



**Georgia Dept  
of Early Care  
and Learning**

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Area **Numbered  
Policies**  
Programs **CACFP**

## **Serious Deficiency Process for Applying (New), Renewing and Participating Institutions, CACFP #9 (00-9)**

### **LEGAL AUTHORITY**

7 C.F.R. § 226.6 (c); O.C.G.A. § 20-1A-5

### **Cross Reference/See Also**

USDA, *Serious Deficiency, Suspension, & Appeals for State Agencies & Sponsoring Organizations*, February 2015; DECAL CACFP Policy No. 02-18; DECAL CACFP Policy No. 04-32; DECAL CACFP Policy No. 14-37; DECAL CACFP Policy No. 17-39

### **I. PURPOSE**

The purpose of this policy is to define and describe: (1) serious deficiencies for new, renewing and participating institutions in the Child and Adult Care Food Program (CACFP) and (2) the procedures for new, renewing and participating institutions that have been declared seriously deficient. The CACFP serious deficiency process was established to ensure compliance with USDA FNS regulations and guidance to protect Program integrity. It ensures Program integrity by allowing State agencies a process in which institutions that have failed to correct non-compliance issues may be terminated and disqualified for cause in accordance with the applicable Federal regulations.

### **II. APPLIES TO**

Potential applicants and all institutions currently participating in the Child and Adult Food Program (CACFP).

### **III. DEFINITIONS**

**"Administrative Review"** means the fair hearing provided upon request to:

- An institution that is given notice by Bright from the Start: Georgia Department of Early Care and Learning (Bright from the Start) of any action or proposed action that would adversely affect their participation or reimbursement under the CACFP.
- A principal or individual responsible for an institution's serious deficiency after the responsible principal or responsible individual has been given a notice of intent to disqualify from participation in the CACFP.

**"Annual Renewal"** means the time period and process in which an institution renews its CACFP application for an upcoming fiscal year. Associated with Annual Renewal are annual requirements. Annual requirements include but are not limited to completing an annual training and assessment and enrolling and submitting the institution's application. During Annual Renewal, a participating institution would revise and submit an annual budget when required; and may also revise the application and management plan.

**"Corrective Action"** means any action directed by GA DECAL and/or taken by an institution to fully and permanently correct an isolated/repeat finding(s) and/or serious deficiency(ies). In response to the Notice of Serious Deficiency, an institution must submit in writing, what corrective action has been taken. This correspondence details the internal controls implemented to ensure the serious deficiencies are fully and permanently corrected. Corrective action must be taken within the timeframe designated by the State agency.

**"Disqualified"** means the status of an institution, a responsible principal or responsible individual, or a day care home that is ineligible for participation. Institutions disqualified from the CACFP are also disqualified from the Summer Food Service Program (SFSP).

**"Facility"** means a sponsored center or a family day care home.

**"FNS"** means the Food and Nutrition Service of the United States Department of Agriculture.

**"FNSRO"** means the appropriate Regional Office of the United States Department of Agriculture's Food and Nutrition Service.

**"Fully and Permanently"** means that documentation submitted by an organization demonstrated that the serious deficiencies had been corrected in such a manner that they were determined by the State agency to be unlikely to recur.

**"Georgia Disqualified List"** or "GDL" means the list maintained by GA DECAL of institutions, sponsors, responsible principals, and/or individuals, and/or day care home providers disqualified from participation in the SFSP and/or CACFP. This list may be shared with other State agencies that administer the SFSP across the country.

**"Institution"** means a sponsoring organization, child care center, outside-school-hours care center, emergency shelter, or adult day care center which enters into an agreement with GA DECAL to assume final administrative and financial responsibility for Program operations. It also includes homeless shelters and "at-risk" after school care programs.

**"National Disqualified List"** means the list, maintained by the United States Department of Agriculture, of institutions, responsible principals and responsible individuals, and day care homes disqualified from

participation in the CACFP.

**"New Institution"** means an institution applying to participate in the Program for the first time, or an institution applying to participate in the Program after a lapse in participation.

**"Notice"** means a letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by GA DECAL or the Food and Nutrition Service (FNS) with regard to an institution's Program reimbursement or participation. The notice must specify the action(s) being proposed or taken and the basis for the action(s) and is considered to be received by the institution or day care home when it is delivered, sent by facsimile, or sent by email. If the notice is undeliverable, it is considered to be received by the institution or responsible principal or individual, or day care home five (5) days after being sent to the addressee's last known mailing address.

**"Office of State Administrative Hearings"** (OSAH) means the executive state agency responsible for the impartial administration of the Georgia Administrative Procedure Act. This agency conducts the Administrative Review. OSAH is not accountable to the management of the CACFP or the state agency.

**"Renewing Institution"** means an institution that is participating in the CACFP at the time it submits a renewal application.

**"Responsible principal and/or responsible individual"** means:

1. A principal (i.e., managers, board members, officers), whether compensated or uncompensated, who is responsible for the managing and/or operating the CACFP and/or who GA DECAL, GA DECAL contractors, USDA or any of their representatives, or FNS determines to be responsible for an institution's serious deficiency;
2. Any other individual employed by, or under contract with, an institution or sponsored center, who GA DECAL, GA DECAL contractors, USDA or any of their representatives, or FNS determines to be responsible for an institution's serious deficiency; or
3. An uncompensated individual who GA DECAL, GA DECAL contractors, USDA or any of their representatives, or or FNS determines to be responsible for an institution's serious deficiency.

**"Serious Deficiencies"** includes, but is not limited to, the criteria as outlined in 7 CFR §226.6(c).

**"Seriously deficient"** means the status of an institution or day care home that has been determined to be non-compliant in one or more aspects of its operation of the Program.

**"Temporarily Deferred"** means the Seriously Deficient determination by GA DECAL has been temporarily suspended until the State agency determines the corrective action submitted by the institution has been fully and permanently implemented.

## IV. Policy

### A. Overview

Consistent with 7 CFR 226 and applicable USDA guidance, GA DECAL works to ensure Program integrity. As stated above, the CACFP serious deficiency process was established to ensure that institutions are in compliance with Federal regulations and guidance in order to protect Program integrity. GA DECAL

monitors institutions and a sponsored facility. A Program violation for noncompliance will result in a “finding.” GA DECAL, GA DECAL contractors, USDA FNS, and/or USDA FNS representatives may issue findings during any of the following types of monitoring visits for new, participating, and renewing institutions:

- Review upon or after application submittal or renewal
- Compliance review
- Follow-up Review
- Serious Deficiency (SD) follow-up review
- Audit
- Financial review
- Complaint and/or special investigation

## B. Findings

Pursuant to 7 CFR § 226.6(c), serious deficiencies which are grounds for disapproval of applications and for termination include, but are not limited to, any of the following:

1. Noncompliance with the applicable bid procedures and contract requirements of Federal child nutrition program regulations. Examples may include, but are not limited to, the following:
  - i. Failure to competitively procure goods and services.
  - ii. Anti-competitive practices, such as collusion, kickbacks, conflicts of interest.
  - iii. Inclusion of non-competitive provisions in a bid (e.g., "successful bidders for a contract to provide meals must establish a scholarship fund.")
2. Submission of false information to GA DECAL or any of its representatives. Examples may include but are not limited to:
  - i. A determination that the institution has concealed a conviction for any activity that occurred during the past seven (7) years and that indicates 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 in writing or otherwise, receiving stolen property, making false claims in writing or otherwise, forging another's signature, altering dates, obstruction of justice, or any other activity indicating a lack of business integrity as defined by GA DECAL.)*
  - ii. Misappropriation of funds.
  - iii. Failure to disclose information about ineligible officers, directors, or other key employees.
  - iv. Allowing an individual who is on the National Disqualified list (NDL) and/or the Georgia Disqualified List (GDL) to serve in any capacity within the institution or, if a sponsoring organization, permits such an individual to serve in any capacity in a sponsored center or as a day care home provider.
  - v. Allowing an individual that has been declared ineligible for any other publicly funded

program by reason of violating that Program's requirements to serve in a principal capacity at the institution or facility level.

- vi. Listing fictitious employees/officers/board members on a program application.
  - vii. Claiming tax-exempt status when denied, rescinded, etc.
  - viii. Submitting the IRS tax-exempt determination letter of a different, or even defunct or non-existing organization.
  - ix. Claiming non-existing/non-participating facilities, children, or adults.
  - x. Inflating meal counts.
  - xi. Claiming nonexistent costs.
  - xii. Claiming of Program payments for meals not served to participating children/adults.
  - xiii. Claiming costs which are disallowed and/or not included in an approved budget (e.g., using Program funds for non-Program purposes.)
  - xiv. Claiming costs for fictitious employees.
  - xv. Submission of information to GA DECAL or any of its representatives which does not accurately reflect the institution's true Program operations.
  - xvi. Falsification of any Program document.
  - xvii. Making false statements within the sponsor's corrective action plan (CAP) so as to influence the sponsor's current serious deficiency status.
  - xviii. Claiming legitimate costs but failing to pay for services.
3. Failure to return to GA DECAL any start-up or advance payments which exceeded the amount earned for serving eligible meals in accordance with federal regulations, or failure to submit all claims for reimbursement in any prior year, provided that failure to return any advance payments for months for which claims for reimbursement are under dispute from any prior year shall not be grounds for disapproval in accordance with federal regulations.
  4. Failure to timely repay any outstanding debt owed in the Child and Adult Food Program (CACFP) and/or Summer Food Service Program (SFSP) and/or failure to adhere to a payment plan arrangement between the organization and DECAL.
  5. Failure to operate the Program in conformance with the Performance Standards (Financial Viability and Financial Management, Administrative Capability, and Program Accountability).
  6. Failure to perform any of the other required financial and administrative responsibilities required by federal regulations
  7. Failure to maintain adequate records. Examples may include but are not limited to:
    - i. Sponsors who consistently have missing records during (different) reviews, complaint investigations or Audits.
    - ii. Missing/incomplete/different amounts or payees for invoices, receipts, canceled checks, inventories resulting in false/inflated/unsubstantiated claimed costs.
    - iii. Cost records not maintained according to generally accepted accounting principles resulting in false/inflated unsubstantiated claimed costs.
    - iv. Missing/incomplete enrollment records and/or income eligibility applications.

- v. Missing/incomplete participation records.
  - vi. Missing/incomplete menu records.
  - vii. Missing/incomplete meal count records.
  - viii. Inflated meal counts, the meals claimed always equals the number of meals ordered/planned or the number of participants on the center roster.
8. Claiming reimbursement for meals not served to participants. Examples may include but are not limited to:
    - i. Claiming meals delivered/planned for as meals served to participants.
    - ii. Claiming meals for participants not present on a given day or for a particular meal.
    - iii. Claiming meals served to non-enrolled children and adults or to staff.
    - iv. Claiming meals for ineligible facilities.
    - v. Knowingly claiming dual participation of facilities.
    - vi. Claiming the same participant for the same meal at more than one facility.
  9. Services of a significant number of meals, which do not include required quantities of all meal components or meet program requirements.
  10. Continued use of a food service management companies that are in violation of health codes.
  11. Failure by a sponsoring organization to properly train or monitor sponsored facilities in accordance with federal regulations (7 CFR § 226.16 (d)). Examples may include but are not limited to:
    - i. Failure to identify and properly address block claiming in sponsored facilities.
    - ii. Failure to appropriately use the sponsoring organization household contact system to verify claim information and/or identify block claiming.
    - iii. Failure to use review averaging appropriately and within the guidelines of federal regulations and GA DECAL policies.
  12. Failure by a sponsoring organization of day care homes to properly classify day care homes as tier I or tier II in accordance with federal regulations (7 CFR § 226.15 (f)).
  13. Failure to properly implement and administer day care home termination and administrative review provisions (7 CFR § 226.16 (l)).
  14. Use of day care home funds by a sponsoring organization to pay for the sponsoring organization's administrative expenses.
  15. Failure of a sponsoring organization to disburse payments to its facilities in accordance with federal regulations and in accordance with its management plan. Examples may include but are not limited to:
    - i. Checks prepared after 5 days.
    - ii. Payments sent without endorsements or otherwise incomplete.
    - iii. Payments made for other than the full amount the facility is entitled to.

- iv. Payments made to a facility other than the facility that earned the payment.
  - v. Payments made to an entity/person other than the facility (without express permission of the facility).
  - vi. Checks not mailed within the 5 day time frame or first business day thereafter.
  - vii. Failure to transfer the full amount of facility payments to payment bank account within 5 day time frame.
  - viii. Failure to maintain the full amount of facility payment in commingled bank account until checks clear.
  - ix. Using administrative or provider advance funds to pay ineligible facilities/providers.
  - x. Using provider reimbursement funds to pay provider advances.
  - xi. Using day care home funds (advance or reimbursement) to pay sponsored centers and vice versa.
  - xii. Retaining sponsored center funds in excess of the amount approved in the management plan.
16. Claiming reimbursement for meals served by a for-profit child care or outside hour school center during a calendar month in which less than 25 percent of its enrolled children, or 25 percent of its licensed capacity, whichever is less, were title XX beneficiaries or qualified for free or reduced priced meals. (e.g., The center may not combine Title XX children with children receiving free and reduced-price meals or At-Risk After School only participants in order to meet the 25% threshold. The center must qualify based on either free/reduced price meal or Title XX documentation, but not both for each month claimed for reimbursement.)
17. Claiming reimbursement for meals served by a for-profit adult day care center during a calendar month in which less than 25 percent of its enrolled adult participants were title XIX or title XX beneficiaries.
18. Any other action affecting the institution's ability to administer the Program in accordance with Program requirements.

## **C. Serious Deficiency Determination and Serious Deficiency Process**

Based on the nature of the finding(s) cited or any other additional supporting information received, GA DECAL will determine whether to classify a finding as an isolated error, a repeat error of a serious nature, or as a serious deficiency. An institution may be declared seriously deficient at any time during Program operation if any of the criteria as outlined within this policy are met.

Once GA DECAL has determined that an institution has committed one or more findings that rise to the level of serious deficiency, the State agency will issue a Notice of Serious Deficiency to the institution and its responsible principals and/or individuals (RP/Is). This notice will list the findings that led to the serious deficiency determination and will give the institution an opportunity to submit corrective action by a specified deadline. A determination of Serious Deficiency itself is not an adverse action and thus, is not appealable. To be clear, the decision to declare an institution seriously deficient is within the State agency's sole discretion. Further, CACFP federal regulations do not provide a timeframe for which the

State agency must determine if an institution is seriously deficient in the operation of the CACFP or provide notification of the serious deficiency determination.

DECAL will add the institution to DECAL's list of seriously deficient institutions, along with the basis for the serious deficiency determination, and provide a copy of the notice to FNS SERO.

Should the institution submit untimely corrective action, no corrective action at all, or corrective action that is determined to be insufficient in fully and permanently correcting the serious deficiency(ies) cited in the Notice, GA DECAL will propose to deny the institution's application for participation and/or propose to terminate the institution and/or disqualify the institution and its RP/Is from Program participation and issue a Notice of Proposed Termination and Proposed Disqualification. Such letter is sent to the institution and its responsible principal and/or individuals (RP/Is). In contrast to the Notice of Serious Deficiency, once such actions have been proposed by GA DECAL, the institution may request an administrative review (appeal) of the application denial or proposed termination and proposed disqualification and will be provided appeal procedures. Within the Notice of Proposed Termination and Proposed Disqualification, institutions are given appeal procedures and an appeal request deadline.

However, if GA DECAL determines that the submitted corrective action fully and permanently corrects the serious deficiency(ies) as cited in the Notice of Serious Deficiency, then GA DECAL will issue a Notice of Successful Corrective Action and Temporary Deferment letter to the institution and its RP/Is. As indicated above, the phrase "fully and permanently" means that documentation submitted by an organization demonstrated that the serious deficiencies had been corrected in such a manner that they were determined by the State agency to be unlikely to recur.

Once the Seriously Deficient determination has been temporarily deferred, DECAL, GA DECAL contractors, USDA FNS, and/or USDA FNS representatives will conduct an unannounced SD follow-up review to verify the adequacy and implementation of the corrective action submitted by the institution to ensure Program compliance and Program integrity.

For example, suppose ABC Kids Academy was cited for unallowable costs which resulted in \$1,000 needing to be repaid and put back into the institution's Food Service Account (FSA). As part of their corrective action, ABC Kids Academy submits bank transfer information demonstrating that \$1,000 was repaid to its FSA using non-Program funds. Suppose further that GA DECAL temporarily defers the institution. ABC Kids Academy will be subject to a review conducted by GA DECAL's Audits and Compliance Division to verify that the \$1,000 is remaining in the FSA and that non-Program funds were used to repay the amount owed.

Pursuant to DECAL CACFP Policy No. 02-18 and DECAL CACFP Policy No. 17-39, all accounts and records pertaining to the Program shall be made available upon request to DECAL, DECAL contractors, USDA, or any of their representatives for audit or review. If DECAL finds in a follow-up review or in any subsequent review that any of the serious deficiency(ies) have not been fully and permanently corrected, and/or unallowable costs have not been repaid and/or verification of financial records and source documents are not provided, DECAL may propose to terminate the institution's agreement and propose to disqualify the institution and its responsible principals and/or individuals (RP/Is) from the Program without any further opportunity for corrective action.



As required by DECAL CACFP Policy No. 02-18, institutions must maintain their submitted corrective action at the place indicated in the "Recordkeeping" section of the institution's Management Plan located in GA ATLAS. As such, institutions are required to have their corrective action available upon request by GA DECAL, GA DECAL contractors, USDA FNS, or any of their representatives.

## **V. Procedure(s)**

### **A. Applying (New) Institutions**

Once GA DECAL determines an applying (new) institution has committed one or more findings that rise to the level of serious deficiency, GA DECAL will issue a Notice of Serious Deficiency to the sponsor and its RP/Is. The notice will list and/or specify the following:

- The serious deficiency(ies);
- The corrective actions to be taken in order to correct the serious deficiency(ies);
- Any adverse action if applicable;
- The time allotted to correct the serious deficiency(ies);
- The consequences of unsuccessful corrective action, should it result;
- That the serious deficiency determination is not subject to administrative review (appeal);
- That failure to fully and permanently correct the serious deficiency(ies) within the allotted time will result in GA DECAL's denial of the institution's application, and proposed termination and proposed disqualification of the institution and its responsible principals and/or individuals from future participation in the Program;
- That if the institution voluntarily withdraws its application with GA DECAL after having been notified that it is seriously deficient, will result in the proposed placement of the institution and its responsible principals and/or individuals on the National Disqualified List;
- That if GA DECAL does not possess the date of birth for any individual named as a "responsible principal or individual" in the serious deficiency notice, the submission of that person's date of birth is a condition of corrective action for the institution and/or individual;
- That GA DECAL will not pay any claims for reimbursement for eligible meals served or allowable administrative expenses incurred until GA DECAL has approved the institution's application and the institution has signed a Program agreement
- That if the institution is an administrative and/or daycare home sponsor, the institution is prohibited from recruiting, enrolling, and approving facilities to participate under its sponsorship; and
- That termination and disqualification from the CACFP may impact an institution's eligibility to receive other State and/or Federal funding from sources such as the Childcare and Parent Services (CAPS) Program or Georgia's Pre-K Program.

#### **1. Corrective Action Plan (CAP)**

Once an institution is declared seriously deficient, it is required to provide written corrective action responses for each finding cited. Taken together, these responses are often referred to as a

Corrective Action Plan or "CAP." Corrective action must be taken within the timeframe designated by the State agency. The written responses should indicate that the sponsor understands what violation occurred and what corrective action needs to be taken to fully and permanently correct the serious deficiency.

An acceptable CAP must include all of the following for each finding cited:

- **What** are the processes and/or procedures that were implemented by the institution to address the serious deficiency;
- **Who** is responsible for addressing the serious deficiencies;
- **When** was the procedure implemented by the institution to address the serious deficiencies and at what frequency (i.e., weekly, monthly, etc.) will the processes/procedures be performed/verified;
- **Where** is the corrective action plan documentation going to be retained; and
- **How** the staff will be informed of the policies and procedures.

An institution's CAP will be denied if it provides little detail, cannot be easily understood, lacks supporting documentation, and/or is missing some or all of the required information listed above. Further, a Notice of Proposed Termination and Proposed Disqualification may be issued to the institution.

**Note:** GA DECAL is prohibited from allowing more than 90 days for corrective action from the date the institution receives the serious deficiency notice.

## 2. Successful Corrective Action and Re-Submission of Application

If corrective action is taken to fully and permanently correct the serious deficiency(ies) in the Notice of Serious Deficiency within the allotted timeframe and to GA DECAL's satisfaction, the State Agency will notify the organization and its responsible principals and/or individuals that it has temporarily deferred its serious deficiency determination, by issuing a Notice of Successful Corrective Action and Temporary Deferment. At that time, the State Agency will offer the institution an opportunity to resubmit its application. If the new institution resubmits its application, GA DECAL will complete its review of the application within 30 days after receiving a complete and correct application. All questions concerning a Program application must be directed to GA DECAL's Application Services Manager and/or assigned Application Specialist.

However, if GA DECAL finds in any subsequent review and/or investigation that the serious deficiencies listed in the most recently issued Note of Serious Deficiency have not been fully and permanently corrected, GA DECAL may immediately propose to terminate and disqualify the institution and its responsible principals and individuals from future participation in the CACFP *without* any further opportunity for corrective action.

## 3. Unsuccessful Corrective Action and Proposed Denial of

## Application

If timely corrective action is not taken to fully and permanently correct the serious deficiency(ies), cited in the Notice of Serious Deficiency, GA DECAL will propose to deny the institution's application and proposed to disqualify the RP/Is. Further, if corrective action is determined to be complete for the institution (program contact) but not for all of the RP/Is (or vice versa), GA DECAL will continue with its proposed application denial and proposed disqualification of the remaining parties.

DECAL is prohibited from paying any claims for reimbursement from a new institution for eligible meals served or allowable administrative expenses incurred until DECAL has approved its application and the institution and State agency have signed a Program agreement.

GA DECAL will notify the organization's program contact and all other RP/Is that the sponsor's application has been denied, the notice will indicate:

- The institution's application has been denied, and GA DECAL is proposing to disqualify the institution and its responsible principals and/or individuals.
- The basis for the denial.
- The procedures for seeking an administrative review (appeal) (in accordance with paragraph 7 C.F.R. §226.6(k)) of the proposed application denial and proposed disqualification.
- If the time for requesting an administrative review expires or if OSAH upholds GA DECAL's proposed denial of the sponsor's application and the proposed disqualification, the State agency will notify the institution's responsible principals and/or individuals that the institution and the responsible principal and/or individuals have been disqualified. This notice will be in the form of a letter entitled Notice of Termination and Disqualification. GA DECAL will then request the institution's name and its responsible principals and/or individuals be placed on the National Disqualified List maintained by the USDA.
- If OSAH overturns GA DECAL's proposed application denial and proposed disqualification, the State Agency will notify the institution and its responsible principals and/or individuals that the application denial and disqualification have been temporarily deferred. The State agency will issue a Notice of Successful Corrective Action and Temporary Deferment. At that time, the State Agency will offer the institution an opportunity to resubmit its application. GA DECAL will then update its list of seriously deficient institutions to include the institution temporary deferred and provide a copy of the notice to FNSRO.

Please Note: If a new institution's application does not meet all of the requirements listed in 7 C.F.R. § 226.6(b), 7 C.F.R. § 226.15(b) and 7 C.F.R. § 226.16(b), GA DECAL must deny the application.

## **B. Participating & Renewing Institutions**

### **1. Findings and Serious Deficiency Determination**

When findings are cited, GA DECAL will determine whether the finding is an isolated error or a repeated error if such severity as to warrant the institution to be declared seriously deficient. If GA DECAL determines that the institution has committed an isolated error, the State agency will provide technical assistance, provide the opportunity for corrective action, and/or perform a follow-up visit to ensure the institution has resumed Program compliance in all areas of Program operations.

If GA DECAL determines that the institution has repeated errors and/or finding(s) that are serious in nature, the State agency will declare the sponsor seriously deficient and issue a Notice of Serious Deficiency.

If the institution's permanent application renewal period expires before the end of the time allotted for corrective action, and/or the conclusion of any administrative review requested by the participating or renewing institution, GA DECAL will temporarily extend its current agreement with the institution and continue to pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative expenses incurred. During this period, the State agency may base administrative payments to the institution on the institution's previous approved budget or may base administrative payments to the institution on the budget submitted by the institution as part of its renewal application. However, the permanent application will not be approved for renewal unless the seriously deficient determination has been temporarily deferred.

### **2. Seriously Deficient Institutions**

Once GA DECAL determines that a renewing institution has committed one or more serious deficiencies or that a participating institution has committed one or more findings that rise to the level of serious deficiency, GA DECAL will notify the institution and its responsible principals and/or individuals that the institution has been determined to be seriously deficient by issuing the Notice of Serious Deficiency. The notice will specify:

- All of the RP/Is';
- The serious deficiencies found for Renewing Institutions;
- The findings that led to the serious deficiency determination for Participating Institutions;
- The corrective actions to be taken in order to correct the serious deficiency(ies);
- Any adverse action if applicable;
- The time allotted to correct the serious deficiency(ies);
- The consequences of unsuccessful corrective action, should it result;
- That the serious deficiency determination is not subject to administrative review (appeal);

- That failure to fully and permanently correct the serious deficiency(ies) within the allotted time will result in GA DECAL's denial of the institution's application, and proposed termination and proposed disqualification of the institution and its responsible principals and/or individuals from future participation in the Program;
- That if the institution voluntarily withdraws its application with GA DECAL after having been notified that it is seriously deficient, will result in the proposed placement of the institution and its responsible principals and/or individuals on the National Disqualified List;
- That if GA DECAL does not possess the date of birth for any individual named as a "responsible principal or individual" in the serious deficiency notice, the submission of that person's date of birth is a condition of corrective action for the institution and/or individual;
- That if the institution is an administrative and/or daycare home sponsor, the institution is prohibited from recruiting, enrolling, and approving facilities to participate under its sponsorship; and
- That termination and disqualification from the CACFP may impact an institution's eligibility to receive other State and/or Federal funding from sources such as the Childcare and Parent Services (CAPS) Program or Georgia's Pre-K Program.

### 3. Corrective Action Plan (CAP)

Once an institution is declared seriously deficient, it is required to provide written corrective action responses for each finding cited. Taken together, these responses are often referred to as a Corrective Action Plan or "CAP." Corrective action must be taken within the timeframe designated by GA DECAL. The written responses should indicate that the institution understands what violation occurred and what corrective action needs to be taken to fully and permanently correct the serious deficiency.

An acceptable CAP must include all of the following for each finding cited:

- **What** are the processes and/or procedures that were implemented by the institution to address the serious deficiency;
- **Who** is responsible for addressing the serious deficiencies;
- **When** was the procedure implemented by the institution to address the serious deficiencies and at what frequency (i.e., weekly, monthly, etc.) will the processes/procedures be performed/verified;
- **Where** is the corrective action plan documentation going to be retained; and
- **How** the staff will be informed of the policies and procedures.

An institution's CAP will be denied if it provides little detail, cannot be easily understood, lacks supporting documentation, and/or is missing some or all of the required information listed above. Further, a Notice of Proposed Termination and Proposed Disqualification may be issued to the institution.

**Note:** GA DECAL is prohibited from allowing more than 90 days for corrective action from the date the institution receives the serious deficiency notice.

## 4. Successful Corrective Action and Temporary Deferment

For participating institutions, if the required corrective action is taken to fully and permanently correct the serious deficiencies within the allotted timeframe and no new findings are cited, the compliance review is closed, and the serious deficiency determination will be temporarily deferred.

In the case of a renewing institution, the renewing institution will be offered the opportunity to resubmit its application. If the renewing institution resubmits its application, GA DECAL must complete its review of the application within 30 days after receiving the complete and correct application.

GA DECAL will notify the institution and its RP/Is by issuing a Notice of Successful Corrective Action and Temporary Deferment. Simultaneously, GA DECAL will update its serious deficiency list to provide that the sponsor has been temporarily deferred. However, if corrective action is complete for the institution but not for all of the responsible principals and/or individuals, GA DECAL will continue with proposed termination and proposed disqualification of the remaining parties.

**If corrective action requests included adhering to an approved payment plan for reclaimed meals or disallowed costs, the deferment of the seriously deficient determination will be contingent upon adherence to the payment plan until the debt is repaid in full. To be clear, failing to adhere to the approved payment plan or the inability by the State agency to verify proper repayments after having been temporarily deferred, will result in GA DECAL issuing a Notice of Proposed Termination and Proposed Disqualification to the organization and its RP/Is.**

If GA DECAL initially determines that the institution's corrective action is complete, but later determines in a follow-up review or in any subsequent review that the serious deficiency(ies) has recurred and has not been fully and permanently corrected, GA DECAL must move immediately to issue a notice of intent to terminate and disqualify the institution, in accordance with 7 CFR 226.6(c)(1)(iii)(B)(3), 7 CFR 226.6(c)(2)(iii)(B)(3), and 7 CFR 226.6(c)(3)(iii)(B)(3).

## 5. Unsuccessful Corrective Action and Proposed Termination and Proposed Disqualification

If timely corrective action is not taken to correct the serious deficiencies, no corrective action is received, corrective action is received but is determined by the State agency to be insufficient, and/or additional findings are cited, GA DECAL will notify the institution and its responsible principals and/or individuals that it is proposing to terminate the institution's Agreement and proposing to disqualify the institution and its responsible principals and/or individuals fully and permanently and will issue a Notice of Proposed Termination and Proposed Disqualification. At this time, GA DECAL will update its Serious Deficiency list to denote that organization's compliance status.

The Notice of Proposed Termination and Proposed Disqualification will specify at a minimum:

- That the institution's application has been denied for Renewing Institutions

- GA DECAL is proposing to terminate the institution's agreement and proposing to disqualify the institution and its responsible principals and/or individuals;
- The basis for the actions; and
- The procedures for seeking an administrative review (appeal) of the application denial and proposed disqualifications for Renewing Institutions
- The procedures for seeking an administrative review (appeal) for proposed termination and proposed disqualification for Participating Institutions.
- That if the institution voluntarily terminates its agreement after receiving the notice of the proposed termination, the institution and the responsible principals and individuals will be disqualified;
- That the institution may continue to participate in the Program and receive reimbursement for eligible meals served and allowable administrative costs incurred until its administrative review is completed.
- When the time for requesting an administrative review expires or when OSAH upholds GA DECAL's denial of the institution's application, the proposed termination, and the proposed disqualifications, GA DECAL will notify the institution's executive director/owner and chairman of the board of directors, and the responsible principals and individuals, that its agreement has been terminated and that the institution and the responsible principals and individuals have been disqualified. At the time this notice is issued, GA DECAL will update GA DECAL's list of seriously deficient institutions and provide a copy of the notice and the mailing address and date of birth for each responsible principal and responsible individual to FNSRO.
- If OSAH overturns GA DECAL's application denial and proposed disqualification, GA DECAL will notify the institution's executive director/owner and chairman of the board of directors, and the responsible principals and individuals that the application denial and proposed disqualification have been temporarily deferred. At the time this notice is issued, GA DECAL will also update GA DECAL's list of seriously deficient institutions to reflect the temporary deferment and provide a copy of the notice to FNSRO.

Unlike a serious deficiency determination, proposed Program termination and disqualification is considered an adverse action. Therefore, attached to the Notice of Proposed Termination and Proposed Disqualification will be appeal procedures, notifying the organization of its right to appeal that action.

Please Note: If a renewing institution's application does not meet all of the requirements listed in 7 C.F.R. § 226.6(b), 7 C.F.R. § 226.15(b) and 7 C.F.R. § 226.16(b), GA DECAL must deny the application.

## **6. Administrative Review (Appellate Process)**

DECAL's action remains in effect during the appeal process. However, participating institutions and facilities may continue to operate the Program during an appeal of termination, and if the appeal results in overturning the State agency's decision, reimbursement will be paid for meals served during the appeal process. However, such continued Program operation shall not be allowed if DECAL's action is based on health

imminent dangers to the health or welfare of children. If the sponsor or site has been terminated for this reason, DECAL will specify it in its notice of action.

For additional guidance, please see DECAL's [CACFP appeal procedures](#).

## 7. Temporary Deferment

Once an administrative review is requested, if the hearing official overrules the State agency's proposed actions, the State agency will issue a Notice of Temporary Deferment, notifying the sponsor and its responsible principals and/or individuals that the proposed termination and disqualification has been temporarily deferred and that the State agency will provide reimbursement for any valid claims for eligible meals served and allowable administrative costs incurred with appropriate documentation during the appeal process. At this time, GA DECAL will update the serious deficiency list to reflect the sponsor's current compliance status.

## 8. Program Termination and Disqualification

Institutions participating in the CACFP that received a Notice of Proposed Termination and Proposed Disqualification, submitted a request for an administrative review, and the administrative hearing official rendered a final decision in GA DECAL's favor, will be terminated and disqualified from the Program. Institutions who did not make a timely request for an appeal will also be terminated and disqualified from the Program following the end of the appeal deadline. In both cases, GA DECAL will issue a Notice of Final Termination and Disqualification to the sponsor and its RP/Is.

Specifically, if the institution fails to appeal the proposed termination and proposed disqualification, the effective date of termination will be the date following the last calendar day the institution had to appeal GA DECAL's proposed actions or the date the Final Termination letter was issued. If GA DECAL's actions are upheld by OSAH, the State agency's proposed termination and disqualification of the institution and its responsible principals and/or individuals will be effective either on the date the Notice of Termination and Disqualification was issued or the date the administrative hearing official rendered its final decision along with the names of the responsible principals and/or individuals as listed on the SD correspondence on the Georgia Disqualified List (GDL) and submitted to be placed on the National Disqualified List (NDL).

## 9. Placement on the National Disqualified List

When the time for requesting an administrative review expires or when the decision to terminate and disqualify is upheld by OSAH, unless instructed otherwise, GA DECAL will issue a **Notice of Termination** and disqualification. GA DECAL will also notify the United States Department of Agriculture (USDA) that the institution's name should be placed on the National Disqualified List maintained by the USDA. All institutions, responsible principals and/or individuals that are placed on the GDL and/or NDL are disqualified from future



participation in the Child and Adult Care Food Program (CACFP) and SFSP. Institutions and responsible principals and/or individuals that are placed on the GDL and/or NDL will remain on the list until seven years have passed since the effective date of termination, as described above. However, if the institution and responsible principals and/or individuals have failed to repay any debt owed under the Program, they will remain on the list until such debt has been repaid in full.

In addition, no individual on the National Disqualified List may serve as a principal in any institution or facility or as a day care home provider. GA DECAL must deny the application of a new or renewing institution if the institution is on the National Disqualified List, and GA DECAL must terminate the agreement of any participating institution that is disqualified by another state agency or by FNS.

GA DECAL must also deny the application of a new or renewing institution if any of the institution's principals are on the National Disqualified List. If an institution permits an individual who is on the National disqualified list to serve in a principal capacity for the institution or for one or more of its facilities, GA DECAL must declare the institution seriously deficient and initiate action to terminate the institution's agreement and disqualify the institution.

## **10. Record Retention for Institutions Declared Seriously Deficient and Institutions Placed on the National Disqualified List**

Please refer to DECAL's Policy CACFP No. 2-18. Per this policy, all records to support any claims must be retained for the current year plus a period of three years after the submission of a claim for the fiscal year to which they pertain. Sponsored facilities are also required to keep all applicable records on file at the facility for three years plus the current year.

The aforementioned principle applies to the serious deficiency process. Consistent with the requirements of DECAL Policy CACFP No. 2-18 and 7 C.R.F. § 226.10(d) concerning the retention of claims-related records, records relating to any serious deficiency shall be retained by DECAL or the sponsoring organization for three years after DECAL and FNS (for institutions or responsible principals or individuals) or sponsoring organization (for family day care homes) accepts the corrective action. This timeframe will permit DECAL (or the sponsoring organization, in the case of a family day care home) to conduct one or more follow-up reviews to ensure that the institution or home has fully and permanently corrected the serious deficiency and will provide the necessary documentation for a proposed termination if it is found that the corrective action has not been permanently implemented.

Additionally, the principals of DECAL's Policy CACFP No. 2-18 applies to the retention of records relating to institutions, responsible principals or individuals, and family day care homes that have been placed on the CACFP's National Disqualified List. These records are considered to pertain to the entire period that an individual or institution remains on the NDL,

since the documentation supporting the disqualification must be available to respond to any challenge to the institution's or individual's inclusion on the NDL, or to a request for removal from the NDL. Therefore, DECAL and/or institutions must retain records relating to the disqualification for three years after the institution, responsible principal or individual, or family day care home is removed from the NDL.

## **VI. Comment(s)**

Any questions concerning this policy should be directed to the Policy Administrator.