Georgia Department of Early Care and Learning

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MEMORANDUM

To: All Child and Adult Care Food Program (CACFP) Sponsors of Unaffiliated Centers

From: Falita S. Flowers, Nutrition Services Director

Date: June 11, 2014

Subject: Guidance to Developing and Applying Administrative Review (Appeal) Procedures

Reference: 7 C.F.R. §226

The purpose of this memo is to provide guidance on applying the appeals process for sponsored centers who receive a notice of proposed termination for cause result of a review, complaint investigation, or fact finding investigation conducted by the sponsoring organization. Termination for cause means the termination of a sponsored center's Program agreement by the sponsoring organization due to the center's violation of the agreement. Refer to Bright from the Start's Policy No. CACFP 04-31, *Procedures for Administrative Sponsors Terminating a Sponsored Center's Child and Adult Care Food Program Agreement,* for additional guidance on termination.

When a sponsoring organization proposes to terminate a center's Program agreement, the sponsored center must be provided an opportunity for an administrative review (appeal) of the proposed termination. This is done by the sponsoring organization offering appeal procedures and a hearing. The following describes the procedures to developing and administering the appeals process.

The sponsoring organization provides a written copy of the organization's appeal procedures so that the sponsored center is made aware of his or her right to an appeal when facing proposed termination. A copy of the procedures must be provided to all sponsored centers either annually; to a sponsored center when a sponsoring organization takes any action subject to a hearing; and any other time upon request. The same procedures must apply to all sponsored centers.

Bright from the Start recommends the written appeal procedures include the following:

- **Definitions** - any relevant terms which will be used throughout the documentation (e.g., "termination for cause," "sponsor," etc.). Definitions may be found in the Federal Regulations, 7 C.F.R. §226.2.

- **Actions subject to a hearing** – intent to terminate the sponsored center's agreement for cause (referencing for use the regulatory citation for sponsors of family day care homes, 7 C.F.R. §226.16(l)(3)(iii) and (l)(4)(ii)) and (b) suspension). The sponsoring organization is prohibited from offering an appeal for reasons other than the aforementioned.

- **Procedures** – requirements to validate a request for an appeal and actions taken by both the sponsoring organization and the sponsored center once the appeal request is received.

- **Contact information** – where the sponsored center can direct questions.

In addition, the sponsoring organizations, as applicable, must follow the procedures described below.

Selecting the Hearing Official

The hearing official must be independent and impartial. This means, although the hearing official may be an employee or board member of the sponsoring organization, he or she must not have been involved in the action that is the subject of the hearing or have a direct personal or financial interest in the outcome of the appeal.

If the hearing official is an employee of the sponsor, he or she may not occupy a position in which he or she is potentially subject to undue influence from the individual responsible for the sponsoring organization's action, nor may he or she occupy a position in which he or she may exercise undue influence on the individual responsible for the action.

The hearing official's role is to determine if the sponsoring organization took appropriate action to terminate the sponsor's agreement as a result of a review, complaint investigation, or fact finding investigation conducted by the sponsoring organization. Moreover, as it relates to imminent threat or serious health and safety violations, the hearing official's role is to determine if the sponsoring organization's decision to suspend, terminate and disqualify the sponsored center is based upon findings cited by the Child Care Services Division (CCS). The hearing official's role is not to determine if CCS took appropriate action.

The sponsored center must be permitted to contact the hearing official directly during the appeal process if he or she so desires.

Notice of Adverse Action

Notices of adverse action shall be issued by the sponsoring organization in writing and shall state the type of action, the cause for the action, and if applicable, the financial effects. Notices shall also describe the sponsored center's right to appeal the action and these procedures. A sponsored center shall be allowed the opportunity to review any information upon which the action was based.

Appeal Request

Sponsored centers are allowed to refute the adverse action(s) in person via a hearing. The request for a hearing must be submitted to the sponsoring organization within the timeframe specified by the sponsoring organization. All appeal requests must be submitted in writing to the attention of the hearing official.

The sponsoring organization's written appeal procedures must specify, at minimum, the following requirements for requesting an appeal:

- How sponsored centers may request an administrative review and the address of the person to whom the request should be submitted;
- That an independent/impartial hearing official will conduct the administrative review;
- The deadline for requesting the review; and
  - The consequence of not submitting a timely appeal, which would be termination of the sponsored center's agreement and placing the name of the sponsored center and the name(s) of the person(s) responsible for the CACFP on the National Disqualified List.

Upon receipt of the request, the sponsoring organization must forward the request to the hearing official for handling along with all pertinent written documentation which led to the action. With respect to the type of appeal being requested:

- Sponsored centers that request a hearing can request that the organization make any information on which the adverse action(s) was based available for inspection.

- The sponsored center and the sponsoring organization will be provided with at least five (5) days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing.

- Within the timeframe specified by the sponsoring organization, days of the request, the hearing will be held at the sponsor's designated location. Where applicable, the hearing will not be scheduled before the sponsored center's written documentation is received by the hearing official.

The proposed termination and proposed disqualification shall remain in effect during the appeal process. However, the sponsored center may continue to operate the Program during an appeal or termination, and if the sponsoring organization's decision is upheld, reimbursement shall be paid for eligible meals served during the appeal process. <u>However, such continued Program operation shall not be allowed if the adverse action is based on imminent danger to the health or safety of children or a serious health and safety violation</u>. If the sponsored center has been terminated for this reason, the sponsored center shall be notified in writing (See also Bright from the Start Policy Memo, "*Health and Safety Requirements - Admin and DCH Sponsors*," dated October 31, 2013).

<u>Hearing</u>
The sponsored center may retain legal counsel or be represented by another person. Failure of the center's legal representation or other representative to appear at the scheduled hearing may constitute the center's waiver of the right to a personal appearance before the hearing official unless the hearing official agrees to reschedule the hearing. The sponsoring organization's representative will be available at the hearing to respond to the sponsored center's testimony and written information and to address questions from the hearing official.

<u>Decision</u>
The hearing official must make a determination based on the information provided by the sponsored center and on Federal and State laws, regulations, polices, and procedures governing the Program.
The hearing official must inform the sponsoring organization and the center of the hearing's outcome within the period of time specified in the sponsoring organization's hearing procedures. This timeframe is an administrative requirement for the sponsoring organization and may not be used as a basis for overturning the termination if a decision is not made within the specified timeframe.

The determination made by the hearing official is the final administrative determination to be afforded the sponsored center (7 C.F.R. §226.6(l)). Final Decisions shall be issued via certified mail, return receipt.

Please Note: Bright from the Start is required to conduct compliance reviews of sponsoring organizations which includes a review of sponsored center(s). If adverse actions are noted as a result of Bright from the Start's review of the sponsored center, the sponsored center is prohibited from requesting an appeal directly to Bright from the Start. Instead, the center must notify the sponsor and discuss the adverse actions.

For questions concerning this memorandum, please contact Sonja Adams, Policy Administrator at (404) 651-8193.