



Georgia Department of Early Care and Learning

**BRIGHT FROM THE START:  
Georgia Department of Early Care and Learning**

**Nutrition Services**

<b>POLICY</b>	<b>No.: CACFP/03-28</b>	<b>Effective Date:</b> 10/1/2003
		<b>Revised:</b> 2/6/2018
		<b>Revision Effective:</b> 2/6/2018

**SUBJECT:** Responsibilities and Guidelines for the Governing Boards of Corporations Applying to or Participating in the Child and Adult Care Food Program (CACFP)

**LEGAL AUTHORITY:** O.C.G.A. § 20-1A-4(3); O.C.G.A § 14-2-801; USDA Management Improvement Guidance for Child Care Centers and Sponsors (September 1999), 7 C.F.R. § § 226.6(b)(1)(xviii)(c )(1), 226.6(b)(2)(vii)(c )(1), 7 C.F.R. § 226.2; Food and Nutrition Service, USDA-Final Rule, Child and Adult Care Food Program-Improving Management and Program Integrity, 76 Fed. Reg. 34542 (June 13, 2011)

*Cross Reference/See Also:* Bright from the Start Policy Memorandum, "Ensuring Institutions Implement Adequate Oversight and Internal Controls of CACFP Operations," (Revised May 15, 2015)

**I. PURPOSE**

The purpose of this policy is to outline the responsibilities and guidelines for the governing boards of all non-profit and for-profit corporations applying to or participating in CACFP.

**II. APPLIES TO**

This policy applies to all non-profit corporations applying to become or currently participating as a CACFP institution. This policy also applies to for-profit corporations, required by law to have a governing board, who are applying to become or currently participating as a CACFP institution.

**III. DEFINITION(S)**

"Institution" means a sponsoring organization, child care center, outside-school-hours care center, emergency shelter, or adult day care center participating in the CACFP. It also includes homeless shelters and "at-risk" after school care programs.

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"Non-profit institution" means any corporation, trust, association, cooperative, or other organization that is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; is not organized primarily for-profit; and uses its net proceeds to maintain, improve, or expand the operations of the organization.

"For-profit Institution" means a business, corporation or other organization whose primary goal is to earn a profit. For-profit institutions do not qualify for tax-exempt status.

"Corporation" means a body formed and authorized by law to act as a single person although constituted by one or more persons and legally endowed with various rights and duties including the capacity of succession.

## IV. POLICY

Federal regulations state all non-profit institutions and for-profit institutions applying to or participating in the CACFP must have internal controls and other management systems in effect to ensure fiscal accountability in accordance with the requirements of 7 C.F.R. § 226. One of the many ways an institution must demonstrate Program accountability is by ensuring that it has adequate oversight of the Program as defined by Federal and State statutes and the requirements of its governing board.

The following guidance applies to all non-profit and for-profit corporations.

Federal regulations require that a corporation's governing board must: 1) meet on a regular basis; and 2) have the authority to hire and fire the institution's executive director (i.e., the board must be independent of the executive director's control) [7 CFR 226.2]. It is a critical aspect of the board's ability to provide adequate oversight of the Program. Federal guidance emphasizes that the governing boards which include an executive director/CACFP director, other sponsor officials, and/or members of their families cannot perform the type of independent oversight required for the corporation's successful operation of Program.

Georgia law requires all corporations to have a board of directors unless the corporation is a statutory close corporation meeting the requirements of O.C.G.A § 14-2-922 or a signed shareholder agreement has eliminated the board of directors. A for-profit corporation's board of directors must consist of at least one member. The code further states that, "all corporate powers shall be exercised by or under the authority of the board of directors of the corporation, and the business and affairs of the corporation shall be managed by or under the direction, and subject to oversight, of its board of directors, subject to any limitation set forth in the articles of incorporation, in rights, options, or warrants permitted by paragraph (2) of subsection (d) of Code Section 14-2-624, or except as provided in an agreement among the shareholders meeting the

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requirements of Code Section 14-2-732 [O.C.G.A. § 14-2-801(b)].

All non-profit corporations and all for-profit corporations that have a board of directors must perform the following functions:

- a. Meet applicable Federal and State statutes and requirements;
- b. Be responsible for policy setting, fiscal guidance, and ongoing governance;
- c. Regularly review the corporation’s policies, program and budgets;
- d. Establish policies for the corporation;
- e. Select and evaluate the Executive Director
- f. Provide fiscal guidance;
- g. Approve decisions about compensation of employees and other parties providing services;
- h. Ensure the establishment and implementation of written codes of conduct and performance of employees engaged in awards and administration of contracts; and
- i. Possess Program knowledge and have operational oversight.

Additionally, all non-profit corporations must meet the definition of an independent governing board of directors per Federal requirements. All for-profit corporations that have a board consisting of two or more persons must also meet the definition of an independent governing board of directors per Federal requirements. Therefore, based on aforementioned Federal and State guidance and in an effort to preserve the board's independence, the following are additional guidelines corporations must include in their governing boards policies to maintain compliance with the CACFP and Federal regulations.

- 1. The executive director/CACFP director, owner, other sponsor officials, and/or members of their families are prohibited from serving as Chairman of the Board.
- 2. The board must be comprised of a majority (51 percent or more) of members of the community who are not financially interested in its activities, or relatives of staff members or to each other.
- 3. Board members are prohibited from voting on decisions relating to their own compensation (or the compensation for a relative).
- 4. There must be a segregation of duties for Program staff who also serve on the board.

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**V. PROCEDURE(S)**

Non-profit and for-profit corporations applying to or participating in the CACFP must document in their application that their corporation has adequate oversight of the Program by its governing board to ensure Program accountability pursuant to this Policy. Non-profit and for-profit corporations must include the names of the members of their governing board in their application along with the name, mailing address, and date of birth of each member of the Board.

If the members of the governing board change, the principal of the corporation must notify the Georgia Department of Early Care and Learning (DECAL) in writing by completing the Institution Change Notification Form and update the electronic application within 30 days of the change. The principal will also be required to attend CACFP 2-day training within 90 days of notification to DECAL. The change in the governing board must be in compliance with this policy.

The corporation must document in its CACFP application how often the governing board will meet and participating institutions must maintain signed, dated, and authenticated records of board minutes as documentation of decisions made during the board meetings. These records must be maintained with all of the other required Program records and must be available for review by the United States Department of Agriculture (USDA), DECAL, and/or any of its agents at all times (See CACFP/02-18 Recordkeeping Requirements for the CACFP). The corporation's policies, operations, programs, and budgets must be reviewed regularly at board meetings. All decisions to make changes in the corporation's policies, operations, programs and/or budgets must be documented in the board's meeting minutes.

For-profit corporations who are legally operating without a board of directors, must include the names of each shareholder/owner in their application along with mailing address and date of birth for each shareholder/owner. Additionally, at least one of the shareholders/owners must attend CACFP 2-day training. As there is no board of directors to exercise the corporation's powers, the shareholders/owners have authority for the corporation. For-profit corporations legally operating without a board of directors with a change to their shareholders must also notify DECAL in writing by completing the Institution Change Notification Form and update the electronic application within 30 days of the change.

**VI. COMMENT(S)**

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