

**IOWA DEPARTMENT OF EDUCATION**

(Cite as 29 D.o.E. App. Dec. 148)

<i>In re: Termination from CACFP</i>	)	
	)	
LAURA MCDOWELL	)	DE Admin Doc. 5107
	)	DIA No. 19DOE0009
	)	
Appellants,	)	
	)	
v.	)	
	)	
IOWA DEPARTMENT OF EDUCATION	)	
BUREAU OF NUTRITION AND HEALTH	)	
SERVICES.	)	
	)	
Appellee.	)	<b>DECISION</b>

Appellant, Laura McDowell (McDowell), filed an appeal from a determination that she is a responsible party for serious deficiencies found at Raisin' Em Up Learning Center (Raisin' Em Up) due to an imminent threat to health or safety of participants and the proposed termination of her ability to participate in the Child and Adult Care Food Program (CACFP). A telephone hearing in this matter was held on August 21, 2019 before Administrative Law Judge Rachel Morgan, designated hearing officer for Ryan M. Wise, Director of the Iowa Department of Education. Appellant McDowell appeared but did not testify. Sarah Tweedy (Tweedy), owner of Raisin' Em Up, testified on behalf of McDowell. Appellee Iowa Department of Education (Department) was represented by Nicole Proesch. Robin Holz (Holz) of the Department of Education testified on the Department's behalf. The Department submitted Exhibits 1-2, 4-6, which were admitted into the record. McDowell submitted one exhibit which was also admitted into the record. The matter is now fully submitted.

**FINDINGS OF FACT**

McDowell was an on-site supervisor for Raisin' Em Up Learning Center (Raisin' Em Up). Raisin' Em Up participates in the Child and Adult Care Food Program (CACFP). CACFP is a federal program that provides reimbursement for meals and snacks provided by providers to children in daycare homes and centers. The program is administered by the United States Department of Agriculture (USDA) through the Department's Bureau of Nutrition and Health Services.

On June 21, 2019, the Department of Human Services (DHS) notified the Department that it was recommending that the daycare license of Raisin' Em Up be revoked. The reasons for the revocation were included in a Child Care Center Evaluation and Recommendation for License Report (the Report) and include the following:

- Training: McDowell completed online training for Tweedy, the director of Raisin' Em Up. The training relates to the health, safety, social and emotional needs of children. (Ex. 2 at 4).
- Child/Supervisor Ratio: Raisin' Em Up operated in a pattern of disregard for child/supervisor ratios. Staff members were told to send young children into older children rooms and lie about the children's ages so that Raisin' Em Up would appear to be in compliance with the child/supervisor ratio.
- Transportation: Raisin' Em Up transported children at numbers higher than allowed without an extra adult. A child was forgotten on the bus and two children have been left on the bus unattended.
- Medication: On at least two occasions, the center did not utilize medication administration log and children were given double doses of medicine. Staff also did not respond appropriately when the incidents occurred.
- Careful Supervision: McDowell fell asleep while providing childcare, children have left rooms unattended, and staff performed training while supervising children.

(Ex. 2; Holz testimony).

On June 25, 2019, the Department sent a serious deficiency notice to Tweedy and Raisin' Em Up (the Notice). The Notice states that based on the Report which cites "violations in the areas of training, ratio, transportation, curriculum, medication administration, supervision, and capacity," the Department determined that Raisin' Em Up is "seriously deficient in its operation of the CACFP." Both Tweedy and McDowell are listed as responsible individuals for the serious deficiencies. The Notice states that if State or local health or licensing officials have cited an institution for serious health or safety violations, or if there is an imminent threat to health or safety of participants, the Department "must immediately suspend the institution's [CACFP] participation." The Notice indicated that the Department is immediately suspending Raisin' Em Up's CACFP participation pursuant to 7 CFR 226.6(c)(5)(ii)(D) and proposed to terminate Raisin' Em Up's agreement to participate in the CACFP for cause and disqualify Tweedy and McDowell from future CACFP participation. (Ex. 5).

McDowell timely appealed the Department's decision. At the hearing, McDowell argued that she was merely an employee and not responsible for Raisin' Em Up's licensing violations and therefore should not be disqualified from CACFP participation. In response, the Department states that McDowell, as an on-site supervisor, bore responsibility for Raisin' Em Up's violations and McDowell also directly participated in the licensing violations that led to the CACFP program termination.

### CONCLUSIONS OF LAW

CACFP is established by the Agricultural Risk Protection Act, 42 U.S.C. § 1766. The program is intended to provide aid to child and adult participants and family or group daycare centers for provision of nutritious foods that contribute to the wellness, healthy growth, and development of young children and the health and wellness of older adults.<sup>1</sup>

<sup>1</sup> 42 U.S.C. § 1766(a)(1)(A)(ii); 7 C.F.R. § 226.1.

Program funding is made available to the Department by applying a formula that relies in part on data collected regarding the number of breakfasts, lunches, dinners, and snacks provided to children in daycare centers.<sup>2</sup>

The Department is required to terminate the agreement of a daycare center if it determines the daycare center has committed a serious deficiency as outlined in the regulations.<sup>3</sup> Serious deficiencies include when a state agency determines that there are “serious health or safety violations” or there is an “imminent threat to the health or safety of participants at an institution.”<sup>4</sup> If there is a serious violation due to a state agency finding serious health or safety violations or an imminent threat to health and safety, the Department must immediately suspend the institution’s participation in CACFP.<sup>5</sup>

Persons who are responsible for CACFP violations may be held accountable for such violations and disqualified from CACFP participation. CACFP regulations require that “responsible principals,” or persons by virtue of their management position bear responsibility for the daycare center’s serious deficiencies and “responsible individuals” or persons who have been directly involved in CACFP violations, be determined seriously deficient along with the daycare center.<sup>6</sup> A national disqualified list is maintained by the USDA of institutions and individuals disqualified from participation in the program.<sup>7</sup>

In this case, the Department argued that there were five violations where McDowell was a “responsible principal” or “responsible individual” because she was directly involved in the serious health and safety violations by Raisin’ Em Up. Each violation will be discussed individually below:

- Ratio Noncompliance / Over Capacity Noncompliance: DHS concluded in its Report that Raisin’ Em Up was not in compliance with DHS’ supervisor/child ratio and was often over capacity. The undersigned finds that McDowell was directly involved in the ratio and over capacity noncompliance violations.

McDowell was the on-site supervisor for Raisin’ Em Up. Tweedy testified that as the on-site supervisor, McDowell was the “go-to” person at the center and other employees were to report concerns and issues to McDowell. (Tweedy testimony). Staff members told DHS that if their rooms were over capacity or they were over the ratio limit, they would let McDowell know of the situation. Text messages between Tweedy and McDowell demonstrate that McDowell was aware of the ratio/capacity issues, suggested solutions for such issues, and was directly involved in the ratio issues facing Raisin’ Em Up. (Ex. 2 at 5-7).

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<sup>2</sup> See 7 C.F.R. § 226.4(e).

<sup>3</sup> 7 C.F.R. § 226.6(c).

<sup>4</sup> 7 C.F.R. § 226.6(c)(5)(i).

<sup>5</sup> *Id.*

<sup>6</sup> 7 C.F.R. § 226.6(c)(2).

<sup>7</sup> 7 C.F.R. § 226.2.

Further, in its Report, DHS indicated concern about “staff and administration” “lying about the age of children so that they did not appear to be violating ratio.” (Ex. 2 at 7). Many of the suggestions offered by McDowell to address the ratio issues involved deceit. For example, McDowell texted Tweedy “K just showed up so we will need 2 in babyroom . . . technically we are over but if we claim R and G three we are good will boot M and J in babyroom.” “E here 8-14-17 technically we can only have 10 with kids out but can lie and make 12, but not 13 ;)” “Okay . . . if Jill [with DHS] comes I am calling B 18 months?” (Ex. 2 at 5-7). Although Tweedy testified that McDowell never lied to DHS regarding the ratios, McDowell sent at least four texts to Tweedy regarding four different situations wherein she offered to lie and deceive DHS regarding the center’s ratio numbers. (Tweedy testimony; Ex. 2 at 5-7).

McDowell argues that the above texts should be disregarded because she never lied to DHS and such texts are merely “thoughts.” However, the text messages demonstrate that McDowell did have authority to make changes to room assignments for children, made room changes on at least one occasion, and the room changes involved pretending that the children were a different age. In fact, consistent with McDowell’s text messages, staff at Raisin’ Em Up indicated that they were directed to send children under 2 years old into another room and pretend they were two years old. (Ex. 2 at 6).

In addition, McDowell failed to turn parents away when the infant room was over ratio limits. Tweedy testified that when parents dropped their children off at Raisin Em Up, they would take their children directly to the children’s teachers. Tweedy also testified that every employee had authority to turn parents and children away if the room was over the ratio limit or over capacity. McDowell was a teacher in the infant room. The Report quotes three staff members of Raisin’ Em Up that report that the infant room was consistently over the supervisor/child ratio. McDowell, as a teacher in the infant room, had the authority to turn parents away when the ratio limit had been reached, but failed to do so. (Ex. 2; Tweedy testimony).

Accordingly, the record in this case supports a finding that McDowell was directly involved in the health and safety violation involving improper ratios and over capacity noncompliance.

- **Careful Supervision:** The Report noted several instances where children were not provided with careful supervision. McDowell was directly involved in two instances. First, McDowell twice fell asleep while supervising children. In addition, McDowell was handling paperwork and a child left the room. (Ex. 2 at 11). McDowell does not dispute that these incidents occurred, but argues that they do not constitute a serious violations because they are merely “human” mistakes and should not require her to be disqualified from participating in the CACFP program. The fact that McDowell fell asleep while supervising children shows she was directly involved in the careful supervision violation.
- **Training:** DHS concluded that McDowell completed mandatory training for Tweedy. DHS found that the failure to complete training limits the ability of staff to provide adequate care or respond to situations appropriately. The Report quoted a statement from McDowell to Tweedy where McDowell stated she would “try and get [Tweedy’s]

Essentials [i.e., training] done” and on another occasion requested Tweedy’s password for the training programs. McDowell argues that the training violation is not related to health and safety and therefore cannot constitute a reason to disqualify her from CACFP.

The undersigned finds that training does relate to health and safety violations and that McDowell was directly involved in the violation. The training that McDowell took for Tweedy related to the health, safety, social and emotional needs of children. Consequently, the training relates to health and safety issues. The emails and messages between McDowell and Tweedy indicate that McDowell was heavily involved in Tweedy’s completion of her required training. McDowell requests Tweedy’s password and specifically states that she will “get [Tweedy’s training] done.” (Ex. 2 at 3-4). Although Tweedy testified that she completed her training on her own, the undersigned does not find such testimony credible as Tweedy admitted that McDowell would help her scroll through the training and write answers for her. (Tweedy testimony). In addition, staff members reported that McDowell completed training for Tweedy. (Ex. 2 at 4). This evidence supports a finding that McDowell was directly involved in the health and safety violation regarding the failure to complete proper training.

- Transportation and Medication: The Department argued that McDowell was responsible for violations regarding transportation supervision and medication violations. In regards to transportation, there is not enough evidence to find that McDowell was directly involved in the center transporting too many children or leaving children unsupervised on the bus. Further, the record is not clear regarding McDowell’s management or supervisor role as it relates to transportation issues. In regards to medication, the medical violations occurred after McDowell had left her position at Raisin’ Em Up. Therefore, the undersigned cannot find McDowell was directly involved in the transportation or medication violations.

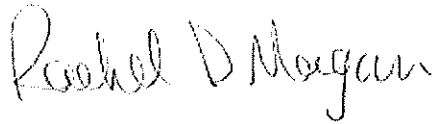
Here, the Department proposed to terminate and disqualify Raisin’ Em Up from participation in CACFP due to several violations regarding the health and safety of children at the center. The Department proposed to list McDowell on the national disqualified list due to her direct participation in the health and safety violations and/or management position at Raisin’ Em Up. The record reflects that McDowell did have direct involvement in several of the health and safety violations, including ratio/over capacity noncompliance, careful supervision, and training violations. Accordingly, McDowell must be included on the national disqualified list pursuant to this decision.

### **ORDER**

Laura McDowell was a responsible individual, was directly involved in CACFP violations, and shall be placed on the national disqualified list.

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Dated this 23rd day of August, 2019.



Rachel D. Morgan  
Administrative Law Judge

It is so ordered.

8-23-19  
Date

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

cc: Laura McDowell  
Suzanne Secor Parker, DOE  
Nicole Proesch, DOE