

SERIOUSLY DEFICIENT PROCEDURES

**PROPOSED TERMINATION AND
DISQUALIFICATION
APPEAL PROCEDURES
SUSPENSION/TERMINATION**

SPONSORING ORGANIZATION PROVISIONS

Excerpts from 7 CFR 226.16

- (1) **Termination of agreements for cause.** (1) **General.** The sponsoring organization must initiate action to terminate the agreement of a day care home for cause if the sponsoring organization determines the day care home has committed one or more serious deficiencies listed in paragraph (1)(2) of this section.

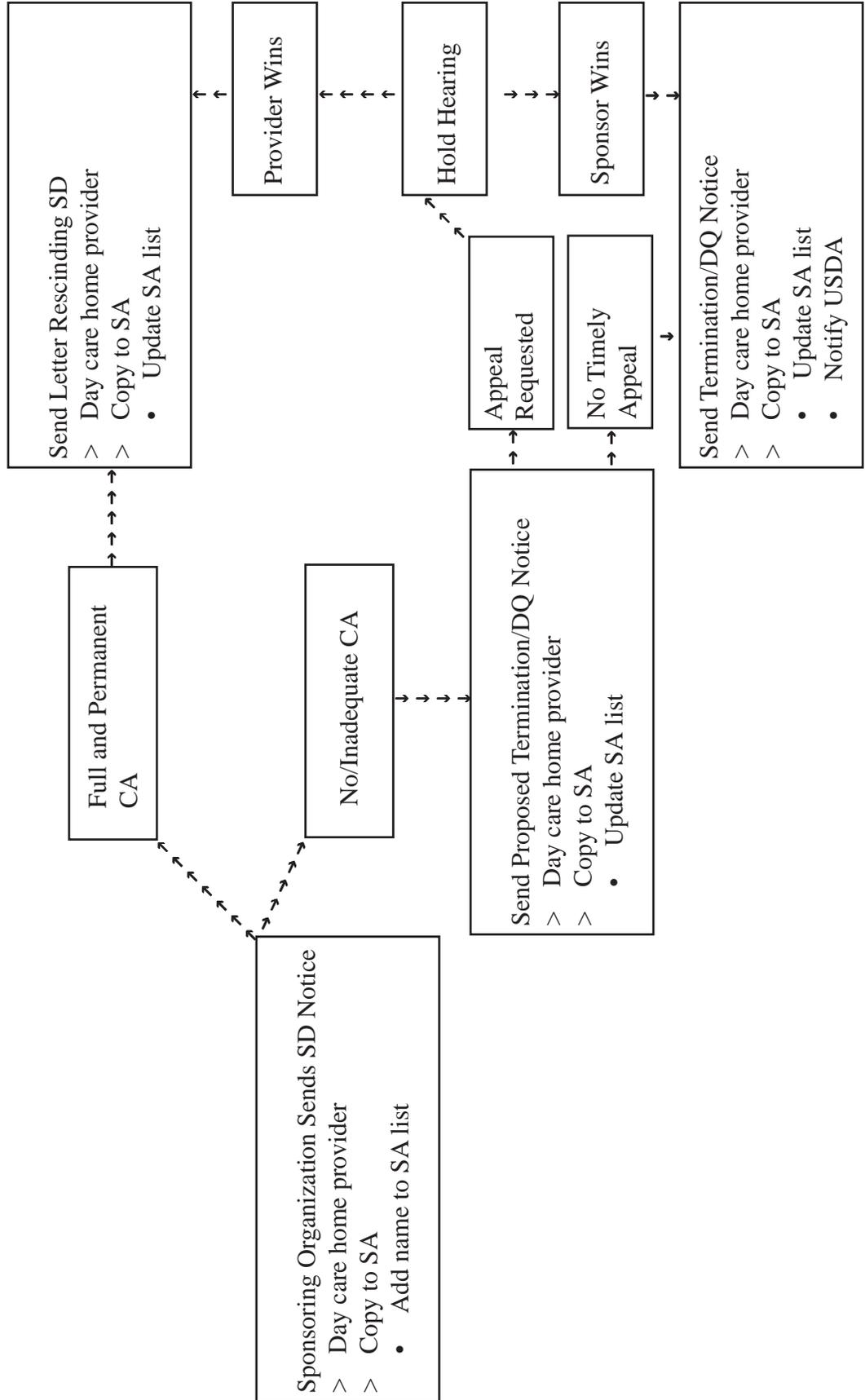
- (2) **List of serious deficiencies for day care homes.** Serious deficiencies for day care homes are:
 - (i) Submission of false information on the application;
 - (ii) Submission of false claims for reimbursement;
 - (iii) Simultaneous participation under more than one sponsoring organization;
 - (iv) Noncompliance with the Program meal pattern;
 - (v) Failure to keep required records;
 - (vi) Conduct or conditions that threaten the health or safety of children in care, or the public health or safety;
 - (vii) A determination that the day care home has been convicted of any activity that occurred during the past seven years and that 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;
 - (viii) Failure to participate in training; or
 - (ix) Any other circumstances related to nonperformance under the sponsoring organization-day care home agreement, as specified by the sponsoring organization or the State Agency.

- (3) **Serious deficiency notification procedures.** If the sponsoring organization determines that a day care home has committed one or more serious deficiencies listed in paragraph (1)(2) of this section, the sponsoring organization must use the following procedures to provide the day care home notice of the serious deficiency and offer it an opportunity to take corrective action. However, if the serious deficiency constitutes an imminent threat to the health or safety of participants, or the day care home has engaged in activities that threaten the public health or safety, the sponsoring organization must follow the procedures in paragraph (1)(4) of this section instead of those in this paragraph (1)(3).
 - (i) **Notice of serious deficiency.** The sponsoring organization must notify the day care home that it has been found to be seriously deficient. The sponsoring organization must provide a copy of the serious deficiency notice to the State Agency. The notice must specify:
 - (A) The serious deficiencies;
 - (B) The actions to be taken by the day care home to correct the serious deficiencies;
 - (C) The time allotted to correct the serious deficiencies (as soon as possible, but not to exceed 30 days);
 - (D) That the serious deficiencies determination is not subject to appeal.

- (E) That failure to fully and permanently correct the serious deficiencies within the allotted time will result in the institution's proposed termination of the day care home's agreement and the proposed disqualification of the day care home and its principals; and
 - (F) That the day care home's voluntary termination of its agreement with the institution after having been notified that it is seriously deficient will still result in the day care home's formal termination by the State Agency and placement of the day care home and its principals on the National Disqualified List.
- (ii) **Successful corrective action.** If the day care home corrects the serious deficiencies within the allotted time and to the sponsoring organization's satisfaction, the sponsoring organization must notify the day care home that it has rescinded its determination of serious deficiency. The sponsoring organization must also provide a copy of the notice to the State Agency.
 - (iii) **Proposed termination of agreement and proposed disqualification.** If timely corrective action is not taken to fully and permanently correct the serious deficiencies cited, the sponsoring organization must issue a notice proposing to terminate the day care home's agreement for cause. The notice must explain the day care home's opportunity for an appeal of the proposed termination in accordance with §226.6(1). The sponsoring organization must provide a copy of the notice to the State Agency. The notice must:
 - (A) Inform the day care home that it may continue to participate and receive Program reimbursement for eligible meals served until its appeal is concluded.
 - (B) Inform the day care home that termination of the day care home's agreement will result in the day care home's termination for cause and disqualification; and
 - (C) State that if the day care home seeks to voluntarily terminate its agreement after receiving the notice of intent to terminate, the day care home will still be placed on the National Disqualified List.
 - (iv) **Program payments.** The sponsoring organization must continue to pay any claims for reimbursement for eligible meals served until the serious deficiencies are corrected or the day care home's agreement is terminated, including the period of any appeal.
 - (v) **Agreement termination and disqualification.** The sponsoring organization must immediately terminate the day care home's agreement and disqualify the day care home when the appeal official upholds the sponsoring organization's proposed termination and proposed disqualification, or when the day care home's opportunity to request an appeal expires. At the same time the notice is issued, the sponsoring organization must provide a copy of the termination and disqualification letter to the State Agency.
- (4) **Suspension of participation for day care homes.**
 - (i) **General.** If state or local health or licensing officials have cited a day care home for serious health or safety violations, the sponsoring organization must immediately suspend the home's CACFP participation prior to any formal action to revoke the home's licensure or approval. If the sponsoring organization determines that there is an imminent threat to the health or safety of participants at a day care home, or that the day care home has engaged in activities that threaten the public health or safety, and the licensing agency cannot make an immediate on-site visit, the sponsoring organization must immediately notify the appropriate state or local licensing and health authority and take action that is consistent with the recommendations and requirements of those authorities. An imminent threat to the health or safety of participants and engaging in activities that threaten the public health or safety constitute serious deficiencies; however, the sponsoring organization must use the procedures in this paragraph (1)(4) (and not the procedures in paragraph [1][3] of this section) to provide the day care home notice of the suspension of participation, serious deficiency, and proposed termination of the day care home's agreement.

- (ii) ***Notice of suspension, serious deficiency, and proposed termination.*** The sponsoring organization must notify the day care home that its participation has been suspended, that the day care home has been determined seriously deficient, and that the sponsoring organization proposes to terminate the day care home's agreement for cause, and must provide a copy of the notice to the State Agency. The notice must:
 - (A) Specify the serious deficiencies found and the day care home's opportunity for an appeal of the proposed termination in accordance with §226.6(l);
 - (B) State that participation (including all Program payments) will remain suspended until the appeal is concluded;
 - (C) Inform the day care home that if the appeal official overturns the suspension, the day care home may claim reimbursement for eligible meals served during the suspension;
 - (D) Inform the day care home that termination of the day care home's agreement will result in the placement of the day care home on the National Disqualified List; and
 - (E) State that if the day care home seeks to voluntarily terminate its agreement after receiving the notice of proposed termination, the day care home will still be terminated for cause and disqualified.
- (iii) ***Agreement termination and disqualification.*** The sponsoring organization must immediately terminate the day care home's agreement and disqualify the day care home when the appeal official upholds the sponsoring organization's proposed termination or when the day care home's opportunity to request an appeal expires.
- (iv) ***Program payments.*** A sponsoring organization is prohibited from making any Program payments to a day care home that has been suspended until any appeal of the proposed termination is completed. If the suspended day care home prevails in the administrative review of the proposed termination, the sponsoring organization must reimburse the day care home for eligible meals served during the suspension period.

FLOW CHART: SERIOUS DEFICIENCY PROCESS DAY CARE HOME PROVIDERS



NOTICE OF SERIOUS DEFICIENCY

The Notice of Serious Deficiency must include the following:

- A description of the *serious deficiency*.
- The *corrective action* required to resolve the serious deficiency and the *deadline* by which the action must be taken. (Homes are allowed up to 30 days to correct a serious deficiency.)
- A statement that indicates the serious deficiency determination is *not subject to appeal*.
- A statement that indicates *failure to fully and permanently correct* the serious deficiency by this *deadline* will result in:
 - The sponsor's **intent** to terminate the provider's agreement for cause.
 - The **intent** to disqualify the provider.
- The notice must also inform the provider of whether he or she will receive *Program payments* during the period of corrective action—usually he or she will.
- It must state that if the provider *voluntarily terminates* his or her agreement after he or she receives the Notice of Serious Deficiency, the sponsor will still proceed with the **intended** disqualifications.
- The Notice of Serious Deficiency must be sent by *certified mail/return receipt requested*, an equivalent private delivery service, fax, or e-mail as required by §226.2 in the regulations. If returned *Undeliverable* (at least five days later), proceed with proposed termination procedures. If the U.S. Postal Service is used, the following Web site may be accessed to track and confirm delivery: <www.usps.com/shipping/trackandconfirm.htm>.
- A copy of the Notice of Serious Deficiency must be sent to the State Agency.

EXAMPLE
SPONSOR LETTERHEAD

NOTICE OF SERIOUS DEFICIENCY

April 13, _____

Ima Blessed
123 Lazy Lane
Anywhere, Oklahoma 01230

Dear Ms. Crooked:

Your day care home has been declared seriously deficient in the operation of the Child and Adult Care Food Program (CACFP). This determination is based on the submission of false claims to the sponsor. For the months of February and March _____, provider records submitted indicated that three children were reported in attendance and participating in meal service. Through parental contacts, we have determined that Joe, Jill, and Janey Jones have not attended your family day care home since January 17, _____. Only children in attendance and participating in meal service may be claimed for reimbursement.

Corrective action needs to be implemented immediately. You must provide us with documentation that indicates you have taken the required corrective action for the serious deficiency. The documentation must be received by April 30, _____.

At this time, you have been assessed \$200.15 for February _____ and \$297.45 for March _____, for a total overclaim of \$497.60. A check must be received by this agency no later than April 30, _____. While you may continue to participate in the CACFP during the corrective action period, only valid claims will be reimbursed.

If you do not fully and permanently correct the serious deficiency and submit corrective action by the due date, the following actions will be taken:

- Intent to terminate your agreement to participate in the CACFP for cause.
- AND**
- Intent to disqualify you from future CACFP participation.

In addition, if you voluntarily terminate your agreement after receiving this letter, we will move forward with the intent to disqualify you from future CACFP participation. If disqualified, you will be placed on the National Disqualified List. While on the list, you will not be able to participate in the CACFP as a day care home provider. In addition, you will not be able to serve as a principal in any CACFP institution or facility.

These actions are being taken pursuant to Section 226.16(l) of CACFP regulations. You may not appeal the serious deficiency determination. However, you may appeal the fiscal action assessed against you. Appeal procedures are enclosed.

If we receive documentation of your corrective action by the due date and determine that it appears to fully and permanently correct all of the serious deficiencies, then we will conduct an unannounced follow-up review to verify the adequacy of the corrective action. If we find in the follow-up review or any subsequent review that the serious deficiency has not been fully and permanently corrected, we will immediately move forward with the intent to terminate your agreement for cause and disqualify you without any further opportunity for corrective action.

Sincerely,

Sam Banks, Executive Director

cc: Oklahoma State Department of Education

NOTICE OF INTENT TO TERMINATE/DISQUALIFY

The notice of intent to terminate/intent to disqualify must include the following:

- A statement that indicates the sponsor is intending to disqualify the provider's agreement for cause.
- A statement that the sponsor is proposing to place the provider on the National Disqualified List.
- An explanation that the reason for these actions is because the serious deficiency was not corrected.
- A statement that the provider may appeal the intent to terminate/intent to disqualify and instructions on how to appeal.
- An indication that the provider will receive program payments during the period of appeal—usually he or she will.
- A statement that indicates that if the provider ***VOLUNTARILY*** terminates the agreement after he or she receives the Notice of Serious Deficiency, the sponsor will still proceed with the proposed disqualification.
- The letter must be sent by certified mail, ***return receipt requested***, or an equivalent private delivery service, fax, or e-mail as required by §226.2 in the regulations.

EXAMPLE

SPONSOR LETTERHEAD

NOTICE OF INTENT TO TERMINATE/DISQUALIFY

May 18, _____

Ima Blessed
123 Lazy Lane
Anywhere, Oklahoma 01230

Dear Ms. Crooked:

This letter concerns the determination in our April 13, _____, letter (Notice of Serious Deficiency) that you are seriously deficient in your operation of the Child and Adult Care Food Program (CACFP).

We received your documentation detailing the actions you have taken to correct these serious deficiencies on April 30, _____. We conducted a follow-up review on May 11, _____, to verify the adequacy of the corrective action.

Based on our review of the documentation and the follow-up review, we have determined that you have not fully and permanently corrected the serious deficiencies that were cited in the Notice of Serious Deficiency.

As a result, the following actions are being taken:

- Intent to terminate your agreement to participate in the CACFP for cause, effective June 1, _____.
- Intent to disqualify you from future CACFP participation, effective June 1, _____.

In addition, if you voluntarily terminate your agreement after receiving this letter, we will move forward to disqualify you from future CACFP participation. If disqualified, you will be placed on the National Disqualified List. While on the list, you will not be able to participate in the CACFP as a day care home provider. In addition, you will not be able to serve as a principal in any CACFP institution or facility.

EXAMPLE

FDCH-1A
Ima Blessed
Page 2
May 18, _____

These actions are being taken pursuant to 7 CFR Section 226.16(l) of CACFP regulations.

The intent to terminate and disqualify is based on the following:

- Submission of false claims for reimbursement.
- Failure to repay the CACFP \$497.60.
- Failure to fully and permanently correct the serious deficiency.

According to 7 CFR 226.69(c)(1)(iii)(c)(4), you have the right to appeal the intent to terminate and disqualify your participation from the CACFP. A copy of the appeal procedures is enclosed for your review. All other appeal rights have been exhausted. 7 CFR 226.6(c)(1)(iii)(c)(5) states that, unless participation has been suspended, you may continue to participate and receive Program reimbursement for eligible meals served and allowable administrative costs incurred (if applicable) until your appeal is completed. If you decide to appeal the proposed actions, make sure you follow the appeal procedures exactly because failure to do so could result in the denial of your request for an appeal.

If you appeal the intent to terminate/disqualify, the proposed actions will not take effect until the hearing official issues a decision on the appeal. If you do not make a timely request for an appeal, your agreement will be terminated for cause on June 1, _____.

You may continue to participate in the CACFP until May 30, _____, or if you appeal the proposed actions, until the hearing official issues a decision on the appeal. We will pay any valid claims for reimbursement submitted by you for this period. You must submit the claims by the normal deadline.

Sincerely,

Sam Banks
Executive Director

Enclosure

cc: Oklahoma State Department of Education

NOTICE OF TERMINATION AND DISQUALIFICATION

The Notice of Termination and Disqualification must be sent:

- If the provider fails to appeal the intent to terminate/disqualify.
- If the hearing official rules in favor of the sponsor.
- To the provider, immediately terminating its agreement and disqualifying the provider. The letter must be sent certified mail, *return receipt requested*, or by an equivalent private delivery service, fax, or e-mail as required by §226.2 in regulations.
- To the State Agency, and the State Agency must update its list by adding the provider's name, address, and date of birth to the list. The State Agency will forward the letter to USDA.

EXAMPLE
SPONSOR LETTERHEAD

NOTICE OF TERMINATION AND DISQUALIFICATION
(FOLLOWING FAILURE TO APPEAL)

June 1, _____

Ima Blessed
123 Lazy Lane
Anywhere, Oklahoma 01230

Dear Ms. Crooked:

This letter concerns our May 18, _____, letter (Notice of Intent to Terminate/Disqualify) which intended to terminate your agreement to participate in the Child and Adult Care Food Program (CACFP) for cause. In that letter, we also intended to disqualify you from further CACFP participation. These actions were based on the determination in our April 13, _____, letter (Notice of Serious Deficiency) that you are seriously deficient in your operation of the CACFP.

You were sent the Notice of Intent to Terminate/Disqualify on May 18, _____. You had until June 1, _____, to submit any requests for appeal of the proposed actions. No request for appeal was submitted by that deadline.

Because the time to request an appeal has now expired, we are:

- Terminating your agreement to participate in the CACFP for cause, effective June 1, _____.
- Disqualifying you from future CACFP participation, effective June 1, _____.

You are being placed on the National Disqualified List. While on the list, you will not be able to participate in the CACFP as a day care home provider. In addition, you will not be able to serve as a principal in any CACFP institution or facility.

These actions are being taken pursuant to 7 CFR Section 226.16(l) of CACFP regulations.

Sincerely,

Sam Banks
Executive Director

cc: Oklahoma State Department of Education
,

EXAMPLE

**CHILD AND ADULT CARE FOOD PROGRAM (CACFP)
REPORT OF DISQUALIFICATION FROM PARTICIPATION
FAMILY DAY CARE HOME (FDCH) PROVIDER**

State Agency Imposing Disqualification: *Oklahoma*

Name of Provider: Last Name: *Blessed* First Name/M.I.: *Ima*

Also Known As (AKA): *NA*

Address of Provider: *123 Lazy Lane, Anywhere, Oklahoma 01230*

Date of Birth of Provider: *4/4/85*

Termination Date: *June 1, -----*

Has the PROVIDER failed to repay debts owed under the Program? Yes No Debt Owed: *\$497.60*

Sponsoring Organization (SO) Name:

SO Address:

Reason(s) for Disqualification: (Check all that apply)

- | | |
|--|---|
| <input type="checkbox"/> Submission of false information on application | <input type="checkbox"/> Failure to keep required records |
| <input checked="" type="checkbox"/> Submission of false claims for reimbursement | <input type="checkbox"/> Conduct or conditions that threaten the health or safety of children in care or the public health or safety |
| <input type="checkbox"/> Simultaneous participation under more than one SO | <input type="checkbox"/> A determination that the FDCH has been convicted of any activity that occurred during the past 7 years and that indicated a lack of business integrity |
| <input type="checkbox"/> Noncompliance with the Program meal pattern | <input type="checkbox"/> Any other circumstance related to nonperformance under the SO-FDCH agreement, as specified by the SO or the State Agency |

Other or additional comments:

NOTICE OF SUCCESSFUL CORRECTIVE ACTION— TEMPORARILY DEFER SERIOUS DEFICIENCY

The notice is sent when:

- The provider has submitted adequate corrective action and the unannounced review documents that the provider has fully corrected the deficiency.

The notice must include:

- That the provider has fully corrected the problem.
- That in any subsequent review, if the deficiencies are found again, the sponsor will immediately propose termination and disqualification without any further opportunity for corrective action.

The notice must be sent certified mail, ***return receipt requested***, or equivalent private delivery service, fax, or e-mail as required by 7 CFR Section 226.2 in regulations.

EXAMPLE
SPONSOR LETTERHEAD

**SUCCESSFUL CORRECTIVE ACTION—
TEMPORARILY DEFER SERIOUS DEFICIENCY**

May 4, _____

Ima Blessed
123 Lazy Lane
Anywhere, Oklahoma 01230

Dear Ms. Crooked:

This letter concerns the determination in our April 13, _____, letter (Notice of Serious Deficiency) that you are seriously deficient in your operation of the Child and Adult Care Food Program (CACFP).

We received the documentation you sent us detailing the actions you have taken to correct these serious deficiencies on April 30, _____, before the corrective action deadline. We conducted a follow-up review on May 14, _____, to verify the adequacy of the corrective actions.

Based on our review of the documentation and the May 11, _____, follow-up review, we have determined that you have fully corrected the serious deficiencies that were cited in the Notice of Serious Deficiency. As a result, we have temporarily deferred the serious deficiency determination as of the date of this letter. This also means that we will not propose to terminate your agreement for cause based on this serious deficiency finding or propose to disqualify you on that basis.

However, if we find in any subsequent review that any of these serious deficiencies have not been permanently corrected, we will immediately propose to terminate your agreement for cause and propose to disqualify you without any further opportunity for corrective action.

Sincerely,

Sam Banks
Executive Director

cc: Oklahoma State Department of Education

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PROVIDER APPEAL PROCEDURES

A family day care home (FDCH) must be provided an opportunity to appeal to the sponsor when there is:

- **PROPOSED** termination of a provider's agreement for cause and the related **PROPOSED** disqualification of the home.
- The suspension of an FDCH's participation for serious health or safety violations.

The law does not require an opportunity to appeal other actions, such as the denial of claims or the recovery of overpayments.

Regulations require that a provider have the opportunity to appeal a decision to terminate its agreement for cause **BEFORE** the termination takes effect. Thus, the **PROPOSED** termination action is appealable.

Regulations require that providers be given a copy of the appeal procedures:

- On an annual basis, in the sponsor/provider application/agreement.
- Whenever an appealable action is taken.
- Upon request.

Minimum Appeal Procedures

Sponsors must follow the procedures established in the regulations when providing appeals to homes.

- **Uniformity.** The same procedures apply to all homes.
- **Representation.** Providers may:
 - Represent themselves.
 - Retain legal counsel.
 - Be represented by any other person of their choosing.
- **Review of the Record and Opposition.** The provider must have the opportunity to review the record on which the sponsor's action was based and refute the action in writing. Sponsors may establish a requirement that the sponsor taking the action has the opportunity to review any documentation or evidence the provider intends to offer to dispute the sponsor's action.
- **In-Person Hearing.** Sponsors may choose to offer in-person hearings, but there is no requirement that they do so. A review of the written record provides a sufficient opportunity for providers to contest an appealable action by their sponsor.

- **Hearing Official.** The person hearing the appeal must be:
 - Independent.
 - Impartial.

This means that they must **NOT** have been involved in the action that is the subject of the appeal. Also, they must **NOT** have a direct personal or financial interest in the outcome.

A hearing official may be:

- An employee or board member of the sponsor.
OR
 - A contractor, such as member of a statewide sponsor association.
- **Deadline for Requesting an Appeal.** This time frame is an administrative requirement for sponsors.
 - **Deadline for Submitting Written Documentation.** This time frame is an administrative requirement for sponsors.
 - **Basis for Decision.** The hearing official must make a determination based only on the information provided by the sponsor and the provider and on federal laws, regulations, policies, and procedures governing the Program.
 - **Time for Issuing a Decision.** The hearing official must inform the sponsor and the provider of the appeal's outcome within the period of time specified in the sponsor's appeal procedures. This time frame is an administrative requirement for sponsors and may not be used as a basis for overturning the termination if a decision is not made within the specified time frame.
 - **Final Decision.** The determination made by the hearing official is the final administrative determination to be afforded the home. The home may not then appeal the decision to the State Agency.

This does not preclude, however, a provider from pursuing the matter through a court of law. In fact, a court may refuse to hear a case until such time as all administrative remedies have been exhausted.

EXAMPLE

SPONSOR LETTERHEAD

APPEAL PROCEDURES

1. Sponsor must offer an appeal to a family day care home (FDCH) provider **only when** the intent of the sponsor is to terminate the provider's agreement for cause or when the intent of the sponsor is to suspend the provider's participation in the CACFP.
2. A provider will be notified in writing by certified mail, **return receipt requested**, of the grounds upon which the sponsor based its action. The notice will inform the provider of its right to appeal. Two types of appeals are authorized:
 - a. The provider may request a review of the records. Upon receipt of such a request, the sponsor will appoint a review official to conduct the review.

OR

- b. The provider may request a hearing. Upon receipt of a request for a hearing, the sponsor will appoint a review official to conduct the hearing.
3. The written request for a review of records or for a hearing must be filed by the provider no later than 15 calendar days from the date the provider receives the notice of action. The 15 days shall begin on the day the notice of action was received. A hearing will be held by the review official in addition to, or in lieu of, a review of written information submitted by the provider **only if** the provider so specifies in the letter requesting the appeal. Therefore, the written request **must specify** which type of appeal is requested. The sponsor will acknowledge the receipt of the request for appeal within 10 calendar days.
4. The provider may refute the information contained in the notice of action in person or by written documentation presented to the review official. The provider must have the opportunity to review the record on which the sponsor's action was based. In order to be considered, written documentation must be filed with the review official not later than 30 calendar days after the provider received the notice of action. The 30 days shall begin on the day the notice of action was received. The provider may be represented by legal counsel or another person. The following applies to the two types of appeals:
 - a. **Review of Records**
 - Upon receipt of an appeal requesting a review of the records, the review official will notify the provider and the sponsor of the timelines for submission of documents.
 - Failure to submit written documentation to refute the action taken by the sponsor within the 30-day time period will constitute the provider's waiver of the appeal, resulting in the action taken by the sponsor being upheld.
 - b. **Hearing**
 - Upon receipt of an appeal requesting a hearing, the review official will notify the provider and the sponsor of the timelines for submission of documents.

- Written documentation submitted after the 30-day time period will not be considered at any point during the appeal process, including the hearing.
 - If the provider chooses to be represented by legal counsel, it will notify the sponsor of the counsel's name and address.
 - The review official will notify the provider and the sponsor by certified mail of the time, date, and place of the hearing. The notice must be provided at least 10 calendar days prior to the hearing.
 - Failure of the provider or his/her representative to appear at a scheduled hearing will constitute the provider's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing.
 - The sponsor will have representatives in attendance at the hearing who may provide information and documentation supporting the action taken.
5. Sponsor documents and information relating to the provider and the action taken will be available for inspection and copying pursuant to the Open Records Fee Schedule at the office of the sponsor.
 6. The review official will be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal.
 7. The review official will make a determination based on information provided by the sponsor, the provider, and the laws and regulations governing the Child Nutrition Programs (CNP).
 8. Within 60 calendar days of receipt of the request for appeal, the review official's determination must be delivered to the provider and the sponsor.
 9. Participating providers may continue to operate under the Program during an appeal of proposed termination unless the action is based on imminent danger to the health or welfare of participants. If the provider has been terminated for this reason, the sponsor must specify this in its notice of action.
 10. The determination by the review official is the final administrative determination to be afforded to the provider.
 11. Pursuant to the federal regulations, appeals will not be allowed on decisions made by Food and Nutrition Service (FNS).

NOTICE OF SUSPENSION

There is only one reason for suspending FDCHs: For an imminent threat to the health or safety of participants or the public. Because the law does not allow homes to be suspended for submitting false or fraudulent claims, there is no suspension review for homes.

Step 1: The sponsor discovers the imminent threat and immediately informs the health/safety licensing authority.

Step 2: After informing the appropriate authority about the problem, the sponsor immediately sends a Notice of Suspension to the home that:

- Identifies all serious deficiencies that constitute the imminent threat.
- Informs the home that its participation is suspended as of the date of the notice.
- Allows no time for corrective action by the provider.
- Proposes to terminate the home's agreement for cause.
- Proposes to disqualify the home and the provider.
- Outlines the procedures for appealing the suspension, proposed termination, proposed disqualification, and the _____ -day time frame. (This appeal time frame is determined by the SO.)

A copy of this notice is sent to the State Agency.

Step 3: The provider requests an appeal of the suspension, proposed termination, and proposed disqualification.

Step 4: The hearing is held, and a decision is rendered.

Step 5: The sponsor informs the provider of the hearing decision (sends the State Agency a copy of this letter).

- a. If the sponsor wins the appeal, the sponsor must send a Notice of Termination and Disqualification to the provider. The notice must inform the provider that:
 - The home's agreement is terminated for cause.
 - The provider is disqualified and placed on the National Disqualified List.
- b. If the sponsor loses the appeal, the sponsor must inform the provider that:
 - The home's suspension ended on the date of the hearing decision.
 - The home's agreement is not terminated.
 - The provider is not disqualified and can claim for eligible meals served during the suspension.

Step 6: The sponsor sends the State Agency a copy of the notice.

Step 7: If the provider has been disqualified, the State Agency adds the home to the State Agency list and informs USDA to add the provider to the National Disqualified List.

EXAMPLE
SPONSOR LETTERHEAD

NOTICE OF SUSPENSION
AND PROPOSED TERMINATION AND DISQUALIFICATION

January 28, _____

Bertha Biggs
311 Sunshine Drive
Anywhere, Oklahoma 01230

Dear Ms. Biggs:

This letter is to inform you that you have been declared seriously deficient in your operation of the Child and Adult Care Food Program (CACFP). The following serious deficiency is identified as being an imminent threat to the health and safety of CACFP participants:

- The utilities in the home have been disconnected.

Because of this imminent threat, we are suspending your CACFP participation, including all Program payments, effective the date of the letter.

This action is being taken pursuant to 7 CFR §226.16(1)(4) of CACFP regulations. We are also:

- Proposing to terminate your agreement to participate in the CACFP for cause, effective February 18, _____.
- Proposing to disqualify you from future CACFP participation, effective February 18, _____.

In addition, if you voluntarily terminate your agreement after receiving this letter, we will propose to disqualify you from future CACFP participation. If disqualified, you will be placed on the National Disqualified List. While on the list, you will not be able to participate in the CACFP as a family day care home provider. In addition, you will not be able to serve as a principal in any CACFP institution or facility.

You may appeal the suspension, the proposed termination of your agreement for cause, and your proposed disqualification. A copy of the appeal procedures is enclosed. If you decide to appeal the suspension or the proposed actions, make sure you follow the appeal procedures exactly because failure to do so will result in the denial of your request for an appeal.

The suspension will remain in effect during the period of any appeal. However, if you request an appeal and the hearing official overturns the suspension, we will pay any valid claims for reimbursement submitted by you for the period of the suspension. As always, we will deny any portion of a claim we determine is invalid. If we deny payment of any portion of a claim, that action would be appealable.

Sincerely,

Sam Banks
Executive Director

Enclosure
Appeal Procedures

cc: Oklahoma State Department of Education

NOTICE OF TERMINATION AND DISQUALIFICATION

The Notice of Termination and Disqualification must be sent. If the provider fails to appeal the proposed termination/ proposed disqualification or if the hearing official rules in favor of the sponsor:

- The sponsor must issue a notice immediately terminating its agreement with the provider and disqualifying the provider.
- The letter must be sent certified mail, *return receipt requested*, or by an equivalent private delivery service, fax, or e-mail as required by §226.2 in regulations.
- A copy of this notice must also be sent to the State Agency.
- That information would also be forwarded to FNSSWRO so that the provider can be placed on the National Disqualified List.

EXAMPLE

SPONSOR LETTERHEAD

**NOTICE OF TERMINATION
AND DISQUALIFICATION—BASED ON SUSPENSION**

February 20, _____

Bertha Biggs
311 Sunshine Drive
Anywhere, Oklahoma 01230

Dear Ms. Biggs:

This letter concerns our January 28, _____, letter (Notice of Suspension and Proposed Termination and Disqualification) which proposed to terminate your agreement to participate in the Child and Adult Care Food Program (CACFP) for cause. In that letter, we also proposed to disqualify you from further CACFP participation.

You received the Notice of Suspension and Proposed Termination and Disqualification on January 31, _____. You had until February 15, _____, to submit any requests for appeal of the proposed action. No request for appeal was submitted by that deadline.

Because the time to request an appeal has now expired, we are:

- Terminating your agreement to participate in the CACFP for cause, effective February 15, _____.
- Disqualifying you from future CACFP participation, effective February 15, _____.

You are now being placed on the National Disqualified List. While on the list, you will not be able to participate in the CACFP as a family day care home provider. In addition, you will not be able to serve as a principal in any CACFP institution or facility.

These actions are being taken pursuant to 7 CFR §226.16(l) of CACFP regulations.

Sincerely,

Sam Banks
Executive Director

cc: Oklahoma State Department of Education

EXAMPLE

**CHILD AND ADULT CARE FOOD PROGRAM (CACFP)
REPORT OF DISQUALIFICATION FROM PARTICIPATION
FAMILY DAY CARE HOME (FDCH) PROVIDER**

State Agency Imposing Disqualification: *Oklahoma*

Name of Provider: Last Name: *Biggs* First Name/M.I.: *Bertha*

Also Known As (AKA): *NA*

Address of Provider: *311 Sunshine Drive, Anywhere, OK 01230*

Date of Birth of Provider: *08/03/78*

Termination Date: *February 15, -----*

Has the PROVIDER failed to repay debts owed under the Program? Yes No

Sponsoring Organization (SO) Name:

SO Address:

Reason(s) for Disqualification: (Check all that apply)

- | | |
|--|---|
| <input type="checkbox"/> Submission of false information on application | <input type="checkbox"/> Failure to keep required records |
| <input type="checkbox"/> Submission of false claims for reimbursement | <input checked="" type="checkbox"/> Conduct or conditions that threaten the health or safety of children in care or the public health or safety |
| <input type="checkbox"/> Simultaneous participation under more than one SO | <input type="checkbox"/> A determination that the FDCH has been convicted of any activity that occurred during the past 7 years and that indicated a lack of business integrity |
| <input type="checkbox"/> Noncompliance with the Program meal pattern | <input type="checkbox"/> Any other circumstance related to nonperformance under the SO-FDCH agreement, as specified by the SO or the State Agency |

Other or additional comments:

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