



**Georgia Dept
of Early Care
and Learning**

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

Procedures for Sponsoring Organizations Terminating a Day Care Home Provider's Child and Adult Care Food Program Agreement, CACFP #16 (01-16)

LEGAL AUTHORITY

Section 243(c) of the Agricultural Risk Protection Act of 2000, Public Law 106-224; 7 C.F.R. § 226; O.C.G.A. § 20-1A-4(3)

Cross Reference/See Also

DECAL Policy Memorandum, "Guidance on Developing and Applying Appeal Procedures - Sponsors of Day Care Homes," December 19, 2014

I. PURPOSE

The purpose of this policy is to identify the minimum procedures sponsoring organizations must include in their policy and procedures for terminating the Child and Adult Care Food Program (CACFP) agreement with day care homes under their sponsorship. This policy specifically addresses the requirements of the serious deficiency process and the administrative review system sponsoring organizations must use when terminating for cause the program agreement of any of their day care home providers. This policy also addresses sponsoring organizations terminating for convenience program agreements. Note: The guidance throughout may also be used by sponsoring organizations of unaffiliated centers.

II. APPLIES TO

This policy applies to all sponsoring organizations having program agreements with day care home providers participating in the Child and Adult Care Food Program (CACFP).

III. DEFINITIONS

"Day care home" means an organized nonresidential child care program for children enrolled in a private home, licensed or approved as a family or group day care home and under the auspices of a sponsoring organization. (7 C.F.R. § 226.2)

IV. POLICY

Bright from the Start: Georgia Department of Early Care and Learning (DECAL) will provide guidance to sponsoring organizations on terminating a day care home provider's participation in the CACFP to ensure that such terminations comply with applicable law(s) and regulation(s). Federal regulations require sponsoring organizations to utilize the serious deficiency process and establish and adhere to an administrative review system to provide family or group day care homes with a fair hearing prior to terminating for cause the program agreement with family or group day care homes participating in the CACFP. The procedures provided in this policy shall operate as the minimum requirements of the sponsoring organization's serious deficiency process and administrative review system.

Termination for Cause - Day Care Home Declared Seriously Deficient

The sponsoring organization shall terminate for cause the program agreement of any day care home provider that the sponsor has determined to be seriously deficient and that fails to fully and permanently correct the serious deficiency(ies). Examples of serious deficiencies which, if not corrected, would result in termination for cause include, but are not limited to:

- Submission of false information and/or misrepresentation of information submitted on the application;
- Submission of false claims for reimbursement;
- Simultaneous participation under more than one sponsoring organization;
- Non-compliance with program meal pattern;
- Failure to keep required records;
- Failure of key staff to attend/participate in mandatory training;
- Conduct or conditions that threaten the health or safety of a child(ren) in care;
- A determination that the day care home provider has been convicted of any activity that occurred during the past seven years and that indicated a lack of business integrity as defined by federal regulations and/or DECAL;
- Failure to participate in training; or
- Any other non-performance under the sponsor-provider agreement, as specified by the sponsoring organization or the State Agency.

At a minimum, the sponsor's serious deficiency process and administrative review system for termination for cause must include the following elements:

1. Written notice of serious deficiency that is sent to the day care home that the sponsor has determined the provider to be seriously deficient and that specifies the serious deficiency(ies).

The sponsor must keep a copy of the notice on file and a copy must also be sent to DECAL's Nutrition Services Policy and Adverse Action Specialist at the same time it is issued to the day care home. The notice must inform the provider of the the following:

- a. The serious deficiency(ies);
 - b. The actions to be taken by the day care home to correct the serious deficiency(ies);
 - c. The time allotted to correct the serious deficiency(ies) (as soon as possible, but not to exceed 30 days);
 - d. That the serious deficiency determination is not subject to administrative review;
 - e. That failure to fully and permanently correct the serious deficiency(ies) within the allotted time will result in the sponsoring organization 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 sponsoring organization after having been notified that it is seriously deficient will still result in the day care home's formal termination by the sponsoring organization and placement of the day care home and its principals on the National disqualified list.
2. Written Notice of Successful Corrective Action and Temporary Deferment if corrective action is satisfactory and the serious deficiency determination is temporarily deferred. The sponsoring organization must also provide a copy of the notice to DECAL's Nutrition Services Policy and Adverse Action Specialist. However, if the sponsoring organization accepts the provider's corrective action, but later determines that the corrective action was not permanent or complete, the sponsoring organization must then propose to terminate the provider's Program agreement and disqualify the provider
3. Written notice of intent to terminate that is sent only after the time given for corrective action has passed and/or the provider has not fully and permanently corrected the serious deficiency(ies). A copy of this notice must be submitted to DECAL's Nutrition Services Policy and Adverse Action Specialist. The notice must:
- Inform the provider that it may request an administrative review of the proposed termination;
 - Outline the procedures for seeking an administrative review;
 - Inform the provider that it may continue to participate and receive Program reimbursement for eligible meals served until its administrative review is concluded;
 - Inform the provider that termination of the day care home's agreement will result in the day care home's termination for cause and disqualification; and
 - Inform the provider 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.

If any serious deficiency involves imminent threat to the health and safety of a child or if an activity of a provider poses a threat to public health or safety, the sponsoring organization must issue the written notice of serious deficiency without giving time for correction and written notice of intent to terminate that immediately suspends program participation and payments. Providers may request an administrative review of the termination and suspension

and, if they prevail, may seek retroactive reimbursement for eligible meals served during the suspension (See also Bright from the Start Policy Memorandum, "Health and Safety in the Child and Adult Care Food Program - Admin and DCH Sponsors," October 31, 2013).

4. Impartial and independent review official. The sponsoring organization must obtain a review official to conduct administrative reviews requested by providers. The review official may be an employee of the sponsoring organization or any other person chosen by the sponsoring organization. In any event, the review official must not have been involved in the proposed termination and cannot have a direct personal or financial stake in the outcome of the review. The sponsoring organization must make every reasonable attempt to ensure that the review official does not have a real or apparent conflict of interest that would affect the review official's judgment.
5. Written Notice of Termination or Written Notice of Corrective Action and Temporary Deferment depending upon the outcome of the administrative review. A copy of this notice must be submitted to DECAL's Nutrition Services Policy and Adverse Action Specialist.

Termination for Convenience

The sponsoring organization may terminate for convenience the agreement with day care homes for reasons unrelated to the provider's performance under the contract. Examples of a termination for convenience include, but are not limited to:

- It is no longer cost effective to sponsor a provider;
- The sponsor is no longer administratively capable of sponsoring a provider;
- The provider continuously submits late paperwork to the sponsor; or
- The provider refuses to follow the sponsor's policies and procedures.

The sponsor must provide written notice to the provider that it will terminate for convenience the agreement with the provider. The notice must indicate the effective date of the termination and a copy must be kept in the sponsor's records and a copy must also be submitted to the assigned Nutrition Services Application Specialist. Providers that are terminated for convenience may not request an administrative review but may seek to enter into an agreement with a different sponsor.

Sponsoring organizations may not terminate for convenience the agreement with day care homes that should otherwise be terminated for cause. In other words, if a day care home is seriously deficient or has findings indicating serious deficiency, the sponsor should follow the serious deficiency process and the procedures for termination for cause and not those covering termination for convenience.

V. PROCEDURES

Sponsoring organizations are to complete the following steps in order to comply with this policy.

Step 1: Create a serious deficiency policy on terminating for cause the agreement with day care home providers. The policy should include, at a minimum, the elements mentioned in this policy. Additional requirements may be imposed in the policy, but the sponsoring organization's policy must at least:

- Provide what the sponsor's staff considers in making the assessment of whether a problem rises to the level of a serious deficiency (i.e., repeat findings, frequency and severity of the

problem, isolated vs. systemic non-compliance, degree to which problem/non-compliance will impact the integrity of the meals served and the funds used, etc.);

- Determine the amount of time that should elapse between the sponsor's identification of a serious deficiency and its issuance of an SD Notice to the FDCH;
- Determine who within the sponsoring organization has the authority to sign SD notices;
- Provide instructions for drafting and executing written notice of serious deficiency, written notice of intent to terminate for cause, written notice of temporary deferment or written notice of termination, and that, if requested, an independent and impartial official will conduct the administrative review; and
- Inform providers that their program agreements may also be terminated for convenience and provide examples of reasons for terminating for convenience.

Step 2: Create appeal procedures for day care home providers that request an administrative review for termination for cause (See also, Bright from the Start Policy Memorandum, "Guidance on Developing and Applying Appeal Procedures - Sponsors of Day Care Homes," December 19, 2014). The appeal procedures should cover at least the following items:

- How day care home providers may request an administrative review (for instance, by submitting a written request for review to the sponsor) and the address of the person to whom the request should be submitted;
- The provider may represent him or herself, retain legal counsel, or may be represented by another person;
- The provider may review the record on which the sponsoring organization's decision was based and refute the action in writing.
- The deadline for requesting the review. Day care home providers should be given a reasonable amount of time (not less than fifteen (15) calendar days) following the receipt of the notice of intent to terminate for cause to request an administrative review;
- That an independent/impartial review official will conduct the administrative review who must make a determination based solely on the information provided by the sponsoring organization and the provider, and on Federal and State laws, regulations, policies, and procedures governing the Program. The provider must be permitted to contact the hearing official directly if he or she so desires.
- The review official must inform the sponsoring organization and the provider of the appeal's outcome within the period of time specified in the State agency's or sponsoring organization's appeal procedures.
- The determination made by the review official is the final administrative determination to be afforded to the provider; and
- The consequence of not timely appealing the termination for cause, and that is, the day care home's agreement would be terminated and the name of the day care home and the name of the person(s) responsible for the CACFP would be added to the National Disqualified List.

Step 3: Distribute a copy of the serious deficiency policy and the appeal procedures to each day care home provider having an agreement with the sponsoring organization annually, when an action is taken by a sponsor that is subject to administrative review, and any other time upon request. The sponsor must

keep on file a copy of the policy and the appeals procedures.

Step 4: Send a copy of the following items to DECAL's Policy and Adverse Action Specialist as they arise:

- A copy of each written notice of serious deficiency sent to day care home providers;
- A copy of each written notice of temporary deferment sent to day care home providers;
- A copy of each written notice of intent to terminate for cause sent to day care home providers;
- A copy of the decision of the review officer. Where no administrative review was timely requested or held, forward to DECAL a copy of the termination letter sent to the day care home provider indicating that its agreement has been terminated for cause and its name will be added by DECAL to the National disqualified list;
- If an administrative review is requested and the decision is in favor of the day care home provider, a copy of the notice of temporary deferment sent to the day care home provider;
- A copy of each written notice of termination for convenience sent to day care home providers; and

Step 5: Send a copy of the following items to DECAL's Nutrition Policy Administrator as they arise:

- A written request for DECAL to place the day care home provider and its responsible principals/individuals on the NDL (include the date of birth for each responsible principal/individual).

VI. COMMENTS

For additional resources, please refer to State issued guidance, "[An Overview of the Serious Deficiency Process in the CACFP \(Exclusively for Sponsors of Day Care Homes and Unaffiliated Centers\)](#)," located on the DECAL website.

Any questions concerning this policy should be directed to the Policy Administrator at (404) 651-8193.