

2013

**Illinois State Board of Education  
Nutrition Programs**

**Child and Adult Care Food Program  
Family Day Care Homes**

***Serious Deficiency Process***

*Corrective Action  
Suspension of Participation  
Termination of Agreement for Cause  
Placement on National Disqualified List  
Administrative Review (Appeal) Procedures for Family Day Care Homes*



**CACFP**

*Building for  
the Future*

**4-C: Community Coordinated Child Care**

## Introduction

In order to participate in the Child and Adult Care Food Program (CACFP), a day care home must operate under the auspices of and enter into a written agreement with an approved sponsoring organization. The agreement must specify the rights and responsibilities of both parties which include, but are not limited to, the right of the sponsoring organization to terminate the agreement for cause and the requirement that the day care home comply with the federal regulations governing the program.

Public Law 106-224, the Agricultural Risk Protection Act of 2000 (ARPA), made significant changes to the procedures involved in terminating participation of day care homes (providers) in CACFP. For the first time, it gives providers the opportunity to request an Administrative Review (also referred to as an appeal) prior to termination of their agreement to participate by the sponsoring organization. This Administrative Review right is only required when the termination is *for cause*. Termination for convenience continues to be permitted, and does not require the sponsoring organization to offer an appeal to the provider in these situations.

Sponsoring organizations are required to conduct an administrative review process. The Illinois State Board of Education (ISBE) does not offer a state-level administrative review process. Each sponsoring organization will follow the same review process in which the appeal review official is an impartial and independent person not involved in the decision to terminate the home's participation.

Sponsoring organizations must follow the procedures for termination including the corrective action process, the Serious Deficiency Process, suspension of participation, and provider appeal rights outlined in this document.

## Serious Deficiency Process

If a sponsor identifies conduct that is the basis for declaring a provider seriously deficient in CACFP operation, which may result in termination for cause of an agreement to operate a CACFP home (as outlined on the previous page), the following actions will be taken. If however, the serious deficiency(ies) constitutes an imminent threat to the health and safety of participants, or the provider has engaged in activities that threaten the public's health or safety, the sponsor must follow the procedures outlined in *Suspension of Participation for Day Care Homes* section.

### Serious Deficiency Notification Procedures

1. The sponsor will thoroughly investigate and document the serious deficiency(ies). This process may include, but is not limited to, household contact for the verification of enrollment and attendance information.
2. The sponsor will notify the provider, in writing, that he/she has been found to be seriously deficient.

The notice will include:

- Serious deficiency(ies)
  - Actions to be taken by the provider to correct the deficiency(ies)
  - Allotted time to correct the serious deficiency(ies) (This must be as soon as possible, but must not exceed 30 days.)
  - Notification that the serious deficiency determination is not subject to administrative review (appeal)
  - Notification that failure to fully and permanently correct the serious deficiency(ies) within the allotted timeframe will result in the sponsor's proposed termination of the provider's agreement and disqualification of the provider
  - Notification that the provider's voluntary termination of its agreement with the sponsor after having been notified that he/she is seriously deficient will still result in the provider's formal termination by the sponsor and placement on the National Disqualified List
3. The sponsor will provide technical assistance as appropriate in the areas identified as serious deficiency(ies).

### Successful Corrective Action

If the provider corrects the serious deficiency(ies) to the sponsor's satisfaction within the allotted timeframe, the sponsor will notify the provider that the determination of serious deficiency has been rescinded.

### Unsuccessful Corrective Action—Proposed Termination and Proposed Disqualification

If the provider fails to implement timely corrective action to fully and permanently correct the serious deficiency(ies) cited, the sponsor will issue a notice proposing to terminate the provider's agreement for cause.

The notice will:

- Provide explanation of the provider's opportunity for an Administrative Review (Appeal) of the proposed termination and the procedures to follow to request such appeal.

- Inform the provider he/she may continue to participate and receive program reimbursement for eligible meals served until the appeal concludes.
- Inform the provider termination of the agreement will result in the day care home's termination for cause and disqualification.
- State that if the provider seeks to voluntarily terminate the agreement with the sponsor after receiving the Notice of Proposed Termination, the home will still be placed on the National Disqualified List.

If an Administrative Review (Appeal) is requested, the sponsor will follow ISBE's Administrative Review (Appeal) procedures for family day care homes. If the Administrative Review (Appeal) Official overturns the sponsor's proposed actions, formal notification will be used to rescind the serious deficiency.

### **Agreement Termination and Disqualification**

The sponsor will immediately terminate the day care home's agreement and disqualify the provider when the Administrative Review (Appeal) Official upholds the sponsor's proposed termination and proposed disqualification. At the same time, the Notice of Termination and Disqualification is issued to the provider.

If the provider does not request an Administrative Review, the sponsor will immediately terminate the provider's agreement and disqualify the home when the opportunity to request the Administrative Review (Appeal) expires. At the same time, the Notice of Termination and Disqualification is issued to the provider.

The state agency will report the name of the terminated and disqualified provider to the federal government placing his/her name on the National Disqualified List.

### **Program Payments During Serious Deficiency Process**

The sponsor will continue to pay any valid Claims for Reimbursement for eligible meals served until the serious deficiency(ies) is corrected or the day care home's agreement is terminated, including the period of any Administrative Review (Appeal).

## **Corrective Action Procedures**

It is the responsibility of the sponsoring organization to provide sufficient training and technical assistance during the pre-approval and 30-day follow-up visits to assure successful participation for all providers. Technical assistance must be provided and documented during the early stages of program participation.

Corrective action procedures may take into consideration the following **special, extenuating circumstances**: new participants on the program, language barriers, literacy barriers, or other documented special circumstances. These circumstances may require extra technical assistance. Once a problem is identified, extra technical assistance must be provided and documented. Technical assistance may continue as long as providers are showing improvement. Documentation must indicate when the provider has completed corrective action or, if no improvement is made, the provider must be declared seriously deficient.

If during a review the sponsor monitor identifies that corrective action is required, a corrective action statement must be written on the review form and the provider must sign the review to show he/she agrees to the corrective action. If the sponsor through office review of provider documents identifies the provider needs a Corrective Action Plan, the sponsor must notify the provider, in writing, that he/she has some deficiencies in the operation of CACFP.

The Administrative Review (Appeal) Procedures can be found at the end of this document. The deficiencies listed under each regulation are common examples. **This should not be interpreted as an exhaustive list.** Other actions could also be considered deficiencies.

## **Suspension of Participation for Day Care Homes**

Suspension of provider's participation in CACFP will occur if the serious deficiency(ies) constitutes an imminent threat to the health and safety of participants, or the provider has engaged in activities that threaten the public's health or safety. Imminent threats to health or safety constitute serious deficiencies; however, the sponsor will use the procedures in this section to provide notice of suspension and proposed termination to the provider.

If the state or local health or licensing officials have cited a provider for serious health or safety violations, the sponsor will immediately suspend the provider's CACFP participation prior to any formal action by the Department of Children and Family Services to revoke the home's license.

If the sponsor determines there is an imminent threat to the health or safety of participants at the day care home, or the provider has engaged in activities that threaten the public's health or safety, the sponsor must immediately notify the Department of Children and Family Services and take action consistent with their recommendations and requirements.

### **Notice of Suspension, Serious Deficiency, and Proposed Termination Procedures**

The sponsor will notify the provider his/her participation has been suspended, that the provider has been determined seriously deficient, and that the sponsor proposes to terminate the provider's agreement for cause.

The notice will:

- Specify the serious deficiency(ies) found and the provider's opportunity for an Administrative Review (Appeal) of the proposed termination, and the procedures to follow to request such appeal.
- State participation (including all program payments) will remain suspended until the Administrative Review (Appeal) concludes.
- Inform the provider if the Administrative Review (Appeal) Official overturns the suspension, the provider may claim reimbursement for eligible meals served during the suspension.
- Inform the provider termination of the home's agreement will result in placement of the home on the National Disqualified List.
- State that if the provider seeks to voluntarily terminate the agreement after receiving the Notice of Proposed Termination, the home will still be terminated for cause and placed on the National Disqualified List.

If an Administrative Review (Appeal) is requested, the sponsor will follow the Administrative Review (Appeal) Procedures for Family Day Care Homes detailed in this document. If the Administrative Review (Appeal) Official overturns the sponsor's proposed actions, formal notification will be used to rescind the serious deficiency.

## Termination of Agreement for Cause

A sponsoring organization (hereafter *sponsor*) must initiate action to terminate the agreement of a day care home (hereafter *provider*) for cause in the operation of the Child and Adult Care Food Program (hereafter *CACFP*) if the sponsor determines the provider has committed one or more serious deficiency(ies) listed below. Upon making a serious deficiency determination, if the provider does not take action to fully and permanently correct the serious deficiency within the allotted time, the provider's agreement must be terminated.

### List of Serious Deficiencies

1. Submission of false information on the application (Sponsor-Provider Agreement) (7 CFR 226.16[1][2][i])
2. Submission of false claims for reimbursement (7 CFR 226.16[1][2][ii])
3. Simultaneous participation under more than one sponsoring organization (7 CFR 226.16[1][2][iii])
4. Noncompliance with the program meal pattern (7 CFR 226.16[1][2][iv])
5. Failure to keep required records (7 CFR 226.16[1][2][v])
6. Conduct or conditions that threaten the health or safety of a child(ren) in care, or the public's health or safety (7 CFR 226.16[1][2][vi])
7. A determination that the provider has been convicted of any activity that occurred during the past seven years and indicated a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the state agency, or the concealment of such a conviction.
8. Failure to participate in training (7 CFR 226.16[1][2][viii])
9. Any other circumstance related to nonperformance under the Sponsor-Provider Agreement as specified by the sponsor or the state agency. This may include, but not be limited to, continuous submission of late and/or incomplete Claims for Reimbursement, failure to comply with civil rights laws, and failure to attend required training. (7 CFR 226.16[1][2][ix])

### **Agreement Termination and Disqualification**

The sponsor will immediately terminate the day care home's agreement and disqualify the home when the Administrative Review (Appeal) Official upholds the sponsor's Proposed Termination and Proposed Disqualification and issues the Notice of Termination and Disqualification to the home.

If the provider does not request an Administrative Review (Appeal), the sponsor will immediately terminate the provider's agreement and disqualify the home when the opportunity to request the Administrative Review (Appeal) expires. At the same time, the Notice of Termination and Disqualification is issued to the home.

The state agency will report the name of the terminated and disqualified provider to the federal government placing his/her name on the National Disqualified List.

### **Program Payments During Suspension**

A sponsor is prohibited from making program payments to a provider who has been suspended until an Administrative Review (appeal) of the proposed termination is completed. If the suspended provider prevails in the appeal, the sponsor will reimburse him/her for eligible meals served during the suspension period.



## **Placement on the National Disqualified List and Conditions of Reinstatement**

Providers terminated and disqualified through the *Serious Deficiency* and *Suspension of Participation* processes, will be placed on the National Disqualified List. While on the list, the provider will not be able to participate in CACFP as a day care home provider. In addition, he/she will not be able to serve as a principal (hold a management position or be an officer) in any CACFP institution or facility.

The provider will remain on the list until such time as ISBE determines that:

1. The conduct that was the basis for the serious deficiencies has been permanently corrected.  
or
2. It has been seven (7) years from the date of termination and disqualification.  
and
3. The provider has repaid all funds received for which he/she was not eligible. If any debt relating to the serious deficiencies has not been repaid, the provider will remain on the list until the debt has been repaid.

The state agency and sponsor will be able to access the data base to ensure providers terminated from the program are not approved for participation in CACFP. Sponsors are prohibited from entering into an agreement with any provider who has been terminated and disqualified and is currently on the National Disqualified List.

## **Administrative Review (Appeal) Procedures**

The state agency requires each sponsoring organization establish an administrative review (appeal) process in which the Administrative Review (Appeal) Official is an impartial and independent person not involved in the decision to terminate the provider's participation.

### **Actions Subject to Administrative Reviews (Appeals)**

The following appeal procedures established in accordance with Sections 226.6, 226.16, and 226.18 of the Child and Adult Care Food Program regulations, as amended by Public Law 106-224, shall be implemented and will be offered by the sponsor to any provider when the sponsor (1) proposes to terminate its program agreement for cause or (2) suspends their participation.

### **Actions NOT Subject to Administrative Reviews (Appeals)**

Neither the state agency nor the sponsor is required to offer an Administrative Review (Appeal) for reasons other than those listed above.

### **Providing the Administrative Review (Appeal) Procedure to Providers**

The sponsor will provide a copy of the Administrative Review (Appeal) procedures to each provider:

- Annually
- When the sponsor takes any action subject to an Administrative Review (Appeal) as detailed above
- Any time upon request

### **Procedures**

The sponsor will follow the *Administrative Review (Appeal) Procedures for Family Day Care Homes*. These procedures are found at the end of the document.

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## **New Administrative Review (Appeal) Process (Updated October 2009)**

The state agency requires each sponsoring organization establish an Administrative Review (Appeal) process in which the Administrative Review (Appeal) Official is an impartial and independent person not involved in the decision to terminate the provider's participation.

### **Actions Subject to Administrative Reviews (Appeals)**

The following appeal procedures established in accordance with 7 CFR Parts 226.6, 226.16, and 226.18 of the Child and Adult Care Food Program regulations, as amended by Public Law 106-224, shall be implemented and will be offered by the Illinois State Board of Education Nutrition Programs Division through an independent contractor to any provider when the sponsor (1) proposes to terminate its program agreement for cause or (2) suspends their participation.

### **Actions NOT Subject to Administrative Reviews (Appeals)**

Neither the state agency nor the sponsor is required to offer an Administrative Review (Appeal) for reasons other than those listed above.

### **Providing the Administrative Review (Appeal) Procedure to Providers**

The sponsor will provide a copy of the Administrative Review (Appeal) procedures to each provider:

- Annually
- When the sponsor takes any action subject to an Administrative Review (Appeal) as detailed above
- Any time on request

All family day care home providers given a Notice of Intent to Terminate for Cause have the right to appeal (request an Administrative Review). An appeal is a process by which an impartial Administrative Review (Appeal) Official reviews information provided by the sponsoring organization and the family day care home provider to determine if procedures were followed and within the federal and state laws, regulations, and policies and procedures governing the Child and Adult Care Food Program (CACFP).

### **Purpose**

The appeal procedure allows day care home providers participating in the CACFP an avenue of appeal. A provider may appeal (request an Administrative Review) when the family day care home sponsoring organization (SO):

1. Proposes termination of the provider's program participation.
2. Suspends the provider's agreement for program participation.

## Procedures

A flow chart is provided as shown in Attachment 1116A delineating the following procedures.

### Procedures for Administrative Review

#### A. Notification:

1. The Sponsoring Organization (SO) will send the Provider the Notice of Proposed Termination and Proposed Disqualification (Notice) by certified mail with return receipts, or email or facsimile with delivery confirmation receipts. The delivery confirmation or return receipt of the Notice should be maintained in file.
2. The Notice will inform the Provider, in writing, of: (1) the actions and the grounds on which the decision to propose to terminate and disqualify the Provider was based; and (2) his/her right to appeal.

#### B. Appeal Request

1. The SO must receive the written appeal request from the Provider no later than seven (7) calendar days from the date the Provider received the Notice. The Provider can send the appeal request by regular mail, certified mail, email, or facsimile.
2. The SO will acknowledge receipt of the appeal request to the Provider within three (3) calendar days from receipt of the appeal request and submit copies to ISBE and the Administrative Review Official (ARO). The acknowledgement letter must indicate the date that the appeal request was received. The letter must also include the name and address of the ARO. The acknowledgement letter must be sent by certified mail with a return receipt, or email or facsimile with delivery confirmation.
3. The SO will make copies of the appeal request and attach these to the acknowledgement letter that will be sent to ISBE and the ARO.
4. The SO will ensure that a copy of the Proposed Termination and Disqualification is sent to the ARO including any direct attachments to the issues, and any list of supporting documentation with page counts no later than three (3) calendar days after receipt of the appeal request—*electronically, if possible*. No additional documentation will be accepted by the ARO after the due date.
5. The provider may refute the charges by showing that the information the sponsor has is incorrect. The Provider may submit supporting documentation directly to the ARO. The documentation must be received by the ARO within seven (7) calendar days that he/she received the acknowledgement letter from the SO. No additional documentation will be accepted after the due date. If the ARO needs additional documentation or clarification, the ARO will contact the Provider.
6. Upon receipt of the acknowledgement letter from the SO, ISBE will send an email to the ARO which will include the contact information for the Provider and the SO. The email will also include the due date of the appeal decision.

7. If the due date falls on a weekend or a holiday, the next business day will be the due date.

### C. Appeal Process

1. The ARO will make a decision based solely on information provided by the SO, the Provider, and on program regulations, federal and state laws, and procedures governing the CACFP.
2. Each SO will have designated and alternate contact persons for any questions the ARO may have.
3. The ARO will issue a written final decision to the Provider, the SO's executive director, and ISBE within thirty five (35) calendar days from the time the SO received the appeal request from the Provider.
4. If the due date falls on a weekend or a holiday, the next business day will be the due date.
5. The provider may continue to operate during an appeal of proposed termination unless there is evidence of eminent threat or danger to the health or welfare of the children.
6. Providers continuing to operate while appealing the proposed termination will be reimbursed for any eligible meals served during the period of the appeal.
7. During the period of the review by the ARO, the SO will not take action to collect or offset any overpayment noted in the termination letter.
8. After the final decision has been issued, the ARO will send all documents used in issuing the decision (Appeal Record) to the SO. The ARO will also send notification to ISBE that the Appeal Record has been sent.
9. The decision by the ARO is the final administrative decision. There is no further opportunity to appeal to the Illinois State Board of Education.
10. If the provider loses the appeal, the termination date of the agreement is the date of the hearing official's decision.
11. The provider will be placed on the National Disqualified List for a period of seven (7) years, unless the provider owes money. In this case, the provider will remain on the list indefinitely or until CACFP funds have been repaid.

### D. Appeal Procedure—Notice of Suspension

When a family day care home sponsoring organization suspends the participation of a provider for imminent threat to the safety or health of children, the provider must be notified both verbally and in writing that its participation has been suspended, that the day care home is seriously deficient, and that the sponsoring organization proposes to terminate the provider's agreement for cause. The written notification must be sent by certified mail via the United States Postal Service.

1. The notice must specify the serious deficiency(ies) found and of the provider's opportunity for an appeal of the proposed termination.
2. The written notice must inform the provider that participation, including all payments, will remain suspended until the appeal is conducted.
3. The written notice must inform the provider that if the ARO overturns the suspension, the provider may claim reimbursement for eligible meals served during the suspension.
4. The written notice must inform the provider that termination of the agreement will result in being listed on the National Disqualified List. The provider will remain on this list for a period of seven (7) years unless the provider owes money, in which case the provider will remain on the list indefinitely or until CACFP funds have been repaid.
5. State that if the provider seeks to voluntarily terminate its agreement after receiving the Notice of Proposed Termination, the provider will still be terminated for cause and placed on the National Disqualified List.
6. The same appeal procedures apply to those Providers who are issued a Notice of Suspension due to health and safety issues (7 CFR 226.16[[2][vi]]).

_____ Provider's Name (print)	_____ Provider's Signature	_____ Date
_____ Sponsor's Name (print)	_____ Sponsor's Signature	_____ Date