms. DeZwarte on September 15, 2005 (Exhibit 2). Some of the applicable provisions in the agreement 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 submission of false claims for reimbursement. [¶17(ii)]
- 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]

At issue in this appeal is the Notice of Intent to Terminate that SIEDA sent to Ms DeZwarte on or about August 7, 2006 (Exhibit 30). The reason provided in the Notice was submission of false claims for reimbursement.

SIEDA correctly followed the procedures required before a home provider may be terminated from CACFP participation. The sponsor provided a written Notice of Seriously Deficient Practice to Ms. DeZwarte to make her aware of the alleged seriously deficient practices on June 1, 2006 (Exhibit 20). The Notice also informed Ms DeZwarte of the Corrective Action Plan required to demonstrate full and permanent compliance with CACFP rules (Exhibit 19). 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.<sup>1</sup>

The details of the allegation of submitting false claims on the Notice of Seriously Deficient Practice (Exhibit 20) are as follows (verbatim):

1. Claiming Maggie and Emily M.<sup>2</sup> after parent said they were not [sic] longer in your care. Their last day according to parent was 4/06/06.
2. Parent of Dayanareh and Alex G says children were in your care from 12 noon to 2 p.m. on Tuesdays and 9 a.m. – 3 p.m. M & W until 2/23/06 and from 7 a.m. to 1:30 on M & W and 5:30 – 2:15 T, Th or F but you claimed both every day 5 or 5:30 to 3 or 3:30 after 2/23/06

The parties agree that the parent of Maggie and Emily M. was in error in reporting that her children were not in the care of Ms DeZwarte after April 6, 2006. That leaves the only valid reason listed on the Notice of Seriously Deficient Practice the false claim involving Dayanareh and Alex G.

On June 28, 2006, SIEDA conducted a home inspection of Ms. DeZwarte's daycare. The inspector for SIEDA, Jennie Nord, listed the children present at the time of inspection. When cross-referencing Ms Nord's list with Ms DeZwarte's claim for that date in June, SIEDA noted that Ms DeZwarte claimed to have provided Maggie and Emily M. with meals on June 28 at a time when neither child was present at her daycare.

Accordingly, by document dated August 7, 2006, SIEDA gave Ms. DeZwarte Notice of Proposed Termination and Disqualification from participation in CACFP for her failure to permanently and fully correct the seriously deficient practice of making false claims. Her timely appeal to this agency followed.

## 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.

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<sup>1</sup> There is an exception not at issue here. 7 C.F.R. section 226.16(l)(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.

<sup>2</sup> The full name was provided in Exhibit 20; for purposes of this Decision it is neither necessary nor desirable that we use full names of non-parties.

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 submission of false claims for reimbursement. 7 C.F.R. § 226.16(l)(2). 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 is mandated in rule 226.16(l)(3). The procedures were followed correctly by the sponsor.<sup>3</sup> The only issue here is whether Ms. DeZwarte continued to file a false claim after receiving her warning not to do so.

The regulations state "[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 C.F.R. § 226.16(c). A home provider is required to be fiscally accountable to the public for the funds she receives through the program. The sponsor is to hold the home provider accountable on behalf of the public.

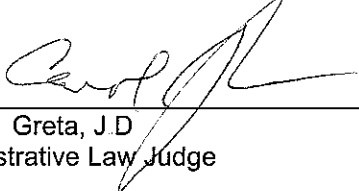
While this result may seem harsh to Ms. DeZwarte, the rationale for the strictness of the regulations is simple. CACFP is funded by public monies; that is, by taxpayers. A home provider is required to be fiscally accountable to the public for the funds s/he receives through the program. When such accountability is lacking, the public trust is gone, and the sponsor is required to take appropriate action.

Ms. DeZwarte does not deny that she submitted false claims regarding Maggie and Emily M.'s presence on June 28. However, she states that the false claims were "human error" and an "accident." She also complains that SIEDA was "nit picking" whenever representatives thereof asked her questions about her claims. We do not doubt that human error (hers) was involved, but her error constitutes the type of carelessness and callous disregard on her part for the public's money that the CACFP rules and regulations are meant to prevent. The only means of safeguarding misuse of the public's money is for a sponsor to "nit pick." SIEDA is to be thanked and not condemned for its scrutiny.

### III. DECISION

For the reason that Ms. DeZwarte failed to fully and permanently correct the serious deficiency of submitting false claims, her proposed termination from the Child and Adult Care Food Program is hereby **affirmed**.

9/29/06  
Date

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

It is so ordered.

9/29/06  
Date

  
\_\_\_\_\_  
Judy A. Jeffrey, Director  
Iowa Department of Education

<sup>3</sup> It is not true, as asserted by Ms. DeZwarte, that the erroneous inclusion of Maggie and Emily M. in Exhibit 20, the Notice of Seriously Deficient Practice invalidated the entire Notice. SIEDA was acting in good faith upon information from Maggie and Emily's parent; whether the Notice would be invalidated if that had been the sole reason listed in the Notice is an issue we need not decide here. The purpose of the Notice is to alert a provider that s/he is headed down a path that, if not fully and permanently corrected, will result in termination from the Program. That purpose was satisfied here.